ADVERTISEMENT.

By a resolve of the legislature, passed February 4, 1832, the Governor was authorized to appoint three commissioners to revise the general statutes of the Commonwealth. Under this resolve, the Hon. Charles Jackson, the Hon. Asahel Stearns, and John H. Ashmun, Esq. were appointed. Mr. Ashmun died in April 1833, and the Hon. John Pickering was appointed in his stead. The report of these commissioners was laid before the legislature at the winter session of 1835. At that session, a joint committee, consisting of nine members of the senate and eighteen members of the house of representatives, was appointed to sit during the recess, and examine the commissioners' report. This committee commenced its sittings, May 20, 1835, and after a session of eighty one days, reported to the legislature the report of the commissioners, with numerous amendments. On the second day of September, 1835, the legislature commenced a session, for the exclusive purpose of acting upon the report of the commissioners and the proposed amendments of the committee. This session continued until the fourth day of the following November, when the act, called the Revised Statutes, was passed.

By virtue of a resolve of November 3, 1835, the subscribers were appointed commissioners, with directions personally to superintend the publication of the Revised Statutes, to examine the proof sheets, to compare the same with the original roll in the office of the secretary of state, to prepare marginal notes to the sections, and an exact and copious index to the whole.

This volume has been prepared in pursuance of that commission. In discharging the duties assigned them, the commissioners foresaw, that by bestowing their own labor upon certain subjects connected with the work, an equal amount of labor might be saved to thousands of individuals, who will hereafter have occasion to consult it. In order, therefore, to facilitate a reference to the statutes which are herein revised, they have caused the chapter of the principal act or acts revised, together with the political year in which the same were passed, to be denoted in the margin. And, generally, whenever the Revised Statutes have adopted, modified, or controlled the adjudications of the supreme judicial court of this Commonwealth, and also where they have established a rule in cases in which the decisions of the courts of other states might have been cited as an authority, the commissioners have placed a reference to those cases, under the marginal notes. They have selected, however, only leading and prominent cases. To have collected all the decisions, having any relation to the enactment, would have encumbered the page; and would, perhaps, more frequently have diverted attention to decisions foreign to the inquiry, than have elucidated the subject of research. No person could expect the margin of a statute book to be a substitute for a digest.

To the Revised Statutes are subjoined two acts, passed in February 1836; one amendatory of them, and the other an act specifically repealing the acts which are consolidated in those statutes.

The constitution of Massachusetts is prefixed to this volume of the laws, in compliance with the eleventh article of the sixth chapter of that instrument. The constitution of the United States is also prefixed. When that constitution was printed in the edition of the general laws of this Commonwealth, published in 1823, it was supposed that thirteen articles of amendment had been added thereto, since its original adoption. But it having been ascertained that the article, numbered *thirteen*, has never been ratified by the requisite number of states, it is omitted in this edition.

TITLE III.

OF THE ASSESSMENT AND COLLECTION OF STATE TAXES; AND OF THE FUNDS, REVENUE, AND PROPERTY OF THE COMMONWEALTH, AND THE ADMINISTRATION THEREOF.

CHAPTER 7. Of the manner in which taxes are to be assessed, and of the property exempted from taxation..... 74
CHAPTER 8. Of the collection of taxes..... 82
CHAPTER 9. Of taxes on banks, and on sales by auction..... 89
CHAPTER 10. Of the public lands, and the superintendence and disposition thereof..... 91
CHAPTER 11. Of the public buildings and other public property..... 93

TITLE IV.

CHAPTER 12. OF THE MILITIA..... 95

TITLE V.

CHAPTER 13. OF CERTAIN STATE OFFICERS..... 146

TITLE VI.

CHAPTER 14. OF COUNTIES AND COUNTY OFFICERS..... 157

TITLE VII.

OF TOWNS AND TOWN OFFICERS.

CHAPTER 15. Of the powers and duties of towns; and the election, qualifications, and duties of town officers..... 174
CHAPTER 16. Of workhouses in towns..... 186
CHAPTER 17. Of keeping watch and ward in towns..... 190
CHAPTER 18. Of securing towns against fires; and the appointment of firewards and enginemen..... 191
CHAPTER 19. Of fences and fence viewers; of pounds and the impounding of cattle; and of field drivers..... 195

TITLE VIII.

CHAPTER 20. OF PARISHES; AND THE SUPPORT OF PUBLIC WORSHIP..... 200

TITLE IX.

OF THE PUBLIC HEALTH.

CHAPTER 21. Of the preservation of the public health; quarantine; nuisances; and offensive trades..... 207
CHAPTER 22. Regulations concerning the practice of physic and surgery..... 214

TITLE X.

CHAPTER 23. OF PUBLIC INSTRUCTION..... 217

TITLE XI.

OF HIGHWAYS, BRIDGES AND FERRIES; AND OF TOWN WAYS.

CHAPTER 24. Of laying out highways, town ways and private ways; and the discontinuance thereof..... 228
CHAPTER 25. Of the repair of ways and bridges..... 242
CHAPTER 26. Of the regulation of ferries 249
CHAPTER 27. Of common sewers and drains, in highways and other places..... 251

TITLE XII.

OF THE REGULATION OF TRADE IN CERTAIN CASES.

CHAPTER 28. Of the inspection of provisions and other merchandize; and regulations respecting the sale thereof... 252
CHAPTER 29. Of sales by auctioneers..... 286
CHAPTER 30. Of weights and measures..... 288
CHAPTER 31. Of the weighing of lighters and other vessels employed in transporting stone, gravel and sand..... 292
CHAPTER 32. Of shipping, ship owners, and charterers; and of pilotage..... 294
CHAPTER 33. Of bills of exchange and promissory notes..... 302
CHAPTER 34. Of limited partnerships..... 304
CHAPTER 35. General provisions respecting trade..... 306

TITLE XIII.

OF CORPORATIONS; AND PROPRIETORS OF COMMON LANDS.

CHAPTER 36. Of banks..... 308
CHAPTER 37. Of insurance companies..... 320
CHAPTER 38. Of manufacturing corporations..... 327
CHAPTER 39. Of turnpike, railroad, and canal corporations..... 334
CHAPTER 40. Of aqueduct corporations..... 350
CHAPTER 41. Of library corporations, and lyceums..... 352
CHAPTER 42. Of agricultural corporations..... 354
CHAPTER 43. Of proprietors of lands, wharves, general fields, and other real estate lying in common..... 356
CHAPTER 44. General provisions respecting corporations..... 362

TITLE XIV.

OF THE INTERNAL POLICE OF THE COMMONWEALTH.

CHAPTER 45. Of the settlement of paupers..... 367
CHAPTER 46. Of the support of paupers..... 369

CHAPTER 47. Of the regulation of licensed houses..... 375
CHAPTER 48. Of the State Lunatic Hospital; and the care of lunatics. 379
CHAPTER 49. Of the maintenance of bastard children..... 383
CHAPTER 50. Of the observance of the Lord's day; and the prevention and punishment of immorality..... 385
CHAPTER 51. Of the law of the road; and the regulation of public vehicles..... 388
CHAPTER 52. Of timber floating on rivers, or carried upon adjoining lands..... 389
CHAPTER 53. Of the preservation of certain useful birds and other animals..... 390
CHAPTER 54. Of the destruction of certain noxious animals..... 391
CHAPTER 55. Of fisheries..... 392
CHAPTER 56. Of lost goods and stray beasts..... 395
CHAPTER 57. Of wrecks and shipwrecked goods..... 397
CHAPTER 58. Of certain municipal regulations of police..... 400

PART II.

OF THE ACQUISITION, THE ENJOYMENT AND THE TRANSMISSION OF PROPERTY, REAL AND PERSONAL; THE DOMESTIC RELATIONS, AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

TITLE I.

OF REAL PROPERTY, AND THE ALIENATION THEREOF.

CHAPTER 59. Of alienation by deed; and of the legal formalities, the construction, and the operation of deeds for the conveyance of lands..... 404
CHAPTER 60. Of estates in dower, by the curtesy, for years, and at will; and general provisions concerning real estate. 408

TITLE II.

CHAPTER 61. OF TITLE TO REAL PROPERTY BY DESCENT..... 413

TITLE III.

CHAPTER 62. OF WILLS OF REAL AND PERSONAL ESTATE..... 416

TITLE IV.

OF THE SETTLEMENT OF THE ESTATES OF DECEASED PERSONS.

CHAPTER 63. Of letters testamentary and other proceedings on the probate of a will..... 421
CHAPTER 64. Of the administration and distribution of the estates of intestates..... 423
CHAPTER 65. Of the inventory, and collection of the effects of deceased persons..... 428
CHAPTER 66. Of the payment of debts and legacies of deceased persons..... 430
CHAPTER 67. Of executors and administrators rendering their accounts and settling estates..... 435
CHAPTER 68. Of the proceedings when the estate of a deceased person is insolvent..... 438
CHAPTER 69. Of the appointment of trustees for minors and others; and of their powers and duties..... 443
CHAPTER 70. General provisions concerning the settlement of the estates of deceased persons..... 445

TITLE V.

OF TITLE TO REAL PROPERTY BY SPECIAL PROVISIONS OF LAW.

CHAPTER 71. Of the sale of lands for the payment of debts, by executors, administrators, and guardians..... 452
CHAPTER 72. Of the sale of land of minors, and other persons under guardianship, and securing the proceeds for their use..... 459
CHAPTER 73. Of taking land to satisfy executions for debt..... 462

TITLE VI.

CHAPTER 74. OF PREVENTING FRAUDS AND PERJURIES IN CONTRACTS AND IN ACTIONS FOUNDED THEREON... 472

TITLE VII.

OF THE DOMESTIC RELATIONS.

CHAPTER 75. Of marriage and the solemnization thereof..... 475
CHAPTER 76. Of divorce..... 479
CHAPTER 77. General provisions concerning husband and wife.... 484
CHAPTER 78. Of parents and children..... 487
CHAPTER 79. Of guardians and wards..... 488
CHAPTER 80. Of masters, apprentices and servants..... 494

PART III.

OF COURTS AND JUDICIAL OFFICERS, AND PROCEEDINGS IN CIVIL CASES.

TITLE I.

OF COURTS, AND JUDICIAL OFFICERS.

CHAPTER 81. Of the supreme judicial court..... 498
CHAPTER 82. Of the court of common pleas..... 507
CHAPTER 83. Of the probate court..... 514
CHAPTER 84. Of county commissioners..... 524
CHAPTER 85. Of justices of the peace..... 526
CHAPTER 86. Of the municipal court of the city of Boston..... 531
CHAPTER 87. Of police courts..... 533
CHAPTER 88. Of clerks, attorneys, and other officers of courts..... 539
CHAPTER 89. General provisions concerning courts and judicial officers..... 544

TITLE II.

OF ACTIONS IN GENERAL.

CHAPTER 90. Of the commencement of actions, and the service of the original writ..... 545
CHAPTER 91. Of bail in civil actions..... 561
CHAPTER 92. Of proceedings when the defendant does not appear and answer to the suit..... 564
CHAPTER 93. Of death, marriage, or other disability, occuring after the commencement of the suit..... 566
CHAPTER 94. Of witnesses and evidence..... 570
CHAPTER 95. Of juries..... 578
CHAPTER 96. Of trial and its incidents..... 583
CHAPTER 97. Of judgment and execution..... 586
CHAPTER 98. Of the relief of poor prisoners committed on execution for debt..... 595
CHAPTER 99. Of writs of review..... 602
CHAPTER 100. General provisions concerning actions..... 605

TITLE III.

OF ACTIONS RELATING TO REAL PROPERTY.

CHAPTER 101. Of the writ of entry for the recovery of the freehold. 609
CHAPTER 102. Of the writ of dower..... 616
CHAPTER 103. Of the partition of lands owned by several persons.. 617
CHAPTER 104. Of forcible entry and detainer..... 627
CHAPTER 105. Of waste, and trespass on real estate..... 629
CHAPTER 106. Of actions for private nuisances..... 632

CHAPTER 107. Of suits to foreclose and to redeem, mortgages,.... 633
CHAPTER 108. Of informations of intrusion, and informations in the nature of inquests of office..... 640

TITLE IV.

OF PROCEEDINGS IN SPECIAL CASES.

CHAPTER 109. Of foreign attachment, or the trustee process..... 642
CHAPTER 110. Of suits by and against executors and administrators. 653
CHAPTER 111. Of the writ of habeas corpus..... 655
CHAPTER 112. Of writs of audita querela, of error, and of certiorari. 660
CHAPTER 113. Of distraining cattle, and of the action of replevin... 664
CHAPTER 114. Of reference to arbitration by agreement before a justice of the peace..... 670
CHAPTER 115. Of proceedings for improving meadows, swamps, and low lands..... 672
CHAPTER 116. Of proceedings for the support and regulation of mills. 675
CHAPTER 117. Of the lien of mechanics and others, for the cost of repairs and improvements on real estate..... 684
CHAPTER 118. Of recognizances for debts; seizing and libelling forfeited goods and the recovery of pecuniary forfeitures..... 689

TITLE V.

OF THE LIMITATION OF ACTIONS.

CHAPTER 119. Of the limitation of real actions and rights of entry.. 695
CHAPTER 120. Of the limitation of personal actions..... 698

TITLE VI.

OF COSTS, AND THE FEES OF OFFICERS.

CHAPTER 121. Of costs in civil actions, and the taxation thereof.... 702
CHAPTER 122. Of the fees of certain officers..... 707

PART IV.

OF CRIMES AND PUNISHMENTS, AND PROCEEDINGS IN CRIMINAL CASES.

TITLE I.

OF CRIMES AND THE PUNISHMENT THEREOF.

CHAPTER 123. Of the rights of persons, who are accused of crimes and offences..... 714

CHAPTER 124. Of offences against the sovereignty of the Commonwealth. 715
CHAPTER 125. Of offences against the lives and persons of individuals.... 716
CHAPTER 126. Of offences against private property.... 719
CHAPTER 127. Of forgery and counterfeiting.... 728
CHAPTER 128. Of offences against public justice.... 732
CHAPTER 129. Of offences against the public peace.... 737
CHAPTER 130. Of offences against chastity, morality and decency... 739
CHAPTER 131. Of offences against the public health.... 742
CHAPTER 132. Of offences against public policy.... 743
CHAPTER 133. General provisions concerning crimes and punishments.... 745

TITLE II.

OF PROCEEDINGS IN CRIMINAL CASES.

CHAPTER 134. Of proceedings to prevent the commission of crimes. 748
CHAPTER 135. Of the arrest and examination of offenders, commitment for trial, and taking bail.... 751
CHAPTER 136. Of indictments and proceedings before trial.... 756
CHAPTER 137. Of trials in criminal cases.... 760
CHAPTER 138. Of appeals, new trials, and exceptions, in criminal cases.... 762
CHAPTER 139. Of judgments in criminal cases, and the execution thereof.... 765
CHAPTER 140. Of coroners inquests.... 768
CHAPTER 141. Of the taxation, allowance and payment of costs in criminal prosecutions.... 770
CHAPETR 142. General provisions concerning proceedings in criminal cases.... 773

TITLE III.

OF IMPRISONMENT FOR OFFENCES, AND THE GOVERNMENT AND DISCIPLINE OF PRISONS.

CHAPTER 143. Of detention and imprisonment in the county jail, or the house of correction, and the government and regulation of those prisons.... 777
CHAPTER 144. Of the state prison, and the government and discipline thereof.... 789
CHAPTER 145. General provisions concerning imprisonment in criminal cases.... 798
CHAPTER 146. Of the repeal of the Statutes herein revised and consolidated.... 800
AN ACT to amend the Revised Statutes, and supply certain omissions therein.... 803
AN ACT to repeal expressly all the acts which are consolidated in the Revised Statutes.... 813
INDEX....835

CONSTITUTION

OF

THE UNITED STATES.

ARTICLE I.

SECTION

1. Legislative powers, in whom vested.
2. House of representatives, how and by whom chosen.—Qualifications of a representative.—Representatives and direct taxes, how apportioned.—Census.—Vacancies to be filled.—Power of choosing officers, and of impeachment.
3. Senators, how and by whom chosen.—How classified.—State executive to make temporary appointments, in case, &c.—Qualifications of a senator.—President of the senate, his right to vote.—President pro tem. and other officers of senate, how chosen.—Power to try impeachments.—When president is tried, chief justice to preside.—Sentence.
4. Times, &c. of holding elections, how prescribed.—One session in each year.
5. Membership.—Quorum.—Adjournments—Rules.—Power to punish or expel.—Journal.—Time of adjournments limited, unless, &c.
6. Compensation.—Privileges.—Disqualification in certain cases.
7. House to originate all revenue bills.—Veto.—Bill may be passed by two-thirds of each house, notwithstanding, &c.—Bill not returned in ten days.—Provision as to all orders, &c. except, &c.
8. Powers of congress.
9. Provision as to migration or importation of certain persons.—Habeas corpus.—Bills of attainder, &c.—Taxes, how apportioned.—No export duty.—No commercial preferences.—No money drawn from treasury, unless, &c.—No titular nobility.—Officers not to receive presents, unless, &c.

SECTION

10. States prohibited from the exercise of certain powers.

ARTICLE II.

SECTION

1. President, his term of office.—Electors of president, number, and how appointed.—Electors to vote on same day.—Qualification of president.—On whom his duties devolve in case of his removal, death, &c.—President's compensation.—His oath.
2. President to be commander in chief.—He may require opinion of, &c. and may pardon.—Treaty making power.—Nomination of certain officers.—When president may fill vacancies.
3. President shall communicate to congress—He may convene and adjourn congress, in case, &c.; shall receive ambassadors; execute laws, and commission officers.
4. All civil offices forfeited for certain crimes.

ARTICLE III.

SECTION

1. Judicial power.—Tenure.—Compensation.
2. Judicial power, to what cases it extends. Original jurisdiction of supreme court.—Appellate.—Trial by jury, except, &c.—Trial, where.
3. Treason defined.—Proof of.—Punishment of.

ARTICLE IV.

SECTION

1. Each state to give credit to the public acts, &c. of every other.
2. Privileges of citizens of each state.—Fu-

SECTION
gitives from justice to be delivered up.—Persons held to service, having escaped, to be delivered up.
3. Admission of new states.—Power of congress over territory and other property.
4. Republican form of government guaranteed.—Each state to be protected.

ARTICLE V.
Constitution, how amended.—Proviso.

ARTICLE VI.
Certain debts, &c. adopted.—Supremacy of constitution, treaties and laws of the United States.—Oath to support constitution, by whom taken.—No religious test.

ARTICLE VII.
What ratification shall establish constitution.

AMENDMENTS.
ARTICLE
1. Religious establishment prohibited.—Freedom of speech, of the press, and right to petition.
2. Right to keep and bear arms.
3. No soldier to be quartered in any house, unless, &c.
4. Right of search and seizure regulated.
5. Provisions concerning prosecution, trial and punishment.—Private property, not to be taken for public use, without, &c.
6. Further provisions respecting criminal prosecutions.
7. Right of trial by jury secured.
8. Excessive bail or fines and cruel punishments, prohibited.
9. Rule of construction.
10. Same subject.
11. Same subject.
12. Manner of choosing president and vice-president.

Preamble.

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this CONSTITUTION FOR THE UNITED STATES OF AMERICA.

ARTICLE I.

Legislative powers, in whom vested.

SECTION 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

House of representatives, how and by whom chosen.

SECT. 2. The house of representatives shall be composed of members chosen every second year, by the people of the several states; and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

Qualifications of a representative.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes, how apportioned.

Representatives and direct taxes shall be apportioned among the several states, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths

of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand; but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three. Census.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies. Vacancies to be filled.

The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment. Power of choosing officers, and of impeachment.

Sect. 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote. Senators, how and by whom chosen.

Immediately after they shall be assembled, in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments, until the next meeting of the legislature, which shall then fill such vacancies. How classified. State executive to make temporary appointments, in case, &c.

No person shall be a senator, who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen. Qualifications of a senator.

The vice president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided. President of the senate, his right to vote.

The senate shall choose their other officers, and also a president pro tempore, in the absence of the vice president, or when he shall exercise the office of president of the United States. President pro tem. and other officers of senate, how chosen.

The senate shall have the sole power to try all impeachments: when sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall Power to try impeachments. When president is tried, chief justice to preside.

preside; and no person shall be convicted without the concurrence of two thirds of the members present.

Sentence.

Judgment, in cases of impeachment, shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Times, &c. of holding elections, how prescribed.

SECT. 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

One session in each year.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Membership.

SECT. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.

Quorum.

Adjournments.

Rules. Power to punish or expel.

Each house may determine the rules of its proceedings, and punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.

Journal.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Time of adjournment limited, unless, &c.

Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Compensation.

SECT. 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to, and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Privileges.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office. Disqualification in certain cases.

SECT. 7. All bills for raising revenue, shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills. House to originate all revenue bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration, two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons, voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress, by their adjournment, prevent its return, in which case it shall not be a law. Veto. Bill may be passed by two thirds of each house, notwithstanding, &c. Bill not returned in ten days.

Every order, resolution or vote, to which the concurrence of the senate and house of representatives may be necessary, (except on a question of adjournment) shall be presented to the president of the United States; and, before the same shall take effect, shall be approved by him, or being disapproved by him shall be repassed by two thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill. Provision as to all orders, &c. except, &c.

SECT. 8. The congress shall have power:—To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defence and general welfare, of the United States; but all duties, imposts and excises shall be uniform throughout the United States:—To borrow money on the credit of the United States:—To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:—To establish an uniform rule of Powers of congress.

Powers of congress.

naturalization, and uniform laws on the subject of bankruptcies throughout the United States :—To coin money, regulate the value thereof, and of foreign coin, and to fix the standard of weights and measures :—To provide for the punishment of counterfeiting the securities and current coin of the United States :—To establish post offices and post roads :—To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries :—To constitute tribunals inferior to the supreme court :—To define and punish piracies and felonies committed on the high seas, and offences against the law of nations :—To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water : —To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years :—To provide and maintain a navy :—To make rules for the government and regulation of the land and naval forces :—To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions :—To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states, respectively, the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress :—To exercise exclusive legislation in all cases whatsoever, over such district, (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States ; and to exercise like authority over all places purchased by consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings : and to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Provision as to migration or importation of certain persons.

SECT. 9. The migration or importation of such persons, as any of the states now existing shall think proper to admit, shall not be prohibited by the congress, prior to the year one thousand eight hundred and eight ; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Habeas corpus.

The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder, or *ex post facto* law, shall be passed. Bills of attainder, &c.

No capitation, or other direct tax, shall be laid, unless in proportion to the census or enumeration, herein before directed to be taken. Taxes, how apportioned.

No tax or duty shall be laid on articles exported from any state. No export duty.

No preference shall be given, by any regulation of commerce or revenue, to the ports of one state over those of another; nor shall vessels bound to, or from one State, be obliged to enter, clear, or pay duties in another. No commercial preferences.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. No money drawn from treasury, unless, &c.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state. No titular nobility. Officers, not to receive presents, unless, &c

SECT. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts; or grant any title of nobility. No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports, or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay. States prohibited from the exercise of certain powers.

ARTICLE II.

SECT. 1. The executive power shall be vested in a PRESIDENT of the United States of America. He shall hold his office during the term of four years; and together with the vice president, chosen for the same term, be elected as follows: President and vice president, their term of office.

Each state shall appoint, in such manner as the legislature thereof Electors of president and

vice-president, number, and how appointed.

may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: But no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Amendment XII. a substitute for this paragraph.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least, shall not be an inhabitant of the same state with themselves: and they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed: And if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list, the said house shall in like manner choose the president: but in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors, shall be the vice president. But if there should remain two or more who have equal votes, the senate shall choose from them, by ballot, the vice president.]

Electors to vote on same day.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Qualifications of president.

No person, except a natural born citizen, or a citizen of the United States, at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

On whom his duties devolve in case of his removal, death, &c.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice president; and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice president, declaring what

officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected; and he shall not receive, within that period, any other emolument from the United States, or any of them. President's compensation.

Before he enter on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm,) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States." His oath.

SECT. 2. The president shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment. President to be commander in chief. He may require opinion of, &c. and may pardon.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two thirds of the senators present concur; and he shall nominate, and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper, in the president alone, in the courts of law, or in the heads of departments. Treaty making power. Nomination of certain officers.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session. When president may fill vacancies.

SECT. 3. He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall President shall communicate to congress. He may convene and adjourn congress, in case, &c.

Shall receive ambassadors; execute laws, and commission officers.

think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

All civil offices forfeited for certain crimes.

SECT. 4. The president, vice president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Judicial power.

Tenure.

Compensation.

SECT. 1. The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the congress may, from time to time, order and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial power, to what cases it extends.

See amendment XI.

SECT. 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, [between a state and citizens of another state,] between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

Original jurisdiction of supreme court.

Appellate.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Trial by jury, except, &c.

Trial, where.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

SECT. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Treason defined.

Proof of.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

Punishment of.

ARTICLE IV.

SECT. 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state: and the congress may, by general laws, prescribe the manner in which such acts, records and proceedings, shall be proved, and the effect thereof.

Each state to give credit to the public acts, &c. of every other.

SECT. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

Privileges of citizens of each state.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Fugitives from justice to be delivered up.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due.

Persons held to service, having escaped, to be delivered up.

SECT. 3. New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

Admission of new states.

The congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed, as to prejudice any claims of the United States, or of any particular state.

Power of congress over territory and other property.

SECT. 4. The United States shall guarantee to every state in this Union a republican form of government; and shall protect each of

Republican form of government guaranteed.

Each state to be protected.

them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened) against domestic violence.

ARTICLE V.

Constitution, how amended.

The congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendments, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Proviso.

ARTICLE VI.

Certain debts, &c. adopted.

All debts contracted, and engagements entered into, before the adoption of this constitution, shall be as valid against the United States, under this constitution, as under the confederation.

Supremacy of constitution, treaties and laws of the U. States.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

Oath to support constitution, by whom taken.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

No religious test.

ARTICLE VII.

What ratification shall establish constitution.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution, between the states so ratifying the same.

ARTICLES,

In addition to, and amendment of, the constitution of the United States, ratified by the legislatures of the several states, pursuant to the fifth article of the original constitution.

I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Religious establishment prohibited. Freedom of speech; of the press, and right to petition.

II. A well regulated militia being necessary to the security of a free state, the right of the people, to keep and bear arms shall not be infringed.

Right to keep and bear arms.

III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

No soldier to be quartered in any house, unless, &c.

IV. The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Right of search and seizure regulated.

V. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment by a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Provisions concerning prosecutions, trial and punishment.

Private property, not to be taken for public use, without, &c.

VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district, wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the

Further provisions respecting criminal prosecutions.

witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

Right of trial by jury secured.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact, tried by a jury, shall be otherwise re-examined, in any court of the United States, than according to the rules of the common law.

Excessive bail or fines and cruel punishments, prohibited.

VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Rule of construction.

IX. The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Same subject.

X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Same subject.

XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Manner of choosing president and vice president.

XII. The electors shall meet in their respective states, and vote by ballot for president and vice president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate;—the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president; but in choosing the president, the votes shall be taken by states, the representation from each state having

one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice; and if the house of representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March then next following, then the vice president shall act as president, as in case of the death or other constitutional disability of the president.

Same subject.

The person having the greatest number of votes as vice president shall be the vice president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the senate shall choose the vice president; a quorum for that purpose shall consist of two thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice.

Same subject.

But no person, constitutionally ineligible to the office of president, shall be eligible to that of vice president of the United States.

CONSTITUTION

OR

FORM OF GOVERNMENT

FOR THE

Commonwealth of Massachusetts.

PREAMBLE.

Objects of government—Body politic, how formed—Its nature.

PART THE FIRST.

ART. 1. Equality and natural rights of all men.

2. Right and duty of public religious worship—Protection therein.

3. Legislature empowered to compel provision for public worship; and to enjoin attendance thereon—Exclusive right of electing religious teachers secured—Option, as to whom parochial taxes may be paid, unless, &c—All denominations equally protected—Subordination of one sect to another, prohibited.

4. Right of self-government secured.

5. Accountability of all officers, &c.

6. Services rendered to the public, being the only title to peculiar privileges, hereditary offices are absurd and unnatural.

7. Objects of government; right of people to institute and change it.

8. Right of people to secure rotation in office.

9. All, having the qualifications prescribed, equally eligible to office.

ART. 10. Right of protection and duty of contribution, correlative—Taxation, founded on consent—Private property not to be taken for public uses, without, &c.

11. Remedies, by recourse to the law, to be free, complete and prompt.

12. Prosecutions regulated—Right to trial by jury in criminal cases, except, &c.

13. Crimes to be proved in the vicinity.

14. Right of search and seizure, regulated.

15. Right to trial by jury sacred, except, &c.

16. Liberty of the press.

17. Right to keep and bear arms—Standing armies dangerous—Military power, subordinate to civil.

18. Moral qualifications for office—Moral obligations of law givers and magistrates.

19. Right of people to instruct representatives and petition legislature.

20. Power to suspend the laws, or their execution.—When and by whom exercised.

21. Freedom of debate, &c., and reason thereof.

22. Frequent sessions, and objects thereof.

ART. 23. Taxation founded on consent.
24. Ex post facto laws, prohibited.
25. Legislature not to convict of treason, &c.
26. Excessive bail or fines, and cruel punishments, prohibited.
27. No soldier to be quartered in any house, unless, &c.
28. Citizens exempt from law-martial, unless, &c.
29. Judges of supreme judicial court—Tenure of their office—Salaries.
30. Separation of executive, judicial, and legislative departments.

PART THE SECOND.

CHAPTER I.

SECTION 1.

ART. 1. Legislative department.
2. Governor's veto—Bill may be passed by two thirds of each house, notwithstanding.
3. General court may constitute judicatories, courts of record, &c.—Courts, &c., may administer oaths.
4. General court may enact laws, &c.; not repugnant to the constitution; may provide for the election or appointment of officers; prescribe their duties; impose taxes; duties and excises, to be disposed of for defence, protection, &c.—Valuation of estates, once in ten years, at least, while, &c.

SECTION 2.

ART. 1. Senate, number of, and by whom elected—Counties to be districts until, &c.
2. Manner and time of choosing senators and counsellors—Word "inhabitant," defined—Selectmen to preside at town meetings—Return of votes—Inhabitants of unincorporated plantations, who pay state taxes, may vote—Plantation meetings—Assessors to notify, &c.
3. Governor and council to examine and count votes and issue summonses.
4. Senate to be final judges of elections, &c., of its own members—Vacancies how filled.
5. Qualifications of a senator.
6. Senate not to adjourn more than two days.
7. Shall choose its officers and establish its rules.
8. Shall try all impeachments—Oaths—Limitation of sentence.
9. Quorum.

SECTION 3.

ART. 1. Representation of the people.
2. Representatives by whom chosen—Proviso as to towns, having less than 150 ratable polls—Towns liable to fine, in case, &c.—Expense of travelling to and from the general court, how paid.
3. Qualifications of a representative.
4. Qualifications of a voter.
5. Representatives, when chosen.
6. House alone can impeach.
7. House to originate all money bills.
8. Not to adjourn more than two days.
9. Quorum.
10. House to judge of returns, &c., of its own members; to choose its officers and establish its rules, &c—May punish for certain offences—Privileges of members.
11. Governor and council may punish—General limitations—Trial may be by committee, or otherwise.

CHAPTER II.

SECTION 1.

ART. 1. Governor—His title.
2. To be chosen annually—Qualifications.
3. To be chosen by the people, by a major vote—How chosen, when no person has a majority.
4. Power of governor, and of governor and council.
5. Same subject.
6. Governor and council may adjourn general court, in cases, &c., but not exceeding ninety days.
7. Governor to be commander in chief—Limitation.
8. Governor and council may pardon offences, except, &c.—But not before conviction.
9. All judicial officers, &c., how nominated and appointed.
10. Militia officers, how elected—How commissioned—Major generals, how appointed and commissioned—Vacancies, how filled, in case, &c—Officers, duly commissioned, how removed—Adjutants, &c., how appointed—Organization of Militia.

ART. 11. Money how drawn from the treasury, except, &c.
12. All public boards, &c., to make quarterly returns.
13. Salary of governor—Salaries of justices of supreme judicial court—Salaries to be enlarged, if insufficient.

SECTION 2.

ART. 1. Lieutenant governor; his title and qualifications—How chosen.
2. President of council—Lieut. governor a member of, except, &c.
3. Lieutenant governor to be acting governor, in case.

SECTION 3.

ART. 1. Council.
2. Number; from whom and how chosen—If senators become counsellors their seats to be vacated.
3. Rank of counsellors.
4. No district to have more than two.
5. Register of council.
6. Council to exercise the power of governor, in case, &c.
7. Elections may be adjourned, until, &c.—Order thereof.

SECTION 4.

ART. 1. Secretary, &c., by whom and how chosen—Treasurer, ineligible for more than five successive years.
2. Secretary to keep records, to attend the governor and council, &c.

CHAPTER III.

ART. 1. Tenure of all commissioned officers to be expressed. Judicial officers, to hold office during good behavior, except, &c.—But may be removed on address.
2. Justices of supreme judicial court to give opinions, when required.
3. Justices of the peace; tenure of their office.
4. Provisions for holding probate courts.
5. Provisions for determining causes of marriage, divorce, &c.

CHAPTER IV.

Delegates to congress.

CHAPTER V.

SECTION 1.

ART. 1. Harvard college—Powers, privileges, &c., of the president and fellows, confirmed.
2. All gifts, grants, &c., confirmed.
3. Who shall be overseers—Power of alteration, reserved to the legislature.

SECTION 2.

Duty of legislators and magistrates in all future periods.

CHAPTER VI.

ART. 1. Oaths, &c.
2. Plurality of offices, prohibited to governor, &c., except, &c.—Incompatible offices—Bribery, &c., operate disqualifications.
3. Value of money ascertained—Property qualifications may be increased.
4. Provisions respecting commissions.
5. Provisions respecting writs.
6. Continuation of former laws, except, &c.
7. Benefit of habeas corpus secured except, &c.
8. The enacting style.
9. Officers of former government continued until, &c.
10. Provision for revising constitution.
11. Provision for preserving and publishing this constitution.

AMENDMENTS.

ART. 1. Bill, &c., not approved within five days, not to become a law, if legislature adjourn in the mean time.
2. General court empowered to charter cities—Proviso.
3. Qualifications of voters for governor, lieutenant governor, senators and representatives.
4. Notaries public how appointed and removed—Vacancies in the office of secretary and treasurer, how filled, in case, &c.—Commissary general may be appointed, in case, &c.—Militia officers how removed.
5. Who may vote for captains and subalterns.
6. Oath to be taken by all officers; or affirmation in case, &c.
7. Tests abolished.
8. Incompatibility of offices.
9. Amendments to constitution, how made.
10. Commencement of political year; and termination—Meetings for choice of governor, lieutenant governor, &c., when to be held—May be adjourned—Article, when to go into operation—Inconsistent provisions, annulled.
11. Religious freedom established.

PREAMBLE.

THE end of the institution, maintenance and administration of government, is to secure the existence of the body politic; to protect it; and to furnish the individuals who compose it, with the power of enjoying in safety and tranquillity, their natural rights and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness. Objects of government.

THE body politic is formed by a voluntary association of individuals; it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them. Body politic, how formed. Its nature.

WE, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great legislator of the universe, in affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring his direction in so interesting a design, do agree upon, ordain and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION of the COMMONWEALTH of MASSACHUSETTS.

PART THE FIRST.

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts.

ART. I. All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality and natural rights of all men.

Right and duty of public religious worship. Protection therein.

II. It is the right as well as the duty of all men in society, publicly, and at stated seasons, to worship the SUPREME BEING, the great creator and preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping GOD in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

See amendments, Art. XI.

III. As the happiness of a people, and the good order and preservation of civil government, essentially depend upon piety, religion and morality; and as these cannot be generally diffused through a community, but by the institution of the public worship of GOD, and of public instructions in piety, religion and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this Commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic, or religious societies, to make suitable provision, at their own expense, for the institution of the public worship of GOD, and for the support and maintenance of public protestant teachers of piety, religion and morality, in all cases where such provision shall not be made voluntarily.

Legislature empowered to compel provision for public worship;

and to enjoin attendance thereon. See amendments, Art. XI.

And the people of this Commonwealth have also a right to, and do, invest their legislature with authority to enjoin upon all the subjects an attendance upon the instructions of the public teachers aforesaid, at stated times and seasons, if there be any on whose instructions they can conscientiously and conveniently attend.

Exclusive right of electing religious teachers secured.

Provided notwithstanding, that the several towns, parishes, precincts, and other bodies politic, or religious societies, shall, at all times, have the exclusive right of electing their public teachers, and of contracting with them for their support and maintenance.

Option as to whom parochial taxes may be paid, unless, &c.

And all monies, paid by the subject to the support of public worship, and of the public teachers aforesaid, shall, if he require it, be uniformly applied to the support of the public teacher or teachers of his own religious sect or denomination, provided there be any on whose instructions he attends: otherwise it may be paid towards the support of the teacher or teachers of the parish or precinct in which the said monies are raised.

See amendments, Art. XI.

All denominations equally protected.

Subordination of one sect to another prohibited.

And every denomination of christians, demeaning themselves peaceably, and as good subjects of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

IV. The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America, in congress assembled.

Right of self-government secured.

V. All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them.

Accountability of all officers, &c.

VI. No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public; and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man being born a magistrate, lawgiver, or judge, is absurd and unnatural.

Services rendered to the public, being the only title to peculiar privileges, hereditary offices are absurd and unnatural.

VII. Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestible, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it.

Objects of government; right of people to institute and change it.

VIII. In order to prevent those, who are vested with authority, from becoming oppressors, the people have a right, at such periods and in such manner as they shall establish by their frame of government, to cause their public officers to return to private life; and to fill up vacant places by certain and regular elections and appointments.

Right of people to secure rotation in office.

IX. All elections ought to be free; and all the inhabitants of this Commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments.

All, having the qualifications prescribed, equally eligible to office.

X. Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws. He is obliged, consequently, to contribute his share

Right of protection and duty of contribution, correlative.

to the expense of this protection; to give his personal service, or an equivalent, when necessary: but no part of the property of any individual, can, with justice, be taken from him or applied to public uses without his own consent, or that of the representative body of the people. In fine, the people of this Commonwealth are not controlable by any other laws, than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

Taxation, founded on consent.

Private property not to be taken for public uses, without, &c.

Remedies, by recourse to the law, to be free, complete and prompt.

XI. Every subject of the Commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly and without delay; conformably to the laws.

Prosecutions regulated.

XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself: and every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel at his election: and no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate; but by the judgment of his peers, or the law of the land.

Right to trial by jury, in criminal cases, except, &c.

And the legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Crimes to be proved in the vicinity.

XIII. In criminal prosecutions, the verification of facts in the vicinity where they happen, is one of the greatest securities of the life, liberty, and property of the citizen.

Right of search and seizure, regulated.

XIV. Every subject has a right to be secure from all unreasonable searches and seizures of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil

officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities, prescribed by the laws.

XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practised, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the legislature shall hereafter find it necessary to alter it. Right to trial by jury sacred, except, &c.

XVI. The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth. Liberty of the press.

XVII. The people have a right to keep and to bear arms for the common defence: and, as in time of peace, armies are dangerous to liberty, they ought not to be maintained without the consent of the legislature; and the military power shall always be held in an exact subordination to the civil authority, and be governed by it. Right to keep and bear arms. Standing armies, dangerous. Military power subordinate to civil.

XVIII. A frequent recurrence to the fundamental principles of the constitution, and a constant adherence to those of piety, justice, moderation, temperance, industry, and frugality, are absolutely necessary to preserve the advantages of liberty, and to maintain a free government. The people ought, consequently, to have a particular attention to all those principles, in the choice of their officers and representatives: and they have a right to require of their lawgivers and magistrates, an exact and constant observance of them, in the formation and execution of the laws necessary for the good administra- of the Commonwealth. Moral qualifications for office. Moral obligations of lawgivers and magistrates.

XIX. The people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good; give instructions to their representatives; and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer. Right of people to instruct representatives and petition legislature.

XX. The power of suspending the laws, or the execution of the laws, ought never to be exercised but by the legislature, or by authority derived from it, to be exercised in such particular cases only as the legislature shall expressly provide for. Power to suspend the laws or their execution.

Freedom of debate, &c., and reason thereof.

XXI. The freedom of deliberation, speech and debate, in either house of the legislature, is so essential to the rights of the people, that it cannot be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever.

Frequent sessions, and objects thereof.

XXII. The legislature ought frequently to assemble for the redress of grievances, for correcting, strengthening, and confirming the laws, and for making new laws, as the common good may require.

Taxation founded on consent.

XXIII. No subsidy, charge, tax, impost, or duties, ought to be established, fixed, laid, or levied, under any pretext whatsoever, without the consent of the people, or their representatives in the legislature.

Ex post facto laws prohibited.

XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

Legislature not to convict of treason, &c.

XXV. No subject ought, in any case, or in any time, to be declared guilty of treason or felony by the legislature.

Excessive bail or fines and cruel punishments, prohibited.

XXVI. No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

No soldier to be quartered in any house, unless, &c.

XXVII. In time of peace, no soldier ought to be quartered in any house without the consent of the owner; and in time of war, such quarters ought not to be made but by the civil magistrate, in a manner ordained by the legislature.

Citizens exempt from law-martial, unless &c.

XXVIII. No person can in any case be subjected to law-martial, or to any penalties or pains, by virtue of that law, except those employed in the army or navy, and except the militia in actual service, but by authority of the legislature.

Judges of supreme judicial court.

XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent, as the lot of humanity will admit. It is therefore not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial

Tenure of their office.

court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws. Salaries.

XXX. In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men. Separation of executive, judicial and legislative departments.

PART THE SECOND.

The Frame of Government.

The people, inhabiting the territory formerly called the Province of Massachusetts Bay, do hereby solemnly and mutually agree with each other, to form themselves into a free, sovereign, and independent body politic or state, by the name of THE COMMONWEALTH OF MASSACHUSETTS.

CHAPTER I.

THE LEGISLATIVE POWER.

SECTION I.

The General Court.

Art. I. The department of legislation shall be formed by two branches, a Senate and House of Representatives: each of which shall have a negative on the other. Legislative department.

The legislative body shall assemble every year, on the last Wednesday in May, and at such other times as they shall judge necessary; and shall dissolve and be dissolved on the day next preceding the said last Wednesday in May; and shall be styled, The General Court of Massachusetts. See amendments, Art. X.

II. No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal: and if he, upon such revision, Governor's veto.

approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichsoever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve: but if, after such reconsideration, two thirds of the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same, it shall together with the objections, be sent to the other branch of the legislature, where it shall also be reconsidered, and if approved by two thirds of the members present, shall have the force of a law: but in all such cases, the votes of both houses shall be determined by yeas and nays; and the names of the persons voting for, or against, the said bill or resolve, shall be entered upon the public records of the Commonwealth.

Bill may be passed by two thirds of each house notwithstanding.

And in order to prevent unnecessary delays, if any bill or resolve shall not be returned by the governor, within five days after it shall have been presented, the same shall have the force of a law.

See amendments, Art. I.

III. The general court shall forever have full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying, and determining of all manner of crimes, offences, pleas, processes, plaints, actions, matters, causes and things, whatsoever, arising or happening within the Commonwealth, or between or concerning persons inhabiting, or residing, or brought within the same; whether the same be criminal or civil, or whether the said crimes be capital or not capital, and whether the said pleas be real, personal, or mixt; and for the awarding and making out of execution thereupon: to which courts and judicatories are hereby given and granted full power and authority, from time to time, to administer oaths or affirmations, for the better discovery of truth in any matter in controversy, or depending before them.

General court may constitute judicatories, courts of record, &c.

Courts, &c., may administer oaths.

IV. And further, full power and authority are hereby given and granted to the said general court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence

General court may enact laws, &c.

not repugnant to the constitution;

of the government thereof; and to name and settle annually, or provide by fixed laws, for the naming and settling all civil officers within the said Commonwealth, the election and constitution of whom are not hereafter in this form of government otherwise provided for; and to set forth the several duties, powers and limits, of the several civil and military officers of this Commonwealth, and the forms of such oaths or affirmations as shall be respectively administered unto them for the execution of their several offices and places, so as the same be not repugnant or contrary to this constitution; and to impose and levy proportional and reasonable assessments, rates, and taxes, upon all the inhabitants of, and persons resident, and estates lying, within the said Commonwealth; and also to impose, and levy reasonable duties and excises, upon any produce, goods, wares, merchandize, and commodities whatsoever, brought into, produced, manufactured, or being within the same; to be issued and disposed of by warrant, under the hand of the governor of this Commonwealth for the time being, with the advice and consent of the council, for the public service, in the necessary defence and support of the government of the said Commonwealth, and the protection and preservation of the subjects thereof, according to such acts as are or shall be in force within the same.

may provide for the election or appointment of officers;

prescribe their duties;

impose taxes;

duties and excises;

to be disposed of for defence, protection, &c.

And while the public charges of government, or any part thereof, shall be assessed on polls and estates, in the manner that has hitherto been practised, in order that such assessments may be made with equality, there shall be a valuation of estates within the Commonwealth taken anew once in every ten years at least, and as much oftener as the general court shall order.

Valuation of estates, once in ten years, at least, while, &c.

CHAPTER I.

SECTION II.

Senate.

Art. I. There shall be annually elected, by the freeholders and other inhabitants of this Commonwealth, qualified as in this constitution is provided, forty persons to be counsellors and senators, for the year ensuing their election; to be chosen by the inhabitants of the districts, into which the Commonwealth may from time to time be divided by the general court for that purpose: and the general court, in assigning the numbers to be elected by the respective dis-

Senate, number of, and by whom elected.

tricts, shall govern themselves by the proportion of the public taxes paid by the said districts; and timely make known, to the inhabitants of the Commonwealth, the limits of each district, and the number of counsellors and senators to be chosen therein; provided, that the number of such districts shall never be less than thirteen; and that no district be so large as to entitle the same to choose more than six senators.

Counties to be districts until, &c.

And the several counties in this Commonwealth shall, until the general court shall determine it necessary to alter the said districts, be districts for the choice of counsellors and senators, (except that the counties of Dukes county and Nantucket shall form one district for that purpose) and shall elect the following number for counsellors and senators, viz:

Suffolk	six	York	two
Essex	six	Dukes county and Nantucket	one
Middlesex	five		
Hampshire	four	Worcester	five
Plymouth	three	Cumberland	one
Barnstable	one	Lincoln	one
Bristol	three	Berkshire	two

Manner and time of choosing senators and counsellors.

See amendments, art. II. and X.

II. The senate shall be the first branch of the legislature; and the senators shall be chosen in the following manner, viz: there shall be a meeting on the first Monday in April annually, forever, of the inhabitants of each town in the several counties of this Commonwealth, to be called by the selectmen, and warned in due course of law, at least seven days before the first Monday in April, for the purpose of electing persons to be senators and counsellors; and at such meetings every male inhabitant of twenty one years of age and upwards, having a freehold estate, within the Commonwealth, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to give in his vote for the senators for the district of which he is an inhabitant. And to remove all doubts concerning the meaning of the word "inhabitant," in this constitution, every person shall be considered as an inhabitant, for the purpose of electing and being elected into any office, or place within this state, in that town, district, or plantation, where he dwelleth, or hath his home.

See amendments, art. III.

Word "inhabitant" defined.

Selectmen to preside at town meetings.

The selectmen of the several towns shall preside at such meetings impartially; and shall receive the votes of all the inhabitants of such towns present and qualified to vote for senators, and shall sort and count them in open town meeting, and in presence of the town clerk,

who shall make a fair record, in presence of the selectmen, and in open town meeting, of the name of every person voted for, and of the number of votes against his name; and a fair copy of this record shall be attested by the selectmen and the town clerk, and shall be sealed up, directed to the secretary of the Commonwealth for the time being, with a superscription, expressing the purport of the contents thereof, and delivered by the town clerk of such towns, to the sheriff of the county in which such town lies, thirty days at least before the last Wednesday in May annually; or it shall be delivered into the secretary's office seventeen days at least before the said last Wednesday in May; and the sheriff of each county shall deliver all such certificates, by him received, into the secretary's office, seventeen days before the said last Wednesday in May.

Return of votes.

See amendments, Art. II. and X.

And the inhabitants of plantations unincorporated, qualified as this constitution provides, who are or shall be empowered and required to assess taxes upon themselves toward the support of government, shall have the same privilege of voting for counsellors and senators, in the plantations where they reside, as town inhabitants have in their respective towns; and the plantation meetings for that purpose shall be held annually on the same first Monday in April, at such place in the plantations respectively, as the assessors thereof shall direct; which assessors shall have like authority for notifying the electors, collecting and returning the votes, as the selectmen and town clerks have in their several towns, by this constitution. And all other persons *living* in places unincorporated, (qualified as aforesaid) who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of giving in their votes for counsellors and senators, in the town where they shall be assessed, and be notified of the place of meeting by the selectmen of the town where they shall be assessed, for that purpose, accordingly.

Inhabitants of unincorporated plantations, who pay state taxes, may vote.

Plantation meetings.

See amendments, Art. X.

Assessors to notify, &c.

III. And that there may be a due convention of senators on the last Wednesday in May annually, the governor, with five of the council, for the time being, shall, as soon as may be, examine the returned copies of such records; and fourteen days before the said day, he shall issue his summons to such persons as shall appear to be chosen by a majority of voters, to attend on that day, and take their seats accordingly: provided, nevertheless, that for the first year, the said returned copies shall be examined by the president and five of the council of the former constitution of government; and the said president shall, in like manner, issue his summons to the persons so elected, that they may take their seats as aforesaid.

Governor and council to examine and count votes, and issue summonses.

See amendments, Art. X.

Senate to be final judge of elections, &c. of their own members.

See amendments, Art. X.

IV. The senate shall be the final judge of the elections, returns, and qualifications of their own members, as pointed out in the constitution; and shall, on the said last Wednesday in May annually, determine and declare who are elected by each district, to be senators, by a majority of votes: and in case there shall not appear to be the full number of senators returned elected by a majority of votes for any district, the deficiency shall be supplied in the following manner, viz: The members of the house of representatives, and such senators as shall be declared elected, shall take the names of such persons as shall be found to have the highest number of votes in such district, and not elected, amounting to twice the number of senators wanting, if there be so many voted for; and, out of these, shall elect by ballot a number of senators sufficient to fill up the vacancies in such district; and in this manner all such vacancies shall be filled up in every district of the Commonwealth; and in like manner all vacancies in the senate, arising by death, removal out of the state, or otherwise, shall be supplied as soon as may be after such vacancies shall happen.

Vacancies, how filled.

Qualifications of a senator.

V. Provided, nevertheless, that no person shall be capable of being elected as a senator, who is not seized in his own right of a freehold within this Commonwealth, of the value of three hundred pounds at least, or possessed of personal estate to the value of six hundred pounds at least, or of both to the amount of the same sum, and who has not been an inhabitant of this Commonwealth, for the space of five years immediately preceding his election, and, at the time of his election, he shall be an inhabitant in the district, for which he shall be chosen.

Senate not to adjourn more than two days.

VI. The senate shall have power to adjourn themselves, provided such adjournments do not exceed two days at a time.

Shall choose its officers, and establish its rules.

VII. The senate shall choose its own president, appoint its own officers, and determine its own rules of proceeding.

Shall try all impeachments.

Oath.

VIII. The senate shall be a court with full authority to hear and determine all impeachments made by the house of representatives, against any officer or officers of the Commonwealth, for misconduct and mal-administration in their offices: but, previous to the trial of every impeachment, the members of the senate shall respectively be sworn, truly and impartially to try and determine the charge in question, according to evidence. Their judgment, however, shall not extend further than to removal from office and disqualification to hold

or enjoy any place of honor, trust, or profit, under this Commonwealth: but the party, so convicted, shall be, nevertheless, liable to indictment, trial, judgment and punishment, according to the laws of the land. Limitation of sentence.

IX. Not less than sixteen members of the senate shall constitute a quorum for doing business. Quorum.

CHAPTER I.

SECTION III.

House of Representatives.

Article I. There shall be, in the Legislature of this Commonwealth, a representation of the people, annually elected, and founded upon the principle of equality. Representation of the people.

II. And in order to provide for a representation of the citizens of this Commonwealth founded upon the principle of equality, every corporate town, containing one hundred and fifty ratable polls, may elect one representative; every corporate town, containing three hundred and seventy five ratable polls, may elect two representatives; every corporate town, containing six hundred ratable polls, may elect three representatives; and proceeding in that manner, making two hundred and twenty five ratable polls the mean increasing number for every additional representative. Representatives, by whom chosen.

Provided, nevertheless, that each town now incorporated, not having one hundred and fifty ratable polls, may elect one representative; but no place shall hereafter be incorporated with the privilege of electing a representative, unless there are within the same one hundred and fifty ratable polls. Proviso as to towns having less than 150 ratable polls.

And the house of representatives shall have power, from time to time, to impose fines upon such towns as shall neglect to choose and return members to the same, agreeably to this constitution. Towns liable to fine in case, &c.

The expenses of travelling to the general assembly, and returning home, once in every session, and no more, shall be paid by the government, out of the public treasury, to every member who shall attend as seasonably as he can in the judgment of the house, and does not depart without leave. Expense of travelling to and from the general court, how paid.

Qualifications of a representative.

III. Every member of the house of representatives shall be chosen by written votes; and, for one year at least next preceding his election, shall have been an inhabitant of, and have been seized in his own right of, a freehold of the value of one hundred pounds, within the town he shall be chosen to represent, or any ratable estate to the value of two hundred pounds; and he shall cease to represent the said town, immediately on his ceasing to be qualified as aforesaid.

Qualifications of a voter.

See amendments, Art. III.

IV. Every male person, being twenty one years of age, and resident in any particular town in this Commonwealth, for the space of one year next preceding, having a freehold estate within the same town, of the annual income of three pounds, or any estate of the value of sixty pounds, shall have a right to vote in the choice of a representative or representatives for the said town.

Representatives, when chosen.

See amendment, Art. X.

V. The members of the house of representatives shall be chosen annually in the month of May, ten days at least before the last Wednesday of that month.

House alone can impeach.

VI. The house of representatives shall be the grand inquest of this Commonwealth; and all impeachments made by them shall be heard and tried by the senate.

House to originate all money bills.

VII. All money bills shall originate in the house of representatives; but the senate may propose or concur with amendments, as on other bills.

Not to adjourn more than two days.

VIII. The house of representatives shall have power to adjourn themselves; provided such adjournment shall not exceed two days at a time.

Quorum.

IX. Not less than sixty members of the house of representatives shall constitute a quorum for doing business.

House to judge of returns, &c. of its own members; To choose its officers and establish its rules, &c. May punish for certain offences.

X. The house of representatives shall be judge of the returns, elections, and qualifications of its own members, as pointed out in the constitution; shall choose their own speaker; appoint their own officers, and settle the rules and orders of proceeding in their own house. They shall have authority to punish by imprisonment, every person, not a member, who shall be guilty of disrespect to the house, by any disorderly, or contemptuous behavior, in its presence; or who, in the town where the general court is sitting, and during the time of

its sitting, shall threaten harm to the body or estate of any of its members, for any thing said or done in the house; or who shall assault any of them therefor; or who shall assault, or arrest, any witness, or other person ordered to attend the house, in his way in going, or returning; or who shall rescue any person arrested by the order of the house.

Privileges of members.

And 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.

Governor and council may punish.

XI. The senate shall have the same powers in the like cases; and the governor and council shall have the same authority to punish in like cases: provided, that no imprisonment, on the warrant or order of the governor, council, senate, or house of representatives, for either of the above described offences, be for a term exceeding thirty days.

General limitation.

Trial may be by committee, or otherwise.

And the senate and house of representatives may try, and determine, all cases where their rights and privileges are concerned, and which, by the constitution, they have authority to try and determine, by committees of their own members, or in such other way as they may respectively think best.

CHAPTER II.

EXECUTIVE POWER.

SECTION I.

Governor.

Governor. His title.

Art. I. There shall be a supreme executive magistrate, who shall be styled, THE GOVERNOR OF THE COMMONWEALTH OF MASSACHUSETTS; and whose title shall be—HIS EXCELLENCY.

To be chosen annually. Qualifications.

II. The governor shall be chosen annually; and no person shall be eligible to this office, unless, at the time of his election, he shall have been an inhabitant of this Commonwealth for seven years next preceding; and unless he shall, at the same time, be seized, in his own right, of a freehold within the Commonwealth, of the value of one thousand pounds; and unless he shall declare himself to be of the christian religion.

See amendments, Art. VII.

By whom chosen, if he have a majority of votes.

See amendments, Art. II. & X.

III. THOSE persons, who shall be qualified to vote for senators and representatives, within the several towns of this Commonwealth, shall, at a meeting, to be called for that purpose, on the first Monday of April annually, give in their votes for a governor, to the selectmen, who shall preside at such meetings; and the town clerk, in the presence and with the assistance of the selectmen, shall, in open town meeting, sort and count the votes, and form a list of the persons voted for, with the number of votes for each person against his name; and shall make a fair record of the same in the town books, and a public declaration thereof in the said meeting; and shall, in the presence of the inhabitants, seal up copies of the said list, attested by him and the selectmen, and transmit the same to the sheriff of the county, thirty days at least before the last Wednesday in May; and the sheriff shall transmit the same to the secretary's office seventeen days at least before the said last Wednesday in May; or the selectmen may cause returns of the same to be made to the office of the secretary of the Commonwealth seventeen days at least before the said day; and the secretary shall lay the same before the senate and the house of representatives, on the last Wednesday in May, to be by them examined; and in case of an election by a majority of all the votes returned, the choice shall be by them declared and published; but if no person shall have a majority of votes, the house of representatives shall, by ballot, elect two out of four persons, who had the highest number of votes, if so many shall have been voted for; but, if otherwise, out of the number voted for; and make return to the senate of the two persons so elected; on which, the senate shall proceed, by ballot, to elect one, who shall be declared governor.

How chosen, when no person has a majority.

Power of governor, and of governor and council.

IV. THE governor shall have authority, from time to time, at his discretion, to assemble and call together the counsellors of this Commonwealth for the time being; and the governor, with the said counsellors, or five of them at least, shall, and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, agreeably to the constitution and the laws of the land.

Same subject.

V. THE Governor, with advice of council, shall have full power and authority, during the session of the general court, to adjourn or prorogue the same to any time the two houses shall desire; and to dissolve the same on the day next preceding the last Wednesday in May; and, in the recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner

See amendments, Art. X.

than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening, whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other the most convenient place within the state.

And the governor shall dissolve the said general court on the day next preceding the last Wednesday in May.

See amendments, Art. X.

VI. In cases of disagreement between the two houses, with regard to the necessity, expediency or time of adjournment, or prorogation, the governor, with advice of the council, shall have a right to adjourn or prorogue the general court, not exceeding ninety days, as he shall determine the public good shall require.

Governor and council may adjourn general court, in cases, &c., but not exceeding 90 days.

VII. The governor of this Commonwealth, for the time being, shall be the commander in chief of the army and navy, and of all the military forces of the state, by sea and land; and shall have full power, by himself, or by any commander, or other officer or officers, from time to time, to train, instruct, exercise and govern the militia and navy; and, for the special defence and safety of the Commonwealth, to assemble in martial array, and put in warlike posture, the inhabitants thereof, and to lead and conduct them, and with them, to encounter, repel, resist, expel and pursue, by force of arms, as well by sea as by land, within or without the limits of this Commonwealth, and also to kill, slay and destroy, if necessary, and conquer, by all fitting ways, enterprizes and means whatsoever, all and every such person and persons as shall, at any time hereafter, in a hostile manner, attempt or enterprize the destruction, invasion, detriment, or annoyance of this Commonwealth; and to use and exercise, over the army and navy, and over the militia in actual service, the law martial, in time of war or invasion, and also in time of rebellion, declared by the legislature to exist, as occasion shall necessarily require; and to take and surprize by all ways and means whatsoever, all and every such person or persons, with their ships, arms, ammunition and other goods, as shall in a hostile manner, invade, or attempt the invading, conquering, or annoying this Commonwealth; and that the governor be intrusted with all these and other powers, incident to the offices of captain general and commander in chief, and admiral, to be exercised agreeably to the rules and regulations of the constitution, and the laws of the land, and not otherwise.

Governor to be commander in chief.

Limitation.

PROVIDED, that the said governor shall not, at any time hereafter, by virtue of any power by this constitution granted, or hereafter to be granted to him by the legislature, transport any of the inhabitants of this Commonwealth, or oblige them to march out of the limits of the same, without their free and voluntary consent, or the consent of the general court; except so far as may be necessary to march or transport them by land or water, for the defence of such part of the state to which they cannot otherwise conveniently have access.

Governor and council may pardon offences, except, &c.

But not before conviction.

VIII. THE power of pardoning offences, except such as persons may be convicted of before the senate, by an impeachment of the house, shall be in the governor, by and with the advice of council; but no charter of pardon, granted by the governor, with advice of the council, before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence, or offences intended to be pardoned.

All judicial officers, &c., how nominated and appointed.

IX. ALL judicial officers, the attorney general, the solicitor general, all sheriffs, coroners, and registers of probate, 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.

Militia officers, how elected. See amendments, Art. V.

X. THE captains and subalterns of the militia shall be elected by the written votes of the train band and alarm list of their respective companies, of twenty one years of age and upwards; the field officers of regiments shall be elected by the written votes of the captains and subalterns of their respective regiments; the brigadiers shall be elected in like manner, by the field officers of their respective brigades; and such officers, so elected, shall be commissioned by the governor, who shall determine their rank.

How commissioned.

THE Legislature shall, by standing laws, direct the time and manner of convening the electors, and of collecting votes, and of certifying to the governor the officers elected.

Major generals, how appointed and commissioned.

THE major generals shall be appointed by the senate and house of representatives, each having a negative upon the other; and be commissioned by the governor.

Vacancies, how filled, in case, &c.

AND if the electors of brigadiers, field officers, captains or subalterns, shall neglect or refuse to make such elections, after being duly notified, according to the laws for the time being, then the governor, with advice of council, shall appoint suitable persons to fill such offices.

And no officer, duly commissioned to command in the militia shall be removed from his office, but by the address of both houses to the governor, or by fair trial in court martial, pursuant to the laws of the Commonwealth for the time being.

Officers, duly commissioned, how removed. See amendments, Art. IV.

The commanding officers of regiments shall appoint their adjutants and quarter masters; the brigadiers their brigade majors; and the major generals their aids; and the governor shall appoint the adjutant general.

Adjutants, &c., how appointed.

The governor, with advice of council, shall appoint all officers of the continental army, whom by the confederation of the United States it is provided that this Commonwealth shall appoint,—as also all officers of forts and garrisons.

The divisions of the militia into brigades, regiments and companies, made in pursuance of the militia laws now in force, shall be considered as the proper divisions of the militia of this Commonwealth, until the same shall be altered in pursuance of some future law.

Organization of militia.

XI. No monies shall be issued out of the treasury of this Commonwealth and disposed of (except such sums as may be appropriated for the redemption of bills of credit or treasurer's notes, or for the payment of interest arising thereon) but by warrant under the hand of the governor for the time being, with the advice and consent of the council, for the necessary defence and support of the Commonwealth; and for the protection and preservation of the inhabitants thereof, agreeably to the acts and resolves of the general court.

Money, how drawn from the treasury, except, &c.

XII. All public boards, the commissary general, all superintending officers of public magazines and stores, belonging to this Commonwealth, and all commanding officers of forts and garrisons within the same, shall, once in every three months, officially and without requisition, and at other times, when required by the governor, deliver to him an account of all goods, stores, provisions, ammunition, cannon with their appendages, and small arms with their accoutrements, and of all other public property whatever under their care respectively; distinguishing the quantity, number, quality and kind of each, as particularly as may be; together with the condition of such forts and garrisons; and the said commanding officer shall exhibit to the governor, when required by him, true and exact plans of such forts, and of the land and sea, or harbor or harbors, adjacent.

All public boards, &c. to make quarterly returns.

And the said boards, and all public officers, shall communicate to the governor, as soon as may be after receiving the same, all letters, dispatches, and intelligences of a public nature, which shall be directed to them respectively.

Salary of governor.

XIII. As the public good requires that the governor should not be under the undue influence of any of the members of the general court, by a dependence on them for his support—that he should, in all cases, act with freedom for the benefit of the public—that he should not have his attention necessarily diverted from that object to his private concerns—and that he should maintain the dignity of the Commonwealth in the character of its chief magistrate—it is necessary that he should have an honorable stated salary, of a fixed and permanent value, amply sufficient for those purposes, and established by standing laws: and it shall be among the first acts of the general court, after the commencement of this constitution, to establish such salary by law accordingly.

Salaries of justices of supreme judicial court.

PERMANENT and honorable salaries shall also be established by law for the justices of the supreme judicial court.

Salaries to be enlarged, if insufficient.

AND if it shall be found, that any of the salaries aforesaid, so established, are insufficient, they shall, from time to time, be enlarged, as the general court shall judge proper.

CHAPTER II.

SECTION II.

Lieutenant Governor.

Lieutenant governor; his title and qualifications.

See amendments, Art. III. VI. and X.

How chosen.

ART. I. THERE shall be annually elected a lieutenant governor of the Commonwealth of Massachusetts, whose title shall be HIS HONOR—and who shall be qualified, in point of religion, property, and residence in the Commonwealth, in the same manner with the governor; and the day and manner of his election, and the qualifications of the electors, shall be the same as are required in the election of a governor. The return of the votes for this officer, and the declaration of his election, shall be in the same manner; and if no one person shall be found to have a majority of all the votes returned, the vacancy shall be filled by the senate and house of representatives, in the same manner as the governor is to be elected, in case no one person shall have a majority of the votes of the people to be governor.

President of council.

Lt. governor a member of, except, &c.

II. THE governor, and in his absence the lieutenant governor, shall be president of the council, but shall have no vote in council; and the lieutenant governor shall always be a member of the council, except when the chair of the governor shall be vacant.

III. WHENEVER the chair of the governor shall be vacant, by reason of his death, or absence from the Commonwealth, or otherwise, the lieutenant governor, for the time being, shall, during such vacancy, perform all the duties incumbent upon the governor, and shall have and exercise all the powers and authorities, which by this constitution the governor is vested with, when personally present. Lt. governor to be acting governor, in case.

CHAPTER II.

SECTION III.

Council, and the manner of settling elections by the Legislature.

ART. I. THERE shall be a council for advising the governor in the executive part of the government, to consist of nine persons besides the lieutenant governor, whom the governor for the time being, shall have full power and authority, from time to time, at his discretion, to assemble and call together; and the governor, with the said counsellors, or five of them at least, shall and may, from time to time, hold and keep a council, for the ordering and directing the affairs of the Commonwealth, according to the laws of the land. Council.

II. NINE counsellors shall be annually chosen from among the persons returned for counsellors and senators, on the last Wednesday in May, by the joint ballot of the senators and representatives assembled in one room; and in case there shall not be found, upon the first choice, the whole number of nine persons who will accept a seat in the council, the deficiency shall be made up by the electors aforesaid from among the people at large; and the number of senators left shall constitute the senate for the year. The seats of the persons thus elected from the senate, and accepting the trust, shall be vacated in the senate. Number; from whom and how chosen. See amendments, Art. X. If senators become counsellors their seats to be vacated.

III. THE counsellors, in the civil arrangements of the Commonwealth, shall have rank next after the lieutenant governor. Rank of counsellors.

IV. NOT more than two counsellors shall be chosen out of any one district of this Commonwealth. No district to have more than two.

V. THE resolutions and advice of the council shall be recorded in a register, and signed by the members present; and this record Register of council.

may be called for at any time by either house of the legislature; and any member of the council may insert his opinion contrary to the resolution of the majority.

Council to exercise the power of governor, in case, &c.

VI. WHENEVER the office of the governor and lieutenant governor shall be vacant, by reason of death, absence, or otherwise, then the council, or the major part of them, shall, during such vacancy, have full power and authority, to do, and execute, all and every such acts, matters and things, as the governor or the lieutenant governor might or could, by virtue of this constitution, do or execute, if they, or either of them, were personally present.

Elections may be adjourned, until, &c.

Order thereof.

VII. AND whereas the elections appointed to be made by this constitution, on the last Wednesday in May annually, by the two houses of the legislature, may not be completed on that day, the said elections may be adjourned from day to day until the same shall be completed: And the order of elections shall be as follows; the vacancies in the senate, if any, shall first be filled up; the governor and lieutenant governor shall then be elected, provided there should be no choice of them by the people; and afterwards the two houses shall proceed to the election of the council.

CHAPTER II.

SECTION IV.

Secretary, Treasurer, Commissary, &c.

Secretary, &c. by whom and how chosen.

See amendments, Art. IV.

Treasurer, ineligible for more than five successive years.

ART. I. THE secretary, treasurer and receiver general, and the commissary general, notaries public, and naval officers, shall be chosen annually by joint ballot of the senators and representatives in one room; and, that the citizens of this Commonwealth may be assured, from time to time, that the monies remaining in the public treasury, upon the settlement and liquidation of the public accounts, are their property, no man shall be eligible as treasurer and receiver general more than five years successively.

Secretary to keep records, to attend the governor and council, &c.

II. THE records of the Commonwealth shall be kept in the office of the secretary, who may appoint his deputies, for whose conduct he shall be accountable, and he shall attend the governor and

council, the senate and house of representatives, in person, or by his deputies, as they shall respectively require.

CHAPTER III.

JUDICIARY POWER.

ART. I. THE tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting such concerning whom there is different provision made in this constitution: provided, nevertheless, the governor, with consent of the council, may remove them upon the address of both houses of the legislature.

Tenure of all commissioned officers to be expressed. Judicial officers to hold office during good behavior, except, &c. But may be removed on address.

II. EACH branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the supreme judicial court, upon important questions of law, and upon solemn occasions.

Justices of supreme judicial court to give opinions when required.

III. IN order that the people may not suffer from the long continuance in place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void, in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth.

Justices of the peace; tenure of their office.

IV. THE judges of probate of wills, and for granting letters of administration, shall hold their courts at such place or places, on fixed days, as the convenience of the people shall require; and the legislature shall from time to time, hereafter appoint such times and places; until which appointments, the said courts shall be holden at the times and places which the respective judges shall direct.

Provisions for holding probate courts.

V. ALL causes of marriage, divorce and alimony, and all appeals from the judges of probate, shall be heard and determined by the governor and council, until the legislature shall, by law, make other provision.

Provisions for determining causes of marriage, divorce &c.

CHAPTER IV.

DELEGATES TO CONGRESS.

Delegates to congress.

THE delegates of this Commonwealth to the congress of the United States shall, sometime in the month of June annually, be elected by the joint ballot of the senate and house of representatives, assembled together in one room; to serve in congress for one year, to commence on the first Monday in November then next ensuing. They shall have commissions under the hand of the governor, and the great seal of the Commonwealth; but may be recalled at any time within the year, and others chosen and commissioned, in the same manner, in their stead.

CHAPTER V.

THE UNIVERSITY AT CAMBRIDGE, AND ENCOURAGEMENT OF LITERATURE, &c.

SECTION I.

The University.

Harvard-College.

ART. I. WHEREAS our wise and pious ancestors, so early as the year one thousand six hundred and thirty six, laid the foundation of Harvard College, in which university many persons of great eminence have, by the blessing of GOD, been initiated in those arts and sciences, which qualified them for public employments, both in church and state; and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of GOD, the advantage of the christian religion, and the great benefit of this, and the other United States of America—it is declared, that the PRESIDENT AND FELLOWS OF HARVARD COLLEGE, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy; and the same are hereby ratified and confirmed unto them, the said president and fellows of Harvard College, and to their successors, and to their officers and servants, respectively, forever.

Powers, privileges, &c. of the president and fellows confirmed.

II. And whereas there have been, at sundry times, by divers persons, gifts, grants, devises of houses, lands, tenements, goods, chattels, legacies and conveyances, heretofore made, either to Harvard College in Cambridge, in New England, or to the president and fellows of Harvard College, or to the said college, by some other description, under several charters successively; it is declared, that all the said gifts, grants, devises, legacies and conveyances, are hereby forever confirmed unto the president and fellows of Harvard College, and to their successors, in the capacity aforesaid, according to the true intent and meaning of the donor or donors, grantor or grantors, devisor or devisors.

All gifts, grants, &c. confirmed.

III. And whereas by an act of the general court of the colony of Massachusetts Bay, passed in the year one thousand six hundred and forty two, the governor and deputy governor, for the time being, and all the magistrates of that jurisdiction, were, with the president, and a number of the clergy in the said act described, constituted the overseers of Harvard College; and it being necessary, in this new constitution of government, to ascertain who shall be deemed successors to the said governor, deputy governor, and magistrates; it is declared, that the governor, lieutenant governor, council and senate of this Commonwealth, are, and shall be deemed, their successors; who, with the president of Harvard College, for the time being, together with the ministers of the congregational churches in the towns of Cambridge, Watertown, Charlestown, Boston, Roxbury, and Dorchester, mentioned in the said act, shall be, and hereby are, vested with all the powers and authority belonging, or in any way appertaining to the overseers of Harvard College; provided, that nothing herein shall be construed to prevent the legislature of this Commonwealth from making such alterations in the government of the said university, as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the legislature of the late province of the Massachusetts Bay.

Who shall be overseers.

Power of alteration, reserved to the legislature.

CHAPTER V.

SECTION II.

The encouragement of Literature, &c.

Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation

of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools, and grammar schools in the towns; to encourage private societies, and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.

Duty of legislatures and magistrates in all future periods.

CHAPTER VI.

OATHS AND SUBSCRIPTIONS; INCOMPATIBILITY OF AND EXCLUSION FROM OFFICES; PECUNIARY QUALIFICATIONS; COMMISSIONS; WRITS; CONFIRMATION OF LAWS; HABEAS CORPUS; THE ENACTING STYLE; CONTINUANCE OF OFFICERS; PROVISION FOR A FUTURE REVISAL OF THE CONSTITUTION, &c.

ART. I. ANY person chosen governor, lieutenant governor, counsellor, senator, or representative, and accepting the trust, shall, before he proceed to execute the duties of his place or office, make and subscribe the following declaration, viz:

"I, A. B. do declare, that I believe the christian religion, and have a firm persuasion of its truth; and that I am seized and possessed, in my own right, of the property required by the constitution, as one qualification for the office or place to which I am elected."

See amendments, Art. VII.

AND the governor, lieutenant governor, and counsellors, shall make and subscribe the said declaration, in the presence of the two houses of assembly; and the senators and representatives, first elected under this constitution, before the president and five of the council of the former constitution, and, forever afterwards, before the governor and council for the time being.

AND every person, chosen to either of the places or offices aforesaid, as also any person appointed or commissioned to any judicial, executive, military, or other office under the government, shall, be-

fore he enters on the discharge of the business of his place or office, take and subscribe the following declaration, and oaths or affirmations, viz.—

"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 acceptation of the foregoing words, without any equivocation, mental evasion, or secret reservation whatsoever. So help me GOD."

See amendment, Art. VI.

"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 the 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.*"

And the said oaths or affirmations shall be taken and subscribed by the governor, lieutenant governor, and counsellors, before the president of the senate, in the presence of the two houses of assembly; and by the senators and representatives first elected under this

constitution, before the president and five of the council of the former constitution; and forever afterwards before the governor and council for the time being; and by the residue of the officers aforesaid, before such persons, and in such manner, as from time to time shall be prescribed by the legislature.

Plurality of offices, prohibited to governor, &c. except, &c.

II. No governor, lieutenant governor, or judge of the supreme judicial court, shall hold any other office or place, under the authority of this Commonwealth, except such as by this constitution they are admitted to hold, saving that the judges of the said court may hold the offices of justices of the peace through the state; nor shall they hold any other place or office, or receive any pension or salary from any other state or government or power whatever.

Same subject.

No person shall be capable of holding or exercising at the same time, within this state, more than one of the following offices, 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.

Incompatable offices.

See amendments, Art. VIII.

No person holding the office of judge of the supreme judicial court—secretary—attorney general—solicitor general—treasurer or receiver general—judge of probate—commissary general—president, professor, or instructor of Harvard College—sheriff—clerk of the house of representatives—register of probate—register of deeds—clerk of the supreme judicial court—clerk of the inferior court of common pleas—or officer of the customs, including in this description naval officers—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.

Same subject.

And the same rule shall take place in case any judge of the said supreme judicial court, or judge of probate, shall accept a seat in council; or any counsellor shall accept of either of those offices or places.

Bribery, &c. operates disqualification.

And no person shall ever be admitted to hold a seat in the legislature, or any office of trust or importance under the government of this Commonwealth, who shall, in the due course of law, have been convicted of bribery or corruption, in obtaining an election or appointment.

III. In all cases, where sums of money are mentioned in this constitution, the value thereof shall be computed in silver at six shillings and eight pence per ounce; and it shall be in the power of the legislature, from time to time, to increase such qualifications, as to property, of the persons to be elected to offices, as the circumstances of the Commonwealth shall require.

Value of money ascertained.

Property qualifications may be increased.

IV. 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.

Provisions respecting commissions.

V. All writs, issuing out of the clerk's office in any of the courts of law, shall be in the name of the Commonwealth of Massachusetts; they shall be under the seal of the court from whence they issue; they shall bear test of the first justice of the court to which they shall be returnable, who is not a party, and be signed by the clerk of such court.

Provisions respecting writs.

VI. All the laws, which have heretofore been adopted, used, and approved in the province, colony or state of Massachusetts Bay, and usually practised on in the courts of law, shall still remain and be in full force, until altered or repealed by the legislature; such parts only excepted as are repugnant to the rights and liberties contained in this constitution.

Continuation of former laws, except, &c.

VII. The privilege and benefit of the writ of *habeas corpus* shall be enjoyed in this Commonwealth in the most free, easy, cheap, expeditious and ample manner; and shall not be suspended by the legislature, except upon the most urgent and pressing occasions, and for a limited time not exceeding twelve months.

Benefit of habeas corpus secured, except, &c.

VIII. The enacting style, in making and passing all acts, statutes and laws, shall be—"Be it enacted by the senate and house of representatives, in general court assembled, and by the authority of the same."

The enacting style.

IX. To the end there may be no failure of justice, or danger arise to the Commonwealth, from a change of the form of government—all officers, civil and military, holding commissions under the government and people of Massachusetts Bay in New England, and all other officers of the said government and people, at the time this

Officers of former government continued until, &c.

constitution shall take effect, shall have, hold, use, exercise and enjoy all the powers and authority to them granted or committed, until other persons shall be appointed in their stead; and all courts of law shall proceed in the execution of the business of their respective departments; and all the executive and legislative officers, bodies and powers shall continue in full force, in the enjoyment and exercise of all their trusts, employments and authority, until the general court and the supreme and executive officers under this constitution are designated and invested with their respective trusts, powers and authority.

Provision for revising constitution.

X. In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary—the general court, which shall be in the year of our Lord one thousand seven hundred and ninety five, shall issue precepts to the selectmen of the several towns, and to the assessors of the unincorporated plantations, directing them to convene the qualified voters of their respective towns and plantations, for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution, in order to amendments.

Same subject.

And if it shall appear by the returns made, that two thirds of the qualified voters throughout the state, who shall assemble and vote in consequence of the said precepts, are in favor of such revision or amendment, the general court shall issue precepts, or direct them to be issued from the secretary's office to the several towns, to elect delegates to meet in convention for the purpose aforesaid.

The said delegates to be chosen in the same manner and proportion as their representatives in the second branch of the legislature are by this constitution to be chosen.

Provision for preserving and publishing this constitution.

XI. This form of government shall be enrolled on parchment, and deposited in the secretary's office, and be a part of the laws of the land; and printed copies thereof shall be prefixed to the book containing the laws of this Commonwealth, in all future editions of the said laws.

ARTICLES OF AMENDMENT.

Bill, &c. not approved within five days, not to become a law, if legislature adjourn in the mean time.

Article 1. If any bill or resolve shall be objected to, and not approved by the governor; and if the general court shall adjourn within five days after the same shall have been laid before the gover-

nor for his approbation, and thereby prevent his returning it, with his objections, as provided by the constitution; such bill or resolve shall not become a law, nor have force as such.

ART. 2. The general court shall have full power and authority to erect and constitute municipal or city governments in any corporate town or towns in this Commonwealth, and to grant to the inhabitants thereof such powers, privileges and immunities, not repugnant to the constitution, as the general court shall deem necessary or expedient for the regulation and government thereof, and to prescribe the manner of calling and holding public meetings of the inhabitants in wards, or otherwise, for the election of officers under the constitution, and the manner of returning the votes given at such meetings: Provided, that no such government shall be erected or constituted in any town not containing twelve thousand inhabitants; nor unless it be with the consent and on the application of a majority of the inhabitants of such town, present and voting thereon, pursuant to a vote at a meeting duly warned and holden for that purpose: And provided also, that all by-laws, made by such municipal or city government, shall be subject, at all times, to be annulled by the general court.

General court empowered to charter cities.

Proviso.

ART. 3. Every male citizen of twenty one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the Commonwealth one year, and within the town or district, in which he may claim a right to vote, six calendar months next preceding any election of governor, lieutenant governor, senators, or representatives, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town or district, of this Commonwealth; and also every citizen who shall be by law exempted from taxation, and who shall be in all other respects qualified as above mentioned, shall have a right to vote in such election of governor, lieutenant governor, senators and representatives; and no other person shall be entitled to vote in such elections.

Qualifications of voters for governor, lieutenant governor, senators and representatives. 11 Pick. 538.

ART. 4. Notaries public shall be appointed by the governor, in the same manner as judicial officers are appointed, and shall hold their offices during seven years, unless sooner removed by the governor, with the consent of the council, upon the address of both houses of the legislature.

Notaries public, how appointed and removed.

In case the office of secretary or treasurer of the Commonwealth

Vacancies in

the office of secretary and treasurer, how filled, in case, &c.

shall become vacant from any cause, during the recess of the general court, the governor, with the advice and consent of the council, shall nominate and appoint, under such regulations as may be prescribed by law, a competent and suitable person to such vacant office, who shall hold the same until a successor shall be appointed by the general court.

Commissary general may be appointed, in case, &c.

Whenever the exigencies of the Commonwealth shall require the appointment of a commissary general, he shall be nominated, appointed and commissioned, in such manner as the legislature may, by law, prescribe.

Militia officers, how removed.

All officers commissioned to command in the militia, may be removed from office in such manner as the legislature may, by law, prescribe.

Who may vote for captains and subalterns.

ART. 5. In the elections of captains and subalterns of the militia, all the members of their respective companies, as well those under, as those above the age of twenty one years, shall have a right to vote.

Oath to be taken by all officers;

ART. 6. Instead of the oath of allegiance prescribed by the constitution, the following oath shall be taken and subscribed by every person chosen or appointed to any office, civil or military, under the government of this Commonwealth, before he shall enter on the duties of his office, to wit:

"I, A. B. do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. So help me God."

or affirmation in case, &c.

Provided, That when any person shall be of the denomination called Quakers, and shall decline taking said oath, he shall make his affirmation in the foregoing form, omitting the word "swear," and inserting, instead thereof, the word "affirm," and omitting the words "so help me God," and subjoining, instead thereof, the words "this I do under the pains and penalties of perjury."

Tests abolished.

ART. 7. No oath, declaration or subscription, excepting the oath prescribed in the preceding article, and the oath of office, shall be required of the governor, lieutenant governor, counsellors, senators or representatives, to qualify them to perform the duties of their respective offices.

Incompatability of offices.

ART. 8. No judge of any court of this Commonwealth, (except the court of sessions,) and no person holding any office under the

authority of the United States, (postmasters excepted,) shall, at the same time, hold the office of governor, lieutenant governor or counsellor, or have a seat in the senate or house of representatives of this Commonwealth; and no judge of any court in this Commonwealth, (except the court of sessions,) nor the attorney general, solicitor general, county attorney, clerk of any court, sheriff, treasurer and receiver general, register of probate, nor register of deeds, shall continue to hold his said office after being elected a member of the congress of the United States, and accepting that trust; but the acceptance of such trust, by any of the officers aforesaid, shall be deemed and taken to be a resignation of his said office; and judges of the courts of common pleas shall hold no other office under the government of this Commonwealth, the office of justice of the peace and militia offices excepted.

Amendments to constitution, how made.

ART. 9. If, at any time hereafter, any specific and particular amendment or amendments to the constitution be proposed in the general court, and agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon, such proposed amendment or amendments shall be entered on the journals of the two houses, with the yeas and nays taken thereon, and referred to the general court then next to be chosen, and shall be published; and if in the general court next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of the senators and two thirds of the members of the house of representatives present and voting thereon; then it shall be the duty of the general court to submit such proposed amendment or amendments to the people; and if they shall be approved and ratified by a majority of the qualified voters, voting thereon, at meetings legally warned and holden for that purpose, they shall become part of the constitution of this Commonwealth.

Commencement of political year,

ART. 10. The political year shall begin on the first Wednesday of January instead of the last Wednesday of May, and the general court shall assemble every year on the said first Wednesday of January, and shall proceed, at that session, to make all the elections, and do all the other acts, which are by the constitution required to be made and done at the session which has heretofore commenced on the last Wednesday of May. And the general court shall be dissolved on the day next preceding the first Wednesday of January, without any proclamation or other act of the governor. But nothing herein contained shall prevent the general court from assembling at

and termination.

such other times as they shall judge necessary, or when called together by the governor. The governor, lieutenant governor, and counsellors, shall also hold their respective offices for one year next following the first Wednesday of January, and until others are chosen and qualified in their stead.

Meetings for choice of governor, lieutenant governor, &c. when to be held.

May be adjourned.

The meeting for the choice of governor, lieutenant governor, senators and representatives, shall be held on the second Monday of November in every year; but meetings may be adjourned, if necessary, for the choice of representatives, to the next day, and again to the next succeeding day, but no further. But in case a second meeting shall be necessary for the choice of representatives, such meetings shall be held on the fourth Monday of the same month of November.

All the other provisions of the constitution, respecting the elections and proceedings of the members of the general court, or of any other officers or persons whatever, that have reference to the last Wednesday of May as the commencement of the political year, shall be so far altered, as to have like reference to the first Wednesday of January.

Article, when to go into operation.

This article shall go into operation on the first day of October, next following the day when the same shall be duly ratified and adopted as an amendment of the constitution; and the governor lieutenant governor, counsellors, senators, representatives, and all other state officers, who are annually chosen, and who shall be chosen for the current year, when the same shall go into operation, shall hold their respective offices until the first Wednesday of January then next following, and until others are chosen and qualified in their stead, and no longer; and the first election of the governor, lieutenant governor, senators and representatives, to be had in virtue of this article, shall be had conformably thereunto, in the month of November following the day on which the same shall be in force and go into operation, pursuant to the foregoing provision.

Inconsistent provisions, annulled.

All the provisions of the existing constitution, inconsistent with the provisions herein contained, are hereby wholly annulled.

Religious freedom established.

Art. 11. Instead of the third article of the bill of rights, the following modification and amendment thereof is substituted.

As the public worship of God, and instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or

religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society: And all religious sects and denominations, demeaning themselves peaceably, and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

[NOTE.—The constitution of Massachusetts was agreed upon by delegates of the people, in convention, begun and held at Cambridge on the first day of September, 1779, and continued by adjournments to the second day of March, 1780, when the convention adjourned to meet on the first Wednesday of the ensuing June. In the mean time the constitution was submitted to the people, to be adopted by them, provided two thirds of the votes given should be in the affirmative. When the convention assembled, it was found that the constitution had been adopted by the requisite number of votes, and the convention accordingly *resolved*, "that the said Constitution or Frame of government shall take place on the last Wednesday of October next; and not before, for any purpose save only for that of making elections agreeable to this resolution." The first legislature assembled at Boston on the twenty fifth day of October, 1780.

The first nine articles of amendment were submitted, by delegates in Convention assembled, November 15, 1820, to the people and by them approved and adopted, April 9, 1821.

The tenth article of amendment was adopted by the legislatures of the political years 1829—30, and 1830—31, and was approved and ratified by the people, May 11, 1831.

The eleventh article of amendment was adopted by the legislatures of the political years 1832 and 1833, and was approved and ratified by the people, November 11, 1833.]

Commonwealth of Massachusetts.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND THIRTY FIVE.

AN ACT

FOR REVISING AND CONSOLIDATING THE GENERAL STATUTES OF THE COMMONWEALTH.

WHEREAS it is expedient that the General Statutes of this Commonwealth should be consolidated and arranged in appropriate titles, chapters and sections; that omissions and defects therein should be supplied and amended; and that the whole should be rendered concise, plain and intelligible:

THEREFORE,

BE it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, in manner following, that is to say:

PART I.

OF THE INTERNAL ADMINISTRATION OF THE GOVERNMENT.

TITLE I.

Of the jurisdiction of the Commonwealth; and of the statutes and legislative proceedings.

CHAPTER 1. Of the jurisdiction of the Commonwealth, and of the concurrent jurisdiction of the United States over places ceded by the Commonwealth.

CHAPTER 2. Of statutes and legislative proceedings.

CHAPTER 1.

OF THE JURISDICTION OF THE COMMONWEALTH, AND OF THE CONCURRENT JURISDICTION OF THE UNITED STATES OVER PLACES CEDED BY THE COMMONWEALTH.

SECTION 1. Jurisdiction of the Commonwealth.

SECTION 2. Places ceded to the United States, and subject to concurrent jurisdiction.

Jurisdiction of the Commonwealth.

SECTION 1. The sovereignty and jurisdiction of the Commonwealth extend to all places within the boundaries thereof; subject only to such rights of concurrent jurisdiction as have been, or may be, granted over any places ceded by the Commonwealth to the United States.

Places ceded to the United States and subject to concurrent jurisdiction.

SECT. 2. The several places here following, which have been ceded to the United States for forts, arsenals, dock-yards, light-houses, hospitals, or other purposes, and over which concurrent jurisdiction has been granted to the United States, shall continue to be subject to such concurrent jurisdiction, according to the tenor and effect of the respective laws of this Commonwealth by which they were so ceded, that is to say:

1790, 4.

The several public light-houses, with the lands and tenements thereunto belonging, the property of this Commonwealth, to wit:—the light-house on Light-House Island in the harbor of Boston; the two light-houses on Thacher's Island in the county of Essex; the two light-houses on the north end of Plumb Island in the county of Essex; the light-house on the Gurnet Head in the county of Plymouth; the light-house on Sandy Point in the county of Nantucket; also the four buoys at the mouth of Merrimack river, namely—one

tract of land on Nobsque Point, in the town of Falmouth, and a tract of land at the entrance of Edgartown harbor, for light-houses :

1828, 30. A tract of land near the mouth of the river Merrimack, in the town of Newbury, for a pier or breakwater :

1830, 111. A tract of land for a light-house on West Chop, in the town of Tisbury, on Martha's Vineyard :

1831, 45. A tract of land for a light-house on Eastern Point, in the town of Gloucester :

1832, 41. 1834. 39. The place called Nix's Mate, in the harbor of Boston, for a beacon :

1835, 98. A tract of land, not exceeding four acres, at a place called the Neck, in Marblehead, for a light-house :

1835, 151. The island called Straitsmouth Island, near the eastern point of Cape Ann, for a light-house.

CHAPTER 2.

OF STATUTES AND LEGISLATIVE PROCEEDINGS.

SECTION

PROMULGATION OF THE LAWS.

1. Laws, how promulgated.
2. " how distributed.
3. Acts of incorporation to be deemed public acts.
4. Statutes to take effect at the same time throughout the state.
5. Same subject.

CONSTRUCTION OF STATUTES.

6. Rules for construing statutes.—Words and phrases to be construed according to established usage, unless technical, &c.
—Singular and plural numbers, masculine gender, &c.—Authority of public officers, &c. to be exercised by majorities, unless, &c.—" Annual meeting."—" Grantor" and " grantee."—" Highway."—" Inhabitant."—" Insane person."—" Issue."—" Land," " lands," and " real estate."—" Month" and " year."—" Oath" and " sworn."—" Person."—" Preceding" and " following."—" Seal."—" State" and " United States."—" Town."—" Will."—"Written" and " writing."

APPLICATIONS TO THE GENERAL COURT.

7. Notices on petitions to general court, affecting individuals or private corporations, how given.
8. Same, in case of towns,
9. Service of such notices, how made and proved.—Fees for service.—Substitute for service.
10. Members of committees may administer oaths.

PROMULGATION OF THE LAWS.

Laws, how promulgated; SECTION 1. All laws shall be promulgated by being printed and published under the authority of the general court, in such manner as they shall direct.

how distributed. SECT. 2. The secretary of the Commonwealth shall deposite in his office one copy of the laws published as aforesaid ; and he shall also, annually, immediately after their publication, distribute copies of them as follows :

To the clerk of the senate, for the use of the senate, twelve copies.

To the clerk of the house of representatives, for the use of the house, twenty four copies.

To the librarian of the state library, for the use of the library, five copies.

To the following public officers, and other persons, one copy each, namely:

The governor.
The lieutenant-governor.
Each member of the council, senate, and house of representatives.
The attorney general.
The treasurer and receiver general.
The adjutant general.
The masters in chancery.
Each of the justices of the supreme judicial court, the court of common pleas, the municipal court of the city of Boston, and the several police courts of the Commonwealth.
The clerks of the judicial courts.
The district attorneys of each district of the state.
The sheriffs and keepers of the jails.
The judges and registers of probate.
The registers of deeds.
The keepers of the houses of correction.
The warden of the state prison.
The county treasurers.
The several clerks of towns, for the use of such towns.
Harvard University, for the law library.
Harvard University.
Williams College.
Amherst College.
The American Academy of Arts and Sciences.
The Massachusetts Historical Society.
The Boston Athenæum.
The American Antiquarian Society, in Worcester.
The Pilgrim Society, in Plymouth.
The Law Library Societies in each county.
The judges of the supreme court of the United States.
The judge of the district court of the United States for the district of Massachusetts.
The clerk of the courts of the United States for the district of Massachusetts.
The secretary of state of the United States, four copies.
The secretary of each state of the Union, for the use of each state, three copies.
To the library of congress, three copies.

Acts of incorporations to be deemed public acts.

SECT. 3. All acts of incorporation shall be deemed public acts, and, as such, may be declared on and given in evidence, without specially pleading the same.

Statutes to take effect at the same time, throughout the state.

SECT. 4. Every statute shall take effect at the same time throughout the state.

Same subject.

SECT. 5. Every statute, which does not expressly prescribe the time, when it shall go into operation, shall take effect on the thirtieth day, next after the day on which it shall have been approved by the governor, or otherwise passed and approved, conformably to the provisions of the constitution.

CONSTRUCTION OF STATUTES.

Rules for construing statutes.

SECT. 6. In the construction of all statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, or repugnant to the context of the same statute, that is to say:

Words and phrases to be construed according to established usage, unless technical, &c.

First. All words and phrases shall be construed and understood, according to the common and approved usage of the language; but technical words and phrases, and such others, as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood, according to such peculiar and appropriate meaning.

Singular and plural number, masculine gender, &c.

Second. Every word, importing the singular number only, may extend and be applied to several persons or things, as well as to one person or thing; and every word, importing the plural number only, may extend and be applied to one person or thing, as well as to several persons or things; and every word, importing the masculine gender only, may extend and be applied to females as well as to males.

Authority of public officers, &c. to be exercised by majorities, unless, &c.

Third. All words, purporting to give a joint authority to three or more public officers or other persons, shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority.

"Annual meeting."

Fourth. The words "annual meeting," when applied to towns, shall be construed to mean the annual meeting, required by law to be held in the months of March or April.

"Grantor" and "grantee."

Fifth. The word "grantor" may be construed as including every person, from or by whom any freehold estate on interest passes, in or by any deed; and the word "grantee," as including every person, to whom any such estate or interest passes, in like manner.

"Highway."

Sixth. The word "highway" may be construed to include county bridges; and it shall be equivalent to the words "county way," "county road," and "common road."

"Inhabitant."

Seventh. The word "inhabitant" may be construed to mean a resident in any city or town.

"Insane person."

Eighth. The words "insane person" shall be construed to include every idiot, non compos, lunatic and distracted person.

"Issue."

Ninth. The word "issue," as applied to the descent of estates, shall be construed to include all the lawful lineal descendants of the ancestor.

"Land," "lands," and "real estate."

Tenth. The words "land" or "lands," and the words "real estate," shall be construed to include lands, tenements and hereditaments, and all rights thereto and interests therein.

"Month" and "year."

Eleventh. The word "month" shall be construed to mean a calendar month, unless otherwise expressed; and the word "year" a calendar year, unless otherwise expressed; and the word "year" alone shall be equivalent to the expression "year of our Lord."

"Oath" and "sworn."

Twelfth. The word "oath" shall be construed to include "affirmations," in all cases, where by law an affirmation may be substituted for an oath, and in the like cases, the word "sworn" shall be construed to include the word "affirm."

"Person."

Thirteenth. The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals.

"Preceding" and "following."

Fourteenth. The words "preceding" and "following," when

used by way of reference to any section of these revised statutes, shall be construed to mean the section next preceding or next following that, in which such reference is made; unless when some other section is expressly designated in such reference.

Fifteenth. In all cases, in which the seal of any court or public office shall be required by law, to be affixed to any paper issuing from such court or office, the word "seal" shall be construed to include an impression of such official seal, made upon the paper alone, as well as an impression, made by means of a wafer or of wax affixed thereto. "Seal."

Sixteenth. The word "state," when applied to the different parts of the United States, shall be construed to extend to and include the district of Columbia and the several territories, so called; and the words "United States" shall be construed to include the said district and territories. "State" and "United States."

Seventeenth. The word "town" may be construed to include all cities and districts, unless such construction would be repugnant to the provision of any act, specially relating to such cities or districts. "Town."

Eighteenth. The term "will" shall be construed to include codicils as well as wills. "Will."

Nineteenth. The words "written" and "in writing," may be construed to include printing, engraving, lithographing, and any other mode of representing words and letters; provided, however, that in all cases, where the written signature of any person is required by law, it shall always be the proper hand writing of such person, or, in case he is unable to write, his proper mark. "Written" and "in writing."

APPLICATIONS TO THE GENERAL COURT.

SECT. 7. Notice of any petition, to be presented to the general court, which affects the rights or interests of individuals or of private corporations, may be given, either by serving such individuals and corporations with a true copy of the petition, at least thirty days before the commencement of the session, or by publishing such a copy, three weeks successively, in some newspaper printed in the counties respectively, where such individuals reside, or in which such corporations are established; or, if no newspaper be there published, then in some newspaper published in the city of Boston; the last of said publications to be at least fourteen days before such session of the general court. Notices on petitions to general court, affecting individuals or private corporations, how given. 1831, 43.

SECT. 8. Notice of any petition, to be presented as mentioned in the preceding section, and which affects the rights or interests of any town, may be given, by serving such town with a true copy of the petition, fourteen days at least before the second Monday of the month of November next preceding the session of the general court, to which the petition is to be presented. Same, in case of towns. 1832, 59.

SECT. 9. The service of the notice, in the cases provided for in the two preceding sections, may be made by any sheriff, deputy sheriff, coroner, constable, or private person, not parties to, nor interested in, the petition; and the service, when made by such officer, may be proved by his return, and, when made by any private person, may be proved by such person's affidavit; and the officer, who shall serve such notice, shall be paid by the petitioner, four cents a mile for his Service of such notices, how made and proved. Fees for service

actual travel in making the service, twelve cents a page for each copy of the petition, and thirty cents for each service; and, after the service, he shall deliver the petition, with his return thereon, to the petitioner; provided, that, in all cases, where an acknowledgment in writing, of the service of any such petition, shall be made by any party, on whom the same is to be served, no other service thereof on such party shall be required.

Substitute for service. 1831, 43.

Members of committees may administer oaths. 1825, 90.

SECT. 10. Any senator or representative, while acting as a member of a committee of the legislature, shall have authority to administer oaths to such persons, as shall be examined before the committee of which he is a member.

TITLE II.

Of Elections, other than of Militia, Town, and Parish, Officers.

CHAPTER 3. Of the qualifications of electors.
CHAPTER 4. Of the manner of conducting elections.
CHAPTER 5. Of the election of governor, lieutenant governor, senators and representatives in the General Court.
CHAPTER 6. Of the election of representatives in Congress.

CHAPTER 3.

OF THE QUALIFICATIONS OF ELECTORS.

SECTION
1. Qualifications of voters at town, county and other elections.
2. Collectors of taxes to keep a list of persons who have paid their taxes, and upon request to give receipts.
3. Collectors to return lists to selectmen twice a year.
4. Penalty for neglect, and for a false return.
5. Selectmen to make out and post up lists of voters.
6. Selectmen to be in session, for receiving evidence of qualifications, and to give notice thereof.
7. Selectmen's sessions, where voters exceed one thousand.
8. Penalty for giving false answers to selectmen at such sessions.
9. Selectmen, when not answerable for refusing to receive votes.
10. Moderator shall receive votes of all persons on the lists—May refuse all others.

Qualifications of voters at town, county, and other elections. 1822, 104, § 1.

SECTION 1. Every male citizen of twenty one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the state one year, and within the town, in which he may claim a right to vote, six months next preceding any election of town, county or state officers, or of representative to congress, and who shall have paid, by himself, or his parent, master

or guardian, any state or county tax, which shall, within two years next preceding such election, have been assessed upon him, in any town of this state; and also every citizen, who shall be by law exempted from taxation, and who shall in all other respects be qualified as above mentioned, shall have a right to vote in all such elections; and no other person shall be entitled to vote in such elections. 11 Pick. 538.

SECT. 2. The collectors of state and county taxes, in each town, shall keep an accurate account of the names of all persons, from whom they shall have received payment of any state or county tax, and of the time of such payment; and, upon request, shall deliver, to the person making the payment, a receipt specifying his name and the time of such payment; and such receipt shall be admitted as presumptive evidence thereof.

Collectors of taxes, to keep a list of persons who have paid their taxes, and upon request to give receipt. 1822, 104, § 2.

SECT. 3. The said collectors, whether the time, for which they were respectively chosen, shall have expired or not, shall, twice in each year, namely, once in the month of February, not more than twenty days nor less than fifteen days before the first Monday in March, and once in the month of October, not more than twenty days nor less than fifteen days before the second Monday in November, return to the selectmen of their respective towns, an accurate list of all persons, from whom they shall have received payment of any state or county tax, subsequently to the time, appointed for making their last preceding return.

Collectors, to return lists to selectmen twice a year. 4 Pick. 118. 7 ib. 286.

SECT. 4. Any collector, who shall neglect to make such a return, as is required in the preceding section, shall forfeit the sum of one hundred dollars, for every such neglect; and any collector, who shall make a false return, in respect to any part of such list, shall forfeit the sum of twenty dollars for every name, in respect to which he shall have made a false return.

Penalty for neglect and for a false return. 1822, 104, §§ 2 and 6. 1833, 102.

SECT. 5. The selectmen shall, at least ten days before the first Monday of March, and at least ten days before the second Monday of November annually, make out correct alphabetical lists of all the persons, qualified to vote for the several officers, to be elected at those periods, respectively, and shall, at least ten days before the said elections, cause such lists, respectively, to be posted up in two or more public places, in their respective towns.

Selectmen to make out and post up lists of voters. 1822, 104, § 2. 1833, 102.

SECT. 6. The selectmen shall be in session, at some convenient place, for a reasonable time, within forty eight hours next preceding all meetings for the elections of any of the officers aforesaid, for the purpose of receiving evidence of the qualifications of persons, claiming a right to vote in such elections, and of correcting the lists of voters; and such session shall be holden for one hour at least, on the day of such election, and before the opening of the meeting; and notice of the time and place of holding the said sessions shall be given by the selectmen, upon the lists posted up as aforesaid.

Selectmen to be in session, for receiving evidence of qualifications, and to give notice thereof. 1822, 104.

SECT. 7. In any town, where the number of qualified voters shall exceed one thousand, such session of the selectmen shall be holden on the day immediately preceding the meeting, and for as much longer time, previous to said day, as the selectmen shall judge necessary, for the purpose aforesaid; and when the day, immediately preceding such meeting, shall be Sunday, then such session shall be holden on the Saturday next preceding.

Selectmen's sessions, where voters exceed one thousand. 1804, 117. 1822, 104, § 2.

Penalty for giving false answers to selectmen at such sessions.
1813, 68, § 4.

SECT. 8. If any person shall give a false name or any false answer to the selectmen, when in session as provided in the two preceding sections, he shall forfeit the sum of thirty dollars for each offence.

Selectmen, when not answerable for refusing to receive votes.
1822, 104, § 4.

SECT. 9. The selectmen, in case they shall have duly entered on said list of voters the names of all persons, who shall have been returned to them by the collectors aforesaid, shall not be held answerable for any omissions in said list, nor for refusing the vote of any person, whose name is not borne thereon, unless the person, whose name may have been so omitted, shall, before offering his vote, furnish them with sufficient evidence of his having the legal qualifications of a voter at such meeting, and shall have requested them to insert his name on said list.

Moderator shall receive votes of all persons on the lists. May refuse all others.
1822, 104, § 5.

SECT. 10. The moderator of any town meeting shall receive the votes of all persons, whose names are borne on the list of voters, as certified by the selectmen; and he shall in no manner be held answerable, for refusing the vote of any person, whose name is not on the said list.

CHAPTER 4.

OF THE MANNER OF CONDUCTING ELECTIONS.

SECTION
1. Elections not to be held on days designated by law for military duty.
2. Meetings not to be opened before eleven o'clock, except, &c.
3. Presiding officers at elections to have a list of voters, and time to examine it.
4. Every vote to be deposited by voter in person.
5. Senators to be voted for on one ballot.
6. Penalty for voting, if not qualified.
7. Penalty for giving in more than one ballot.
8. Penalty for giving false answers to presiding officers at elections.
9. Penalty for aiding unqualified persons to vote.
10. Penalty for disorderly conduct at elections.
11. Penalty, if selectmen, &c. neglect their duty at elections.
12. Elections in Boston.
13. Choice, how determined, when several persons are voted for on same ballot.

Elections, not to be held on days, designated by law for military duty.
1798, 31, § 1.

SECTION 1. No meeting for the election of state, county or town officers, or of electors of president and vice president of the United States, or of representatives in congress, shall be held on any day, on which the militia of the Commonwealth are by law required to do military duty.

Meetings not to be opened before eleven o'clock, except, &c.
1804, 117, § 1.

SECT. 2. No meeting for any election of governor, lieutenant governor, senators and representatives of the Commonwealth, electors of president and vice president of the United States, or of representatives in congress, shall be opened at an earlier hour than eleven o'clock in the forenoon of the election day, except in towns having more than five hundred qualified voters; and in such towns, the meeting may be opened before that hour, at the discretion of the selectmen.

SECT. 3. The selectmen, moderator, or town clerk, at any meeting held for the election of town or other officers, shall be provided with a complete list of the persons qualified to vote at such election; and no person shall vote at any election, whose name shall not have been previously placed on such list, nor until the selectmen, moderator, or town clerk, presiding at such meeting, shall have had opportunity to find such voter's name on the list.

Presiding officers at elections to have a list of voters, and time to examine it. 12 Pick. 485. 1822, 104, § 2. 1800, 74, § 4.

SECT. 4. No vote shall be received by the presiding officer, at any of the elections provided for in this chapter, unless deposited in the ballot box by the voter in person.

Every vote to be deposited by voter in person. 1798, 31, § 3.

SECT. 5. At the elections of senators, each voter shall give in his vote on one ballot, for a number of persons, not exceeding the number of persons to be chosen.

Senators to be voted for on one ballot. 1800, 74, § 2.

SECT. 6. If any person, knowing himself not to be a qualified voter, shall, at any election, wilfully give in a vote, for any officers to be then chosen, he shall forfeit a sum not exceeding one hundred dollars, for each offence.

Penalty for voting, if not qualified. 1813, 68, § 3.

SECT. 7. If any voter shall knowingly give in more than one ballot, at any one time of balloting, at any election, he shall forfeit a sum not exceeding one hundred dollars.

Penalty for giving in more than one ballot. 1813, 68, § 2. 1800, 74, § 3.

SECT. 8. If any person shall wilfully give any false answer to the selectmen or moderator, presiding at any election, he shall forfeit, for each offence, a sum not exceeding one hundred dollars.

Penalty for giving false answers. 1800, 74, § 4.

SECT. 9. If any person shall wilfully aid or abet any one, who is not legally qualified, in voting or attempting to vote at any election, he shall forfeit a sum not exceeding fifty dollars, for every such offence.

Penalty for aiding unqualified persons to vote. 1813, 68, § 3.

SECT. 10. If any person shall be disorderly in any meeting, held for any election mentioned in this chapter, he shall forfeit a sum not exceeding twenty dollars.

Penalty for disorderly conduct at elections. 16 Mass. 385. 1795, 55, § 4.

SECT. 11. If any selectman, or other town or city officer, shall wilfully neglect or refuse to perform any of the duties required of them, respecting elections, by the several provisions of this chapter, they shall, severally, for each offence, forfeit a sum not exceeding two hundred dollars.

Penalty, if selectmen, &c. neglect their duty at elections. 11 Mass. 350. 7 Greenl. 411. 1 East, 563. 11 Johns. R. 114. 1 N. Hamp. R. 88. 11 S. & R. 35. 1795, 55, §§ 1, 2. 1800, 74, § 5. 1813, 68, § 5.

SECT. 12. In the city of Boston, the several elections, provided for in this chapter, shall be conducted according to the provisions of the act establishing the city of Boston, and of the several acts in addition thereto.

Elections in Boston. 1821, 10.

SECT. 13. In order to determine the result of any election, in this Commonwealth, the whole number of persons, who voted at such election, shall first be ascertained, by counting the whole number of separate ballots given in; and no person shall be deemed or declared to be elected, who shall not have received a majority of the whole number of ballots; and in all returns of elections, the whole number of ballots given in shall be distinctly stated; but blank pieces of paper shall not be counted as ballots; and if, at any election, a greater number of candidates, than the number to be elected, shall severally receive a majority of the whole number of ballots, a num-

Choice, how determined, when several persons are voted for on same ballot.

ber equal to the number to be elected, of such, as have the greatest excess over such majority, shall be deemed and declared to be elected; but if the whole number to be elected cannot thus be completed, by reason of any two or more of such candidates having received an equal number of ballots, the candidates having such equal number shall be deemed not to be elected.

CHAPTER 5.

OF THE ELECTION OF GOVERNOR, LIEUTENANT GOVERNOR, SENATORS, AND REPRESENTATIVES IN THE GENERAL COURT.

SECTION

GOVERNOR, LIEUTENANT GOVERNOR AND SENATORS.

1. Separate lists of votes for governor, &c. to be transmitted to the secretary or to sheriffs.
2. Division of Commonwealth into senatorial districts.

REPRESENTATIVES IN THE GENERAL COURT.

3. Qualifications of voters on the question of sending representatives.
4. Penalty on towns for electing representatives when not entitled, &c.
5. Town meetings for elections of representatives in general court, how notified.
6. Selectmen to preside; their powers and duties at such meetings.
7. Record of election to be made.
8. Selectmen to give notice to persons elected, and certify and make returns.
9. Form of certificate.
10. Constable or, &c. to make return on certificate.
11. Elections in Boston, how conducted.
12. Penalties, how to be recovered and to whose use.

GOVERNOR, LIEUTENANT GOVERNOR AND SENATORS.

Separate lists of votes for governor, &c. to be transmitted to the secretary or to sheriffs.
1833, 141, § 1.

SECTION 1. At the election of governor, lieutenant governor and senators, it shall be the duty of the selectmen and clerks of towns, and of the mayor and aldermen of the city of Boston, to make and seal up separate lists of persons voted for as governor, lieutenant governor, and senators of the Commonwealth, with the number of votes for each person, written in words at length against his name, and to transmit said lists to the secretary of the Commonwealth or to the sheriffs of their respective counties; and when the said lists shall be received at the office of the secretary, the seals thereof shall not be broken, but the same shall be kept as they are received, until delivered by him to the two branches of the general court, or to the executive authority, according to the constitution and laws.

Division of Commonwealth into senatorial districts.
1832, 155.

SECT. 2. For the choice of senators, the Commonwealth is hereby divided into thirteen districts, each of which shall, in the manner prescribed by the constitution and laws, elect the number of senators hereinafter assigned to such districts.

Suffolk.

The county of Suffolk shall form one district, and choose six senators.

Essex.

The county of Essex shall form one district, and choose six senators.

Middlesex.

The county of Middlesex shall form one district, and choose five senators.

The county of Worcester shall form one district, and choose six senators. Worcester.

The county of Hampshire shall form one district, and choose two senators. Hampshire.

The county of Hampden shall form one district, and choose two senators. Hampden.

The county of Franklin shall form one district, and choose one senator. Franklin.

The county of Berkshire shall form one district, and choose two senators. Berkshire.

The county of Norfolk shall form one district, and choose three senators. Norfolk.

The county of Bristol shall form one district, and choose three senators. Bristol.

The county of Plymouth shall form one district, and choose two senators. Plymouth.

The county of Barnstable shall form one district, and choose one senator. Barnstable.

The counties of Nantucket and Dukes County shall form one district, and choose one senator. Nantucket and Dukes County. 1832, 155.

REPRESENTATIVES IN THE GENERAL COURT.

SECT. 3. The qualifications, for voting on the question, whether any town will send representatives to the general court, and on all questions, relating to the number of representatives, that such town will send, shall be the same, in all respects, as the qualifications, required by the constitution, for voting in the choice of such representatives. Qualifications of voters on the question of sending representatives, 15 Mass. 537. 1813, 68, § 6.

SECT. 4. If any town shall elect and return a representative to the general court, when it shall not be constitutionally entitled thereto, or shall elect and return a greater number of representatives, than it shall be constitutionally entitled to, such town shall, for each representative, so unconstitutionally elected and returned, forfeit a sum not exceeding three thousand dollars, at the discretion of the court, before which the conviction may be had. Penalty on towns for electing representatives when not entitled, &c. 1812, 135, § 4.

SECT. 5. All town meetings, for the election of representatives in the general court, shall be notified by the selectmen of each town, in the manner legally established in such town, for calling other town meetings. Town meetings for elections of representatives in general court, how notified. 1795, 55, § 1.

SECT. 6. The selectmen shall preside in such meetings, and they shall have all the powers, which are vested in moderators of town meetings; they shall openly receive, sort and count the votes, there given by the qualified voters present, and shall forthwith publicly declare who are the persons elected. Selectmen to preside; their powers and duties at such meetings. 1795, 55, §§ 1. 3.

SECT. 7. The election shall be recorded in the town records, together with the whole number of votes given in, and the names of all the persons, for whom they were given. Record of election to be made. 1795, 55, § 1.

SECT. 8. The selectmen, within three days after such election, shall, either by a constable of the town, or by some other person thereto specially authorized by them, give notice of the choice to the representatives elected; and a certificate and return of such election shall be given, under the hands of the selectmen present, and shall Selectmen to give notice to persons elected and certify and make returns. 1795, 55, § 1.

SECTION
6. In case of no choice, a precept to issue for a new election in the towns, &c.
7. When vacancies happen, new elections to be had.
8. Sheriffs to transmit precepts to selectmen.
9. Special provisions for such elections in Boston.
10. Fees of sheriffs for their services.
11. Penalty for their neglect.
12. " for neglect of town and city officers.

ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES.

13. Electors of president and vice president to be chosen.
14. Selectmen to notify meetings on the second Monday of November for the choice of electors.
15. Names of all the electors to be on one ballot, &c.
16. Selectmen to preside.—List of votes to be certified.
17. Time and manner of transmitting the votes.
18. Special provision for the city of Boston.
19. The governor and council to count the votes; and notice to be given to the persons elected.
20. If a majority not chosen, the residue to be elected by the general court.
21. Time and place of meeting of the electors.—Vacancies, how filled.
22. Electors to vote, and to certify and transmit their votes to the seat of government, directed, &c.
23. Compensation of electors.
24. All duties of sheriffs and town officers in election of governor, &c. to be observed in the election of electors.—Penalties.

OF THE ELECTION OF REPRESENTATIVES IN CONGRESS.

SECTION. 1. For the purpose of electing representatives in the congress of the United States, the state shall be divided into twelve districts, each of which shall elect one representative, being an inhabitant of the same district, in the manner hereinafter provided. *The state divided into 12 congressional districts.*

SECT. 2. The said twelve districts shall be as follows, to wit: *Description thereof.*

The city of Boston shall constitute one district, and be called district Number One. *District, No. 1.*

The towns of Gloucester, Manchester, Essex, Wenham, Beverly, Salem, Danvers, Lynnfield, Lynn, Saugus, Marblehead, Chelsea, Ipswich, and Hamilton, shall constitute one district, and be called district Number Two. *District, No. 2.*

The towns in the county of Essex, not before enumerated, and the towns of Dracut, Lowell, Tewksbury, Billerica, Wilmington, Reading and South Reading, shall constitute one district, and be called district Number Three. *District, No. 3.*

The towns of Acton, Ashby, Bedford, Boxborough, Burlington, Cambridge, Carlisle, Charlestown, Chelmsford, Concord, Dunstable, Framingham, Groton, Lexington, Lincoln, Littleton, Malden, Marlborough, Medford, Pepperell, Shirley, Stoneham, Stow, Sudbury, Townsend, Tyngsborough, Waltham, Watertown, Wayland, West Cambridge, Westford, Weston and Woburn, shall form one district, and be called district Number Four. *District, No. 4.*

The towns of Winchendon, Ashburnham, Lunenburg, Fitchburg, Westminster, Gardner, Hubbardston, Princeton, Leominster, No Town, Lancaster, Harvard, Bolton, Berlin, Sterling, Holden, Rutland, Oakham, Paxton, Boylston, West Boylston, Shrewsbury, Worcester, Leicester, Spencer, Ward, Oxford, Dudley, Webster, Charlton, Millbury, Southbridge, Northborough, Grafton and Sutton, shall form one district, and be called district Number Five. *District, No. 5.*

The towns of Ashfield, Buckland, Bernardston, Coleraine, Conway, Deerfield, Gill, Greenfield, Heath, Leyden, Shelburne, Whate- *District, No. 6.*

ly, Orange, Wendell, Warwick, Leverett, New Salem, Northfield, Montague, Sunderland, Shutesbury, Pelham, Prescott, Amherst, Hadley, Hatfield, Williamsburg, Goshen, Greenwich, Chesterfield, Enfield, Royalston, Athol, Phillipston, Templeton, Petersham, Dana, Barre and Hardwick, and the plantation of Erving's Grant, shall form one district, and be called district Number Six.

District, No. 7. The county of Berkshire, together with the towns of Monroe, Rowe, Charlemont, Hawley, Plainfield, Cummington, Worthington, Middlefield, Norwich, Chester, Blandford and Tolland, shall form one district, and be called district Number Seven.

District, No. 8. The towns of West Springfield, Westfield, Granville, Russell, Montgomery, Southwick, Holland, Wales, Brimfield, Monson, Palmer, Ludlow, Springfield, Longmeadow, Wilbraham, Belchertown, Easthampton, Granby, South Hadley, Northampton, Southampton, Ware, Westhampton, Sturbridge, Warren, Brookfield, North Brookfield and New Braintree, shall form one district, and be called district Number Eight.

District. No. 9. The towns of Brighton, Newton, Natick, Sherburne, Hopkinton, Holliston, Roxbury, Brookline, Dedham, Needham, Dover, Canton, Sharon, Walpole, Medfield, Medway, Wrentham, Foxborough, Franklin, Bellingham, Mendon, Milford, Upton, Westborough, Southborough, Douglas, Uxbridge and Northbridge, shall form one district, and be called district Number Nine.

District, No. 10. The towns in the county of Bristol, (excepting the towns of New Bedford and Fairhaven,) together with the towns of Bridgewater, North Bridgewater, West Bridgewater, East Bridgewater, and Middleborough, in the county of Plymouth, shall form one district, and be called district Number Ten.

District, No. 11. The counties of Barnstable, Nantucket and Duke's county, and the towns of New Bedford and Fairhaven, in Bristol county, shall form one district, and be called district Number Eleven.

District, No. 12. The towns in the county of Plymouth, not herein before enumerated, with the towns of Cohasset, Weymouth, Randolph, Stoughton, Braintree, Quincy, Milton, and Dorchester, shall form one district, and be called district Number Twelve.

Representatives in congress to be chosen on the second Monday of November, biennially. 11 Mass. 424.

SECT. 3. The selectmen of the several towns shall, in the manner directed by law for holding elections therein, cause the inhabitants of said towns, duly qualified to vote for representatives in the general court, to assemble on the second Monday of November in the year one thousand eight hundred and thirty six, and thence afterwards biennially, on the second Monday of November, to give in their votes for representatives in congress; and at such meetings, the selectmen shall preside, and shall, in open town meeting, receive, sort, and count the votes, and shall form a list of the names of the persons voted for, with the number of votes for each person, written in words at length, against his name; and the town clerk shall make a record thereof.

Selectmen to preside, &c. 1833, 68, § 3.

Selectmen to seal up and transmit the votes to the sheriff or secretary.

SECT. 4. The selectmen shall, in such meeting, make public declaration of the persons voted for, and of the number of votes given for each; and shall, in open town meeting, certify and seal up the said lists, and shall express, on the outside thereof, the district in which the said votes were given, and transmit the same, within three days after the election, to the sheriff of the county; and the said sheriff shall transmit the same to the office of the secretary of the Com-

monwealth, within seven days thereafter; or the said selectmen may themselves transmit the same to the said office within ten days after the election; and, in case of a vacancy in the office of sheriff, in any county, the selectmen of the several towns therein shall return such lists to the secretary's office, within the said term of ten days.

Length of time allowed. 1833, 68, § 3.

SECT. 5. The secretary shall lay the said returns before the governor and council; and in case of an election for any district, by a majority of the votes returned from such district, the governor shall forthwith transmit to the person chosen a certificate of such choice, signed by the governor and countersigned by the secretary.

Secretary to lay returns before governor and council. 1833, 68, § 3.

SECT. 6. In case of no choice in a congressional district, the governor shall cause precepts to issue to the selectmen of the several towns, within such district, directing them to cause the qualified electors of their respective towns, to assemble on the day appointed in such precept, to give their votes for a representative in congress; and the said precept shall be accompanied with a list of all the persons voted for in such district, who shall have received as many as fifty votes according to the next preceding return, and shall show the number of votes for each of such persons; and the same proceedings shall be had thereon, and the same returns made in all respects, as before directed; and the like proceedings shall be repeated, as often as occasion may require.

In case of no choice a precept to issue for a new election in the towns, &c. 1833, 68, § 4.

SECT. 7. When any vacancy shall happen in the representation of this Commonwealth in congress, the governor shall cause precepts to issue, for a new election in the congressional district, where such vacancy exists; and the like proceedings in all respects shall be thereon had, from time to time, as are in this chapter provided for the election of representatives.

When vacancies happen, new elections to be had. 1833, 68, § 5.

SECT. 8. The several sheriffs, upon receiving any precept from the governor, for the election of a representative in congress, shall seasonably transmit the same to the selectmen of the towns, within their respective counties, to whom such precept may be directed.

Sheriffs to transmit precepts to selectmen. 1833, 68, § 6.

SECT. 9. In the congressional district of the city of Boston, the said election shall be held, and all the proceedings thereon had, and the returns thereof made, in conformity with the act establishing the city of Boston, and the several acts in addition thereto; and in case of no choice being made at such election, or in case of any vacancy happening in said district, the governor shall cause precepts for new elections, to be directed to the mayor and aldermen of said city, as often as occasion shall require; and such new elections shall be held, and all proceedings thereon had, and returns made, in conformity with the said acts.

Special provisions for such elections in Boston. 1833, 68, §§ 3, 4. 1821, 110, § 23.

SECT. 10. Each sheriff shall be entitled to receive, out of the treasury of the Commonwealth, fifty cents for each of the said precepts, by him transmitted to the selectmen, as before provided, and, for returning the votes which may be delivered to him as aforesaid, he shall be entitled to receive seventeen cents a mile, computing from his place of abode to the office of the secretary; and the sheriffs shall present their accounts for the said services, to the treasurer of the Commonwealth, for examination and allowance.

Fees of sheriffs, for their services. 1833, 68, § 6.

SECT. 11. Any sheriff, who shall neglect to perform the duties required of him in this chapter, shall, for each offence, forfeit a sum

Penalty for their neglect. 1833, 68, § 7.

not exceeding two thousand dollars, nor less than two hundred dollars.

Penalty for neglect of town and city officers. 1833, 68, § 7.

SECT. 12. If any selectman, or the mayor, or either of the aldermen, or ward officers of the city of Boston, shall wilfully neglect to perform any of the duties, required of them respectively in this chapter, each of them, so neglecting his duty, shall forfeit a sum not exceeding two hundred dollars, nor less than thirty dollars, for any such neglect.

ELECTORS OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES.

Electors of president and vice president to be chosen.

SECT. 13. In each year, when the election of president and vice president of the United States is to take place, there shall be chosen as many electors of president and vice president, as this Commonwealth may at such time be entitled to.

Selectmen to notify meetings on the second Monday of November for the choice of electors.

SECT. 14. The selectmen of the several towns shall, in the manner prescribed by law for notifying town meetings, cause the inhabitants of their respective towns, qualified to vote for representatives in the general court, to assemble on the second Monday of November of the year, when the election of president and vice president is to be made, and give in their votes for the whole number of electors, to which this Commonwealth may be then entitled.

Names of all the electors to be on one ballot, &c. 1832, 169, § 1.

SECT. 15. The names of all the electors, to be so chosen, shall be written on each ballot; and each ballot shall contain the name of at least one inhabitant of each congressional district, into which the Commonwealth shall be then divided; and against the name of each person, on every such ballot, shall be designated the congressional district to which he belongs.

Selectmen to preside.

SECT. 16. The selectmen shall preside at all meetings held for the choice of electors aforesaid, and shall in open town meeting receive, sort, count and declare the votes given in; and the same shall be recorded by the town clerks, respectively, and exact lists thereof shall be made and certified by the selectmen and clerk.

List of votes to be certified. 1832, 169, § 1.

Time and manner of transmitting the votes. 1832, 169, § 1.

SECT. 17. The selectmen and clerk may, within three days next after the day of such election, deliver the said lists, sealed up, to the sheriff of the county, in which such election shall be held; and, in that case, the sheriff shall, within seven days after receiving the said lists, transmit the same to the office of the secretary of the Commonwealth; or, the selectmen may, and when the office of sheriff is vacant, they shall, themselves, transmit the said lists to the said office, within ten days after the election; and all votes not so transmitted shall be rejected.

Special provision for the city of Boston. 1832, 169, § 3.

SECT. 18. In the city of Boston, the said elections shall be holden, and the returns thereof made, in conformity with the act establishing the city of Boston, and the several acts in addition thereto; but the same shall be holden and made at and within the times directed in the five preceding sections.

The governor and council to count the votes; and notice to be given to the person elected.

SECT. 19. The governor and council shall open and examine the lists so transmitted, and shall count the votes; and the governor shall forthwith transmit to each person, who shall have received a majority of the votes so returned, a certificate of his election.

SECT. 20. If, upon examination of the votes as aforesaid, it shall appear that there has not been a choice of a majority of the whole number of electors, the governor shall, by proclamation, call the general court together forthwith; and the general court shall, by joint ballot of the senators and representatives, assembled in one room, choose as many electors, as shall be necessary to complete the number, to which this Commonwealth may be entitled.

If a majority not chosen, the residue to be elected by the general court.

SECT. 21. The electors so chosen shall convene at the state house in Boston, on the Tuesday preceding the first Wednesday of December, next after their election, at three of the clock in the afternoon; and in case of the death or absence of any elector so chosen, or in case the number of electors aforesaid shall, from any cause, be deficient, the electors then present shall forthwith elect, from the citizens of the Commonwealth, so many persons as shall supply such deficiency.

Time and place of meeting of the electors.

Vacancies, how filled. 1832, 169, § 4.

SECT. 22. The electors convened as aforesaid shall, on the said first Wednesday of December, vote by ballot for one person for president, and one person for vice president of the United States; one of whom, at least, shall not be an inhabitant of this Commonwealth; they shall name in their ballots the person voted for, as president, and in distinct ballots, the person voted for as vice president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice president, and of the number of votes given for each; which lists they shall sign and certify, and transmit, sealed up, to the seat of the government of the United States, directed to the president of the senate; and they shall, in all respects, proceed conformably to the constitution of the United States, and the laws in this behalf provided.

Electors to vote, and to certify and transmit their votes to the seat of government, directed, &c. 1832, 169, § 4.

SECT. 23. The said electors shall receive such compensation for their travel and attendance, as the members of the general court.

Compensation of electors. 1832, 169, § 4.

SECT. 24. All laws in force, in relation to the duties of sheriffs, town officers and voters, in the election of governor, counsellors, senators and representatives of this Commonwealth, shall, as far as the same may be applicable, apply and be in force, in regard to the meetings and elections to be held, and the returns to be made, under the provisions of this chapter, respecting the choice of electors of president and vice president of the United States; and the like penalties shall be incurred for the violation thereof.

All duties of sheriffs and town officers in election of governor, &c. to be observed in the election of electors. Penalties. 1832, 169, § 4.

TITLE III.

Of the Assessment and Collection of State Taxes; and of the Funds, Revenue, and Property of the Commonwealth, and the Administration thereof.

CHAPTER 7. Of the manner in which taxes are to be assessed, and of the property exempted from taxation.
CHAPTER 8. Of the collection of taxes.
CHAPTER 9. Of taxes on banks, and on sales by auction.
CHAPTER 10. Of the public lands, and the superintendence and disposition thereof.
CHAPTER 11. Of the public buildings and other public property.

CHAPTER 7.

OF THE MANNER IN WHICH TAXES ARE TO BE ASSESSED, AND OF THE PROPERTY EXEMPTED FROM TAXATION.

SECTION

OF THE PERSONS AND PROPERTY SUBJECT TO TAXATION.

1. Persons subject to poll tax.
2. All property subject to taxation, except, &c.
3. Real estate.
4. Personal estate.

OF THE PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

5. Property and polls exempted—Property of the United States—Property of certain institutions, if, &c.—Bunker Hill Monument—Household furniture, &c. Churches, tombs, &c.—Cattle, &c.—Indians—Polls and estates of persons unable to pay.

OF THE TOWNS OR PLACES WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

6. Poll tax, where assessed.
7. Real estate, where and to whom taxed.
8. Contribution between landlord and tenant.
9. Personal estate, where and to whom taxed.
10. Personal property taxable in other places than where the owner is an inhabitant, viz:—1, Stock in trade, &c. employed in other towns:—2, Machinery, belonging to corporations:—3, Horses, &c. kept in towns where owners do not reside:—4, Personal property of persons under guardianship:—5, or held in trust:—6, deposited to accumulate:—7, in hands of executors, &c. undistributed:—8, Property held as a ministerial fund.
11. Personal property, mortgaged, &c. taxed to holder.
12. Real estate of any person deceased, may be assessed to heirs, &c. jointly, until notice given of division; one liable for the whole, with right to contribution.
13. Partners may be jointly assessed for joint stock in trade.

OF THE MANNER OF ASSESSING TAXES.

14. State treasurer to send tax warrants to sheriffs, whenever, &c.
15. Treasurer to send blank forms to assessors.
16. By what rules all taxes to be assessed.
17. Penalties, if assessors refuse to obey treasurer's warrants.
18. When assessors neglect, &c. commissioners shall appoint.
19. Assessors to give notice to bring in lists of polls and property.
20. " may verify lists by the oath of the party.
21. " shall make a valuation.
22. " shall receive lists as a true valuation, unless, &c.

SECTION
23. Assessors shall make an estimate, when lists are not brought in.
24. Such estimate conclusive, unless, &c.
25. State, county and town taxes may be included in one assessment.
26. County and city taxes in Boston, how assessed.
27. One sixth shall be assessed on polls, provided, &c.; the residue on property.
28. Assessors may add five per cent. for convenience of apportionment.
29. Assessors to deposite a copy of the valuation in their office.
30. What shall be contained in the valuation:—1, Inhabitants' estates:—2, Non-resident owners' estates.
31. Form of tax list for collectors.
32. Assessors to commit lists to collectors, with warrant.
33. Contents of warrant—No seal requisite.
34. If no collector, lists, with warrant, to be given to sheriff or his deputy.
35. Towns may allow discount.
36. Assessors to post up rates of discount, if allowed.

SECTION
37. Reasonable abatements may be made by assessors, &c.
38. Costs which have arisen before abatement, to be paid.
39. If assessors refuse to abate taxes, the party may complain to the county commissioners, &c.
40. No abatement allowed, unless a list has been brought in, &c.
41. Abatements to be applied for within six months.
42. If tax has been paid, amount of abatements to be allowed out of town treasury.
43. Party entitled to certificate of his abatement.
44. Assessors to be responsible only for fidelity, &c.
45. Pay of assessors.

TAXES ON UNINCORPORATED PLACES.
46. Assessments on unincorporated places.
47. Meetings of such places; choice of assessors, &c.
48. Assessment and collection of taxes in such places.

OF THE PERSONS AND PROPERTY SUBJECT TO TAXATION.

SECTION 1. A poll tax shall be assessed upon every male inhabitant of the Commonwealth, between the ages of sixteen and seventy years, whether a citizen of the United States, or an alien, in the manner hereinafter provided in this chapter.

Persons subject to poll tax. 7 Mass. 523. 1830, 151, § 2.

SECT. 2. All property, real and personal, of the inhabitants of this state, not expressly exempted by law, shall be subject to taxation, in the manner provided in this chapter.

All property subject to taxation, except, &c 1830, 151, § 2.

SECT. 3. Real estate shall, for the purposes of taxation, be construed to include all lands within this state, and all buildings and other things erected on or affixed to the same.

Real estate.

SECT. 4. Personal estate shall, for the purposes of taxation, be construed to include all goods, chattels, moneys and effects, wheresoever they may be, all ships and vessels, whether at home or abroad, all moneys at interest, due the persons to be taxed, more than they pay interest for, and all other debts due to them more than they are indebted for, all public stocks and securities, stocks in turnpikes, bridges and all monied corporations, whether within or without the state, and also income from any profession, trade or employment, or from an annuity, unless the capital of such annuity shall be taxed in this state; and all other property returned in the last preceding valuation, for the purpose of taxation.

Personal estate. 6 Pick. 98. 1830, 151, § 2

OF THE PROPERTY AND PERSONS EXEMPTED FROM TAXATION.

SECT. 5. The following property and polls shall be exempted from taxation, namely:—

Property and polls exempted.

First. The property of the United States and of the Commonwealth.

Property of the U. States, &c.

Property of certain institutions, if, &c.

Secondly. The personal property of all literary, benevolent, charitable and scientific institutions, incorporated within this Commonwealth, and such real estate belonging to such institutions, as shall actually be occupied by them, or by the officers of said institutions, for the purposes for which they were incorporated.

Bunker Hill Monument.

Thirdly. The Bunker Hill Monument.

Household furniture, &c.

Fourthly. The household furniture of every person, not exceeding one thousand dollars in value; and also his wearing apparel, farming utensils, and mechanic's tools necessary for carrying on his business.

Churches, tombs, &c.

Fifthly. All houses of religious worship, and the pews and furniture within the same, (except for parochial purposes) and all tombs and rights of burial.

Cattle, &c.

Sixthly. All mules, horses, and neat cattle less than one year old; and all swine and sheep less than six months old.

Indians.

Seventhly. The polls and estates of all Indians.

Polls and estates of persons unable to pay. 1830, 151, § 6.

Eighthly. The polls and estates of persons, who, by reason of age, infirmity and poverty, may, in the judgment of the assessors, be unable to contribute towards the public charges.

OF THE TOWNS OR PLACES WHERE POLLS AND PROPERTY SHALL BE ASSESSED.

Poll tax, where assessed. 13 Mass. 495. 8 Pick. 494. 1830, 151, § 3.

SECT. 6. The poll tax shall be assessed upon each taxable person in the town, where he shall be an inhabitant on the first day of May in each year; provided however, that all minors, liable to taxation, shall be taxed for their polls, in the towns where the parents, masters, or guardians, who have the control of the persons of such minors, may reside; and if any such minor shall have no parents, master or guardian within this state, he shall be personally taxed for his poll, as if he were of full age; and the poll tax, of every other person under guardianship, shall be assessed to his guardian, in the town where the guardian is taxed for his own poll.

Real estate, where and to whom taxed. 1830, 151, § 3.

SECT. 7. All taxes on real estate shall be assessed, in the town where the estate lies, to the person, who shall be either the owner or in possession thereof, on the first day of May; and in cases of mortgaged real estate, the mortgagor shall, for the purposes of taxation, be deemed the owner, until the mortgagee shall take possession, after which the mortgagee shall be deemed the owner.

Contribution between land lord and tenant. 1830, 151, § 3.

SECT. 8. When a tenant, paying rent for real estate, shall be taxed therefor, he may retain, out of his rent, the one half of the taxes paid by him; and when a landlord is assessed for such real estate, he may recover the one half of the taxes paid by him and his rent, in the same action against his tenant; unless there be an agreement to the contrary.

Personal estate, where and to whom taxed. 6 Pick. 98.

SECT. 9. All personal estate, whether within or without this state, shall, except in the cases enumerated in the following section, be assessed to the owner in the town where he shall be an inhabitant on the first day of May.

Personal property taxable in other places, than where the owner is an inhabitant, viz. 1. Stock in

SECT. 10. The excepted cases mentioned in the preceding section are the following, namely:

First. All goods, wares and merchandize, or any other stock in trade, including stock employed in the business of any of the mecha-

nic arts, in towns within the state, other than where the owners reside, shall be taxed in those towns, if the owners hire or occupy stores, shops or wharves therein, and shall not be taxable where the owners reside.

trade, &c. employed in other towns. 1830, 151, § 2.

Secondly. All machinery, employed in any branch of manufactures and belonging to any corporation, shall be assessed to such corporation, in the town or other place, where such machinery may be situated or employed; and, in assessing the stockholders, for their shares in any manufacturing corporation, there shall first be deducted, from the value thereof, the value of the machinery and real estate, belonging to such corporation.

2. Machinery, belonging to corporations. 1832, 158, § 2.

Thirdly. All horses, mules, neat cattle, sheep and swine, kept throughout the year, in towns other than where the owners reside, shall be assessed to the owners, in the towns where they are kept.

3. Horses, &c. kept in towns, where owners do not reside. 1830, 151, § 3.

Fourthly. All personal property, belonging to minors under guardianship, shall be assessed to the guardian, in the town where he is an inhabitant; and the personal property of all other persons under guardianship shall be assessed to the guardian, in the town where the ward is an inhabitant.

4. Personal property of persons under guardianship.

Fifthly. All personal property, held in trust by any executor, administrator, or trustee, the income of which is to be paid to any married woman or other person, shall be assessed to the husband of such married woman, or to such other person, respectively, in the town of which he is an inhabitant; but if such married woman, or other person reside out of the state, the same shall be assessed to said executor, administrator or trustee, in the town where he resides.

5.—or held in trust.

Sixthly. Personal property, placed in the hands of any corporation or individual, as an accumulating fund, for the future benefit of heirs or other persons, shall be assessed to the person, for whose benefit the same is accumulating, if within the state, otherwise to the person so placing it, or his executors or administrators, until a trustee shall be appointed, to take charge of such property, or of the income thereof.

6.—deposited to accumulate.

Seventhly. The personal estate of deceased persons, which shall be in the hands of their executors or administrators and not distributed, shall be assessed to the executors and administrators, in the town where the deceased person last dwelt, until they shall give notice to the assessors, that the estate has been distributed and paid over to the parties interested therein.

7.—in hands of executors, &c. undistributed, 5 Pick. 236.

Eighthly. All property, held by any religious society, as a ministerial fund, shall be assessed to the treasurer of such society; and if such property consists of real estate, it shall be taxed in the town, where such property lies; and if it consists of personal property, it shall be taxed in the town, where such society usually hold their meetings.

8. Property held as a ministerial fund.

SECT. 11. When personal property is mortgaged or pledged, it shall, for the purposes of taxation, be deemed the property of the party who has the possession.

Personal property, mortgaged &c. taxed to holder.

SECT. 12. The undivided real estate of any deceased person may be assessed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they shall have given notice to the assessors of the division of the estate, and the names of the several heirs or devisees; and each heir or devisee shall

Real estate of any person deceased may be assessed to heirs, &c. jointly until notice given of division.

One liable for the whole, with right to contribution.

be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective proportions thereof when paid by him.

Partners may be jointly assessed for joint stock in trade.

SECT. 13. Partners in mercantile or other business, whether residing in the same or different towns, may be jointly taxed, under their partnership name, in the town where their business is carried on, for all the personal property employed in such business; and if they have places of business in two or more towns, they shall be taxed in those several towns, for the proportions of property employed in such towns, respectively; and, in case of being so jointly taxed, each partner shall be liable for the whole tax.

OF THE MANNER OF ASSESSING TAXES.

State treasurer to send tax-warrants to sheriffs, whenever, &c.

SECT. 14. Whenever a state tax shall be required to be assessed, the treasurer shall send his warrants, for the assessing thereof, to the sheriffs of the several counties, who shall immediately transmit the same to the assessors, to whom they are directed.

Treasurer, to send blank forms to assessors. 1823, 138, §§ 1. 4.

SECT. 15. When the treasurer shall send a tax act to the assessors of any town, it shall be his duty to send therewith a suitable number of blanks, for invoice and valuation books, so arranged as conveniently and distinctly to exhibit, in separate columns, the following particulars, to wit:

The names of the persons assessed.
The number of their polls.
The description of estate taxed.
The true value of the estate taxed.
The reduced value of the same.
The amount of the poll tax.
The tax on real estate.
The tax on personal estate.
The total amount of each person's tax.

And the treasurer shall also send with said blanks suitable forms of warrants, certificates of assessments for state, county and town taxes, forms of notices to be posted up previously to the making of any tax, and also blanks for tax lists or books, sufficient for the use of such town.

By what rules all taxes to be assessed. 1785, 50, §§ 4. 8.

SECT. 16. The assessors shall assess all state taxes for which they may receive warrants from the treasurer, according to the rules prescribed in this chapter, and such as may be further prescribed in the acts laying such taxes; and they shall in like manner assess all county taxes, which shall be duly certified to them, and all town taxes duly voted by their respective towns, and all taxes duly voted and certified by any school districts therein.

Penalty, if assessors refuse to obey treasurer's warrant. 1785, 50, § 4.

SECT. 17. If any assessors shall neglect to obey the warrants, received by them from the treasurer of the Commonwealth, for the assessing of any tax upon the inhabitants or estates of their town, every one so neglecting shall forfeit a sum not exceeding two hundred dollars.

When assessors neglect, &c. commissioners shall appoint. 1785, 50, § 4.

SECT. 18. When the assessors of any town shall neglect to assess any tax, as mentioned in the preceding section, the commissioners in the respective counties, shall forthwith appoint other suitable persons, to assess such tax, according to the warrant of the

treasurer; and the persons so appointed shall take the same oath, and perform the same duties, and be liable to the same penalties, as are provided in the case of assessors of towns.

SECT. 19. Before proceeding to make any assessment, the assessors shall give seasonable notice thereof, to the inhabitants of their respective towns, at any of their meetings, or by posting up in their towns one or more notifications, in some public place or places, or by some other sufficient manner; and such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their polls and estates, both real and personal, not exempted from taxation.

Assessors to give notice to bring in lists of polls and property. 1785, 50, § 9.

SECT. 20. The assessors may, in all cases, require any person bringing in such a list, to make oath, that the same is true; which oath may be administered by either of the assessors.

Assessors may verify lists by the oaths of the party. 1785, 50, § 9.

SECT. 21. The assessors of each town shall, at the time appointed, make a valuation of all the estates, real and personal, subject to taxation therein.

— shall make a valuation. 1785, 50, § 1.

SECT. 22. The assessors shall receive, as the true valuation of the property of each individual, the list, if any, brought in by him according to the provisions of this chapter, unless he shall, on being thereto required by the assessors, refuse to make oath that the same is true.

— shall receive lists as a true valuation, unless, &c. 1785, 50, § 9.

SECT. 23. If any person shall not have brought in such list, the assessors shall ascertain, as nearly as possible, the particulars of his personal estate, and of the real estate in his possession or occupation, as owner or otherwise, and make an estimate thereof, at its just value, according to their best information and belief.

— shall make an estimate, when lists are not brought in. 1785, 50, § 1.

SECT. 24. Such estimate shall be entered in the valuation, and shall be conclusive upon all persons, who shall not seasonably have brought in lists of their estates, unless they can show a reasonable excuse for the omission.

Such estimate conclusive, unless, &c. 1785, 50, § 9.

SECT. 25. The assessors may include, in the same assessment, their state, county, and town taxes, or any two of them, whenever they shall think it convenient.

State, county and town taxes may be included in one assessment.

SECT. 26. In the city of Boston, all taxes, assessed for city or county purposes, may be assessed separately, as county taxes, and as city taxes, or under the denomination of city taxes only, as the city council shall from time to time direct.

County and city taxes in Boston, how may be assessed. 1821, 109, § 13

SECT. 27. The assessors shall assess upon the polls, as nearly as the same can be conveniently done, one sixth part of the whole sum to be raised; provided the whole poll tax, assessed in any one year, upon any individual, for town and county purposes, except highway taxes, shall not exceed one dollar and fifty cents; and the residue of said whole sum to be raised shall be apportioned upon property, in the manner provided in this chapter.

One sixth shall be assessed on polls, provided, &c.; the residue on property. 1828, 143, § 3. 1830, 151, § 2.

SECT. 28. The assessors may add, to the amount of any tax, to be assessed, such a sum, not exceeding five per cent. of the same, as any fractional divisions of the said amount may render convenient, in the apportionment thereof.

Assessors may add five per cent. for convenience of apportionment. 1785, 50, § 11.

SECT. 29. The assessors shall make a list of the valuation and the assessment thereon, and shall, before the taxes assessed are committed for collection, deposite the same, or an attested copy thereof,

Assessors, to deposite a copy of the valuation in their office. 1785, 50, §§ 1. 8.

in their office, or, if there be no office, then with their chairman, for public inspection.

What shall be contained in the valuation:

SECT. 30. The first part of said list shall exhibit the valuation and assessment of the polls and estates of the inhabitants assessed; and it shall contain, in separate columns, the following particulars to wit:

1.—Inhabitants' estates.

The names of the inhabitants assessed; and opposite to their names,

The number of polls.
The amount of their poll tax.
The description of their real estate.
The true value of their real estate.
The reduced value of their real estate.
The tax assessed on such real estate.
The description of their personal property.
The true value of their personal property.
The reduced value of their personal property.
The tax on their personal property.
The sum total of each person's tax.

2.—Non-resident owners' estates. 1828, 143, § 5.

The second part of said list shall exhibit the valuation and assessment of the estates of non-resident owners; and it shall contain, in separate columns, the following particulars, to wit:

The names of the non-resident owners of the property assessed, or such description of them as can be given.
Their places of abode, if known.
The description of their estate.
The true value of such estate.
The reduced value of such estate.
The tax thereon.

Form of tax list for collectors. 1828, 143, § 6. 9 Pick. 97.

SECT. 31. The tax list committed to the collectors shall be in substance, as follows;

Names.	No. of polls.	Poll Tax.	Tax on Real Estate.	Tax on personal property.	Total.	Time when paid.

NON RESIDENTS.

Names.	Places of abode, if known.	Tax.	

Assessors to commit lists to collectors, with warrant. 1785, 50, § 6. 1786, 70, § 1.

SECT. 32. The assessors shall, within a reasonable time, commit the said tax list, with their warrant, under their hands, to the collector for collection.

Contents of warrant. No seal requisite. 1785, 50, § 6.

SECT. 33. The warrant of the assessors shall specify the duties of the collector, as prescribed by law, in the collection of taxes, and the times when, and the persons to whom, the same shall be paid in by the collector, and it shall be substantially in the form heretofore used, except that it shall not be required to be under seal.

SECT. 34. If there be no collector, the assessors shall commit the tax lists, with their warrant, in the form prescribed in the preceding section, to the sheriff or his deputy, whose duty it shall be to collect such taxes.

If no collector, lists, with warrant to be given to sheriff or his deputy.

SECT. 35. Any town may, at their annual meeting, allow a discount of such sums, as they may think expedient, to those persons who shall make voluntary payment of their taxes, within such periods of time, as the town shall prescribe for that purpose; and in such case the collectors shall make such discount accordingly.

Towns may allow discount.

SECT. 36. When a discount shall be allowed, as provided in the preceding section, the assessors shall, at the time of committing their warrant to the collector, post up, in one or more public places within the town, notice of the rates of discount.

Assessors to post up rates of discount, if allowed. 1815, 130, § 4.

SECT. 37. Any person, aggrieved by the taxes assessed upon him, may apply to the assessors for an abatement thereof; and, if he shall make it appear to them, that he is taxed at more than his just proportion, they shall make a reasonable abatement to him; and they may for this purpose examine upon oath, (which may be administered by either of them,) the person so applying, and any witnesses whom he or they may see fit.

Reasonable abatements may be made by assessors, &c. 1785, 50, § 10.

SECT. 38. If any legal costs shall have accrued, before making any such abatement, as is provided for in this chapter, the person, applying for the abatement, shall, notwithstanding, pay such costs.

Costs which have arisen before abatement to be paid.

SECT. 39. If the assessors shall refuse to make an abatement to any person, he may make complaint thereof to the county commissioners, and if, upon the hearing of such complaint, it shall appear that the complainant is over-rated, the said commissioners shall make such an abatement of his taxes, as they shall deem reasonable; provided, that the party aggrieved shall, in all cases, file his complaint with the clerk of the commissioners, within one month after the refusal of the assessors to allow an abatement.

If assessors refuse to abate taxes, the party may complain to commissioners, &c. 6 Pick. 98. 1785, 50, § 10.

SECT. 40. No person shall have any abatement made, by the commissioners, unless he shall have brought in a list of his estate to the assessors, or shall show good cause for not having so done, and unless he shall, if required by the assessors, have made oath to the truth of the same.

No abatement allowed, unless a list has been brought in, &c. 1785, 50, §§ 9, 10.

SECT. 41. No abatement shall be allowed to any person, unless he shall have made application therefor, within six months after the date of his tax bill.

Abatements to be applied for within six months.

SECT. 42. Any person, who shall have an abatement made, shall, if his tax has been paid, be reimbursed out of the treasury of the town, to the amount of the abatement allowed, together with all charges, except the legal costs, provided for in the thirty eighth section of this chapter.

If tax has been paid, amount of abatements to be allowed out of town treasury. 1785, 50, § 10.

SECT. 43. Every person, whose tax shall be abated, shall be entitled to a certificate thereof from the assessors, or clerk of the commissioners, or other proper officer.

Party entitled to certificate of his abatement.

SECT. 44. The assessors shall not be responsible for the assessment of any tax, in any town, parish, religious society, or school district, for which they are assessors, when such tax shall have been assessed by them, in pursuance of any vote for that purpose, certified to them by the clerk or other proper officer of such town, parish,

Assessors to be responsible only for fidelity, &c. 1823, 138. 1833, 166. 5 Pick. 451. 498. 4 ib. 399. 7 ib. 106.

religious society or school district; but they shall, in such case, be responsible only for the want of integrity and fidelity on their own part.

Pay of assessors. 1831, 99.

SECT. 45. Each assessor shall be paid by his town the sum of one dollar a day, for every whole day, that he shall be employed in that service, together with such other compensation as the town shall allow.

TAXES ON UNINCORPORATED PLACES.

Assessments on unincorporated places. 1785, 46, § 10.

SECT. 46. Whenever any part of a state or county tax shall be laid on any unincorporated place, the treasurer of the state or county, respectively, shall issue his precept to some justice, dwelling near to such place, requiring him to grant his warrant, directed to some principal inhabitant of such place, who shall thereupon notify a meeting of the inhabitants of such place, for the purposes set forth in the following section; and such principal inhabitant shall obey such warrant, on penalty of paying the whole amount of the tax, directed to be assessed on such place.

Meetings of such places; choice of assessors, &c. 1785, 46, § 10.

SECT. 47. The inhabitants of such unincorporated place shall, in pursuance of the proceedings mentioned in the preceding section, meet, and choose a moderator, clerk, assessors and collector; and such clerk, assessors and collector, may be sworn to the faithful discharge of their respective offices, by the moderator of the meeting; and they shall have the same compensation, as is allowed to such officers in towns.

Assessments and collection of taxes in such places.

SECT. 48. The assessors of such unincorporated place shall assess such taxes, by the like rules, and in the like manner, as taxes are assessed upon towns; and the collector of such place shall have the like authority, to collect the taxes assessed, as the collectors of towns have for collecting taxes.

CHAPTER 8.

OF THE COLLECTION OF TAXES.

SECTION
1. Collectors to collect taxes according to warrant.
2. " to complete collections, though term of office, expired.
3. Demand to be made before distraining.
4. Party claiming abatement must produce certificate of assessors—Liable to pay fees and costs.
5. Errors in names not to defeat collection of taxes.
6. Collectors may demand aid; penalty for refusing.
7. Distress and sale to pay taxes; except of certain goods.
8. Distress, how long kept; how advertised and sold.
9. Sale may be adjourned once.
10. Surplus to be returned to owner, on demand.
11. After neglect to pay for fourteen days, party may be imprisoned.
12. In cases of doubtful credit, taxes may be collected forthwith.
13. Copy of warrant, &c. to be left with jailer.
14. Persons removing from collector's precinct, without paying.

Penalty for refusing. 1785, 70, § 9. 1782, 61.

in; and if such person shall refuse to render such aid, he shall forfeit, to the use of the town where the offence is committed, a sum not exceeding ten dollars.

Distress and sale to pay taxes; except of certain goods. 1785, 50, § 6.

SECT. 7. If any person shall refuse or neglect to pay his tax, the collector shall levy the same by distress and sale of his goods, excepting the goods following, namely:

The tools or implements necessary for his trade or occupation; beasts of the plough necessary for the cultivation of his improved lands; military arms, utensils for house keeping necessary for upholding life, and bedding and apparel necessary for himself and family.

Distress, how long kept, how advertised and sold. 1785, 50, § 6. 1785, 70, § 2. 1791, 22, § 3.

SECT. 8. The collector shall keep the goods distrained, at the expense of the owner, for the space of four days, at the least, and shall, within seven days after the seizure, sell the same by public auction, for the payment of the tax and the charges of keeping and of the sale, having given notice of such sale, by posting up a notification thereof, in some public place in the town, forty eight hours at least before the sale.

Sale may be adjourned once.

SECT. 9. The collector may, if he see fit, once adjourn such sale, for a time not exceeding three days; in which case, he shall forthwith give notice of such adjournment, by posting up a notification thereof, at the place of sale, when he makes such adjournment.

Surplus to be returned to owner, on demand. 1785, 70, § 2.

SECT. 10. If the distress shall be sold for more than the tax and the charges of keeping the distress and making the sale, the collector shall return the surplus to the owner, upon demand, with an account, in writing, of the sale and charges.

After neglect to pay for 14 days, party may be imprisoned. 1785, 70, § 2.

SECT. 11. If any person shall refuse or neglect, for fourteen days after demand thereof made, to pay his tax, and the collector cannot find sufficient goods, upon which it may be levied, he may take the body of such person and commit him to prison, there to remain, until he shall pay the tax and charges of commitment and imprisonment, or shall be discharged by order of law.

In cases of doubtful credit, taxes may be collected forthwith. 1785, 70, § 2. 1815, 130, § 3.

SECT. 12. When the credit of any person taxed shall be considered doubtful by the assessors, they may order the collector forthwith to compel payment by distress or imprisonment, whether the tax be made payable immediately, or at a future day, or by instalments, or otherwise.

Copy of warrant, &c. to be left with jailer. 1785, 70, § 11.

SECT. 13. When the collector shall commit any person to prison, he shall give the keeper of the prison an attested copy of the warrant, with a certificate thereon, under the hand of the collector, setting forth the sum, which such person is to pay as his tax, with the cost of taking and committing him, and, that upon his having neglected payment for fourteen days, or otherwise, as the case may be, and for want of goods whereof to make distress, he has taken his body.

Persons removing from collector's precinct, without paying. 1785, 70, § 5.

SECT. 14. When any person shall, after the assessment of a tax upon him, remove out of the precinct of the collector, without paying his tax, the collector may demand payment thereof, wherever such person may be found; and, in default of payment, the collector may forthwith proceed to collect the tax by making a distress, or by commitment of such person to the prison of the county where he may be found.

Remedy of collector when persons re-

SECT. 15. When any person, who is taxed, shall remove as aforesaid, or shall die, or being an unmarried woman, shall be mar-

Affidavit of posting notifications to be evidence, if recorded, &c. 1794, 68, § 2.

SECT. 23. The affidavit of any disinterested person, taken before a justice of the peace, of the posting up of notifications of the sale of land, by any collector or other officer for payment of taxes, shall be admitted as competent evidence of the fact of notice, upon any trial on the validity of such sale; provided, that such affidavit, made upon one of the original advertisements, or upon a copy of one of them, be filed and recorded in the registry of deeds of the county where the land lies, within six months after such sale.

Sales of real estate, how advertised by collectors. 1785, 70, § 7.

SECT. 24. The collector shall give notice of the time and place of sale of any real estate taken for taxes, by an advertisement thereof three weeks successively, in some newspaper of the county where the real estate lies, if there be any such newspaper, and if not, then in a newspaper printed in any adjacent county; the last publication of which advertisement shall be at least one week before the time of sale.

Contents of advertisement. 1785, 70, § 7.

SECT. 25. The advertisement, required in the preceding section, shall state the names of all the owners, if known to the collector, with the amount of the taxes assessed on their lands respectively; and, where the owners are not so known, the advertisement shall state the amount of the taxes on the several rights, lots, or divisions, of the real estate to be sold as aforesaid.

When name of the town has been changed. 1785, 70, § 7.

SECT. 26. When any real estate, to be sold under the provisions of this chapter, is situated in any town, the name of which shall have been changed by law, within three years next preceding the sale, the collector shall, in his advertisement and notices of the sale, designate such town by its former and also its present name.

Notices to be also posted up in precinct of collector. 1785, 70, § 7.

SECT. 27. The collector shall also post a notice, similar to that required by the two preceding sections, in some convenient and public place in his precinct, three weeks before the time of sale.

Sale by auction of sufficient, &c 1785, 70, § 7.

SECT. 28. If no person shall appear to pay the taxes, at the time and place appointed for the sale of real estate, taken for taxes, the collector shall sell, by public auction, so much of the real estate, as shall be sufficient to discharge such taxes and all necessary intervening charges.

Sale, how made when the real estate cannot be divided without injury.

SECT. 29. If, in the opinion of the collector, any parcel of real estate cannot be conveniently divided, and a part thereof be set off, without injury to the residue, he may, as he shall judge to be most for the public interest, either take and sell the rents and profits of the whole parcel, by public auction, for such term of time, as shall be sufficient to discharge the tax thereon, with necessary intervening charges, or he may sell the whole of the land itself, and, after first satisfying such taxes and charges, shall pay over the residue of the proceeds of the sale to the owner of the estate, upon demand.

Collector may adjourn the sale, not exceeding seven days in the whole. 1785, 70, § 7.

SECT. 30. The collector may adjourn his sale from day to day, not exceeding seven days in the whole; and he shall give notice of every such adjournment by a public declaration thereof, at the time and place previously appointed for the sale.

Deed, to be given to the purchaser, subject, &c. 1785, 70, § 7.

SECT. 31. The collector shall execute and deliver to the purchaser a deed of the real estate, or of the rents and profits sold; which deed shall state the cause of sale, the price for which the estate, or rents and profits were sold, and if the real estate shall have been sold, shall convey, subject to the right of redemption, provided for in the

the same tax list to him, with their warrant accordingly; and such person shall have the same powers and duties, and be under the same liability, as other collectors are.

If collector become insane, &c., assessors may remove him. 1791, 22; 1785, 46; 1783, 10, § 1.

SECT. 40. If any collector shall become insane, or otherwise, in the judgment of the assessors, unable to discharge his duty, or shall abscond, or shall remove, or, in the judgment of the assessors, shall be about to remove, from the town, or shall refuse, on demand, to exhibit to the selectmen or assessors his accounts of collections, as provided in this chapter, the assessors may remove him from office, and appoint another collector, as in case of the death of the collector.

On the death, &c., of a collector, his list to be delivered over to assessors. 1785, 46, § 5. 1791, 22.

SECT. 41. In case of the death or removal from office of any collector, it shall be the duty of his executors or administrators, and of all other persons, into whose hands any of his unsettled tax lists may come, forthwith to deliver the same to the assessors.

Deficiency in state or county tax, how supplied.

SECT. 42. If, in consequence of the collector's failing, without his own default, to collect any tax, there shall be a deficiency of the amount due on any state or county tax, it shall be supplied by the collector, from the proceeds of the collection of town taxes, if any, in his hands; and, if he have none, by the town treasurer, on the written requisition of the collector.

Collector to be credited with abatements, &c. 1790, 42.

SECT. 43. The collector shall be credited with all sums abated according to law, and with the amount of taxes assessed upon any person, who has been committed to prison within one year from the receipt of the tax list by the collector, and has not paid his tax, and also with any sums, which the town may see fit to abate to him, due from persons who shall have been committed after the expiration of a year.

Remedy of towns for collector's neglect. 1785, 46, § 5.

SECT. 44. If any collector shall neglect seasonably to pay any state or county tax committed to him, whereby the town shall be compelled to pay the same, or shall neglect seasonably to account for and pay in any town tax committed to him, the town may recover the amount thereof, with all damages sustained through such neglect, with interest, by an action on his official bond, if any shall have been given, and, if none, by an action for money had and received.

Collectors to exhibit accounts every two months, if required. 1783, 66, § 1.

SECT. 45. Every collector shall, once in every two months, if required, exhibit to the selectmen, and, where there are no selectmen, to the assessors, a true account of all moneys received on the taxes committed to him, and produce the treasurer's receipts, for all money paid into the treasury by him.

Penalty for not exhibiting. 1783, 66, § 2.

SECT. 46. If any collector shall neglect so to exhibit his accounts, he shall forfeit to the use of his town the sum of two and a half per cent. on the sums committed to him for collection.

Compensation of collectors.

SECT. 47. Each collector shall be paid such compensation for his services as his town shall determine.

porations, on sales of real estate, ships and other property. 1824, 129, § 1; 1825, 163; 1834, 161.

and manufacturing companies, and also of any company whatever, incorporated under the authority of this Commonwealth, shall be one tenth of one per cent. on the amount of the sales; the tax upon sales of real estate, and of ships and vessels, shall be one half of one per cent. on the amount of the sales; and the tax upon all other sales, shall be one per cent. on the amount thereof.

Amount on leases, &c. sold by auction for a gross sum. 1830, 61, § 1. 9 Pick. 412.

SECT. 6. All contracts and engagements for any lease or underlease of real estate, or for the assignment of any lease or underlease of real estate, which shall be made or entered into by way of sale or bidding at public auction, if the same shall be bid off or sold for a gross sum, shall be subject to a tax of one half of one per cent. on such gross sum.

Amount on contracts by auction for sale and delivery of other leasehold property. 1830, 61, § 2.

SECT. 7. If such contract or sale, as described in the preceding section, shall be for an annual rent, or for a sum payable by instalments, for any term not exceeding seven years, the gross amount of such rent or instalments shall be subject to a tax of one half of one per cent. and for any term beyond seven years, and not exceeding fourteen years, to a tax of one third of one per cent.; and for any term beyond fourteen years, to a tax of one fourth of one per cent.

Amount on contract for sale of goods, &c.

SECT. 8. All contracts and agreements for the sale, delivery, furnishing, or supplying, of any goods, wares and merchandize, or other personal property, which shall be made or entered into, by way of bidding or sale at public auction, shall be deemed sales by public auction of personal estate, and shall be subject to a tax of one per cent. on the whole value or amount of the goods or property which are the subject of such contract or agreement.

When bidding is for a part or sample, tax payable for the whole. 1830, 61, § 4.

SECT. 9. Where any sale or bidding shall be made at public auction, upon the rent of any smaller parcel of real estate, for the purpose of fixing the rent or price of any larger parcel of such estate, or upon any contract for a lease or underlease of real estate, for a shorter term, for the purpose of fixing and determining the rent or price of a longer term, and where such sale or bidding, in regard to any goods, wares and merchandize, or other personal property, or any contract or agreement to sell, deliver, furnish or supply the same, shall be of, or upon, any less quantity, for the purpose of fixing the price of a larger quantity, in every such case, the whole amount of the property sold, transferred, contracted for or negotiated, by the terms and conditions of such auction, and the amount of the rent, for the whole of the real estate so agreed to be leased, and for the whole term, for which it is to be leased, shall be subject to a tax, as if the whole had been set up and sold by auction.

Tax to be paid when property is bid in by owner, &c. 1824, 129, § 1.

SECT. 10. When any auction, for the sale or lease of any property, or for any contract in relation thereto, shall have been actually begun, and the final purchase or bidding shall have been made by the owner of the property, by the auctioneer, or by any person employed by either of them, the same tax shall be paid, as if the bidding had been made by any other person.

Auctioneers to render accounts of sales to treasurer, in June and December, except, &c. 1822, 87, § 4. 1824, 129, § 2.

SECT. 11. Every auctioneer, except in cases where the amount of taxes, accruing upon his sales made for six months, previous to the first day of June, shall not exceed ten dollars, as hereafter provided for, shall, on the first day of June and December, in each year, or within sixty days thereafter, render to the treasurer of the Common-

The land office, to be kept in Boston, &c. 1815, 131, §§ 1, 2.

SECTION 1. The land office now established shall be continued, for the management and sale of land, belonging to this Commonwealth in the state of Maine; it shall be kept in Boston, under the direction of an agent, who shall be furnished with a suitable office and a clerk and stationary, at the public expense; and the office shall be kept open at such stated hours, as, in the opinion of the said agent, will be most convenient for the public.

Land agent shall take charge of books, &c., of land office. Shall have the care of lands in Maine. 1815, 131, §§ 2, 3.

SECT. 2. The land agent shall take charge of the records, plans, papers and documents of every description, appertaining to the lands of the Commonwealth in the state of Maine, and shall have the care, superintendence and management of all the said lands; subject, however, to such rules and directions, as shall from time to time be prescribed by the legislature.

Surveys, &c. to be made by order of agent. 1815, 131, § 4.

SECT. 3. The said agent shall, from time to time, under the direction of the legislature, cause surveys to be made of the said lands, and take such measures, as may be expedient for ascertaining the quantity and quality of the different tracts thereof, and the lakes, rivers, mountains, minerals and natural productions thereof, and for preserving the timber thereon.

Sales of land to be made by agent. 1815, 131, § 7.

SECT. 4. The said agent may, from time to time, under the direction of the legislature, sell any part of said lands, upon such terms and conditions, as he shall think for the interest of the Commonwealth.

Records, to be kept by him. 1815, 131, § 8.

SECT. 5. All contracts and sales, and all deeds, grants and other doings of said agent, shall be entered in suitable books and records, kept for that purpose.

The treasurer, to keep a separate account of proceeds of lands in Maine, made since, &c. 1830, 98.

SECT. 6. It shall be the duty of the treasurer to keep a separate account of all the money, received by him from the sale of lands belonging to this Commonwealth in the state of Maine, which have been made since the first day of January, in the year one thousand eight hundred and thirty one, and of all funds which may be paid over or transferred to him by the land agent, arising from the sale of said lands and of the timber cut thereon, and also an account of notes and obligations, heretofore given by purchasers of said lands, and of the interest or income of all such moneys.

The money so received, when and how to be invested. 1830, 98.

SECT. 7. The treasurer shall, from time to time, with the approbation of the governor, invest all moneys received by him, under the provisions of the preceding section, in the stock of any banks within this Commonwealth, either by subscription to the capital stock thereof or otherwise, or in any other public stock; regard being had to the comparative security and productiveness of the same; and when thus invested, the same shall remain subject to the further order of the legislature.

Persons having unauthorized possession, punishable. 1814, 75, § 2.

tain, or have in his possession, any of the said tools or implements so marked or branded, the same not having been delivered to him by any person thereto authorized, shall be deemed guilty of a misdemeanor, and be punished by fine, not exceeding ten times the just value of such tool or implement.

Penalty for injuring, &c. the state house, &c. 1833, 178.

SECT. 8. If any person shall wilfully deface, mar, or injure the walls, wainscoting, or any other part of the state house, or of any other building, or the appurtenances thereof, belonging to the Commonwealth, by cutting, writing, or in any other manner, he shall for each offence forfeit a sum not less than five dollars.

THE STATE LIBRARY.

State library, to be kept in state house.

SECT. 9. There shall be a state library kept in the state house, for the use of the governor, lieutenant governor, the council, the senate, the house of representatives, and such officers of the government, and other persons, as may from time to time be permitted to use the same.

Books and maps belonging to the Commonwealth, to be placed in the library, except, &c. 1825, 123, § 1.

SECT. 10. All the books and maps, belonging to the Commonwealth, shall be deposited and suitably arranged in the land office, and be placed under the care of the land agent, who shall be the librarian; excepting such books, as by order of the respective departments of the government are now retained in the senate chamber, in the hall of the house of representatives, and in the department of the secretary of the Commonwealth.

Library committee. Their duties. 1825, 123, § 3.

SECT. 11. A joint standing committee of six persons, shall be annually appointed by the legislature, three from each branch, to be called a library committee, who shall superintend the library, use the funds appropriated by law in purchasing such books, maps and charts as they may think expedient; procure, if necessary, a suitable person to perform the duties of assistant librarian, during the sitting of the legislature, see that the apartments of the library are at all times properly warmed, lighted and prepared for the accommodation of the members of the legislature, and of such other persons as may be permitted to use the same; and make and enforce such rules for the regulation of said library, as to the said committee may seem proper.

Annual appropriation for the library. 1825, 123, § 4.

SECT. 12. The sum of three hundred dollars, annually, is appropriated, to procure for the state library suitable works of science, literature and the arts, and such maps and charts as may, in the judgment of the library committee, be most useful for said library; and the governor, with the advice and consent of the council, may, from time to time, [to] draw his warrant accordingly.

MONEY RECEIVED OF THE UNITED STATES FOR MILITIA SERVICES.

Proceeds of Maine lands and militia claim, appropriated to school fund. 1834, 169, § 1.

SECT. 13. All moneys and stocks in the treasury, on the first day of January, in the year one thousand eight hundred and thirty five, which shall have been derived from sales of the Commonwealth's lands in the state of Maine, and from the claim of the Commonwealth on the government of the United States for military services, and which shall not be otherwise appropriated, together with one half of the moneys thereafter received from the sale of lands in Maine, shall constitute a permanent fund, to be called the Massachusetts school fund, for the encouragement of common schools, according

SECTION

EQUIPMENTS.

36. Soldiers, how to be equipped within six months after enrolment—officers how equipped—soldiers to keep equipped—arms, &c. to be inspected.
37. Inability of private to equip himself, how proved—equipments to be supplied by selectmen—Penalty for neglect to furnish.
38. Minors, how equipped—when unable, how equipped.
39. What uniforms to be provided.
40. Cavalry, how equipped—if unprovided with horse, &c. more than three months, to be discharged.
41. Artillery, how equipped—to have cannon, &c.
42. Uniform, arms, &c. exempt from attachment.

ARTICLES FURNISHED.

43. Colors to be furnished and preserved—instruments of music to be furnished and preserved—blank rolls, &c. to be furnished.
44. Cannon, &c. to be furnished to artillery, and preserved.
45. Horses to be provided.
46. Musket balls, flints, kettles, &c., to be provided and stored by towns—powder to be provided and stored by towns, in case, &c.—penalty for neglect.
47. Schedules of military stores to be annually furnished by selectmen, in May—Penalty for neglect.

APPOINTMENT AND ELECTIONS OF OFFICERS.

48. Officers of the line, how elected.
49. Staff officers, how appointed.
50. Non-commissioned officers, how appointed.
51. Officers, how commissioned—warrants of non-commissioned officers—certificates of clerk's appointment.
52. Persons ineligible to military offices—when such persons are elected, commander in chief to appoint.
53. Rank of officers, how determined—commissions shall express date of appointment.
54. Loss of commission supplied.
55. Major general to be notified of his election, and to signify his acceptance within thirty days.
56. Major generals to order elections of all commissioned officers.
57. Electors to have ten days notice.
58. Who may preside at elections—officers elected, how notified—elections and refusals, how returned—acceptances when notified—refusals at the time, recorded—elections may be twice adjourned, two days each—what number of electors must be present—rosters and rolls to be produced at elections.
59. When electors refuse to elect, governor to appoint—in case of refusal to elect, officers to be appointed—volunteers disbanded on refusing twice—returns of elections and refusals—new elections ordered, unless, &c.
60. Elections in companies without officers, may be ordered by colonel.
61. Commissions, how transmitted.
62. Notice given, if officers refuse to be qualified.
63. Candidates not to treat with ardent spirits.
64. Persons on military duty, privileged from arrest on civil process.

OFFICERS, HOW QUALIFIED.

65. Oaths of commissioned officers—how administered and certified—form of certificate.
66. Clerk's oath—certificate of.

HOW OFFICERS ARE DISCHARGED.

67. Discharge of officers upon their own request.
68. Time and conditions of resignations.
69. Remedy in case of unreasonable refusal to approve resignations.
70. No resignations while under arrest.
71. Discharges without request—of persons unable and unfit, and convicts—persons who have removed—absent more than one year—upon address of legislature—by sentence of court martial—by disbanding of corps.
72. Discharges by appointment in the army; penalty for continuing to act.
73. Expiration of commissions of staff.
74. Resignation of clerks and non-commissioned officers.

DISCIPLINE, INSPECTION, TRAININGS AND REVIEWS.

75. System of discipline.
76. Inspection on first Tuesday of May.
77. Selections from militia law to be read.
78. Company parades—reviews—time and place of reviews—no person to march more than fifteen miles to any review, except, &c.
79. Rank of divisions, &c.—senior officer to command—company without officers, how commanded at reviews.
80. Bounds of parade may be fixed—punishment of intrusion.

SECTION

81. Brigade majors, &c. to attend reviews —to attend inspection of regiments, &c.
82. Adjutant general, when to attend reviews.
83. Ball cartridges how inspected—penalty for bringing loaded arms, except, &c.
84. Treating with ardent spirits forbidden.
85. No parades on days of certain town meetings, except, &c.—penalty for ordering them.
86. Commander in chief may order escorts, &c.
87. Voluntary parades not prohibited—constitution of companies binding, so far, &c.—remedy for breach thereof.

NOTIFICATIONS.

88. Who shall notify trainings.
89. Requisites of notifications—time for training—for elections—on sudden emergencies—verbal notice on parades.
90. What, sufficient notice of enrolment.
91. Company without officers, how notified —penalty of refusal to notify.
92. Adjutant general to furnish blank orders and notifications.
93. Orders and notifications to be recorded by clerk.

EXCUSES.

94. Excuses to be made within twenty days, unless, &c.—clerks to be informed of excuses.
95. Deficiencies in equipments not to be excused—Penalty.
96. Certain conditional exemptions not to be excused, unless, &c.
97. Who may excuse in companies without officers.

FINES AND PENALTIES.

98. *Fines of soldiers* for unnecessary absence.
99. *Fines of soldiers* for deficiencies of equipments.
100. *Fines of soldiers* for neglects and offences—quitting guard, &c.—discharging musket, &c.—refusing to warn in company without officers—loading with ball, &c. on parade, &c.—refusing to act as clerk—refusing to enrol and to return roll in company without officers—contempt, disorderly conduct, tumult or riot, disobedience, neglect of duty—persons committing the last mentioned, may be put under guard—non-commissioned officers may be reduced to the ranks.
101. *Fines of officers* for ordering parade on days of election—acting as an officer after accepting commission in the army —disobeying any order in case of tumult—refusing to certify or falsely certifying compensation list—fines by court martial.
102. *Fines of musicians*, neglect or misconduct of band—hired musicians subject to commands and penalties like soldiers.
103. *Fines for false information*, giving false information to avoid enrolment—by householders.
104. *Fines of citizens*, neglect of parents, guardians, &c.—Absence of soldiers in companies without officers.
105. *Fines of selectmen*, for neglect, &c. to return a list of men, to provide arms, to examine lists and draw orders, to appropriate money received from exempts, to return military stores.
106. *Fines of towns*, neglect to provide supplies, &c.—to keep military stores—to keep powder when required.
107. Fines for having in possession, without right, certain articles belonging to the Commonwealth.

PROSECUTIONS FOR FINES.

108. *Fines prosecuted by indictment or action on the case.*
109. *Fines recovered by complaint or action on the case*, by commanders of regiments, &c. for refusal to give notice in a company without officers—of clerk of such company to return roll—of mayor and aldermen, or selectmen, to return list of such company—for quitting platoon, or company, on regimental parade.
110. *Fines prosecuted by captain, brigade major, or judge advocate*—for refusal to perform the duties of clerk—incurred by members of brigade band—by sentence of court martial—costs against judge advocate to be paid by county treasurer.
111. Fines in company without officers.
112. *Fines prosecuted by clerk*—for absence, or disobedience in case of riot, &c.—by musicians—for giving false information, by parents, guardians, or masters—all fines not otherwise provided for, to be recovered by clerk—information, when and where filed—form of information—when summons to be issued—form of summons of justices, of police or justices' court—general issue may be pleaded—what is sufficient evidence for the prosecution—secondary evidence, when received—clerk, &c. may be a witness—exemptions and excuses for infirmity, how proved—commanding officer may be a witness—execution when issued—form of execution—amendments of complaint—when no costs against complain-

SECTION

ant—appeals when allowed—similar complaints by other officers.

113. Imprisonment on execution.

114. To whose use fines accrue—clerk to make annual return of fines received by him.

COURTS MARTIAL.

115. No court martial, except on written complaint, signed, &c.—offences to be tried within one year, unless, &c.

116. Respondent to be put under arrest—copy of charges to be delivered ten days before trial—if not delivered, court may adjourn.

117. Courts martial to consist of president, &c.—when held—how often—general courts martial, how to be appointed, and who may be tried by them—division courts martial, how to be appointed, and who may be tried by them—members, how to be detailed—if any officer detailed is unable to serve—returns of members detailed—judge advocate to attend—when prevented—if the president does not attend—if a sufficient number of members do not attend or cannot serve—if the judge advocate or marshall is absent—person serving as judge advocate, to continue through the trial—officers, how to take rank—court may adjourn, when.

118. Members to be sworn—president and members' oath—judge advocate's oath—challenges, how and when made—certain causes of challenge, when waived—if the defendant is absent or withdrawn—witnesses, how summoned—penalty for not appearing—oath of witnesses—evidence of neglect of returns to adjutant general—copies and documents, how authenticated—proceedings to be in writing—votes, how taken—order to be preserved—records, how authenticated, and transmitted—approval or disapproval of sentence—pay roll—copies allowed—judgment of disqualification may be reversed.

119. What offences may be tried by court martial.

120. Board of officers.

121. Courts of inquiry, how organized—vacancies, how filled—oaths of president and members, of judge advocate—witnesses—judge advocates to attend.

122. No guard, unless, &c.

COMPENSATION.

123. Compensation to aids, brigade majors, and adjutants.

124. Pay of members of court martial, &c.—of president—of judge advocate—of marshal and members—of witnesses—fees—no allowance for guard, unless, &c.

125. Allowance to members of volunteer companies—compensation list, how made out and certified—how examined and paid—action for non-payment—penalty for neglect to certify and examine—Commonwealth to reimburse towns.

126. Compensation to soldiers or their families, when injured or killed.

127. Pay of troops in actual service—additional pay to uniform troops—to those without uniform—to those providing their own arms—when discharged, how long paid.

128. Pay rolls and claims for compensation, how examined and certified—how allowed and paid.

CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULTS, OR RIOTS.

129. Militia, how called out, in case of invasion or insurrection.

130. Drafts, how made.

131. Drafts in companies without officers.

132. Penalty for officers neglecting to march or disobeying—for soldiers.

133. Selectmen to provide carriages, &c.—penalty on towns for neglect.

134. In case of tumults, riots, mobs, &c. how the militia are to be ordered out—form of precept.

135. Penalty of officer disobeying—of soldiers and others.

136. Troops to appear at rendezvous, and obey, &c.

RULES AND ARTICLES FOR GOVERNING THE TROOPS OF THE COMMONWEALTH, AND THE MILITIA IN ACTUAL SERVICE.

137. Who shall be taken to be a soldier.

138. Offences punished by death, or, &c.

i. Sedition.

ii. Not suppressing sedition, nor giving information of it.

iii. Desertion.

iv. Advising desertion.

v. Misbehaving before an enemy—abandoning post, &c.

vi. Abandoning post or colors, to plunder.

vii. Making known or falsifying watchword.

viii. Forcing a safeguard.

ix. Harboring or relieving an enemy.

x. Corresponding with an enemy.

SECTION
xi. Compelling commander to surrender.
xii. No sentence of death except by court martial.
139. Offences of officers punished by cashiering.
xiii. Using traitorous or contemptuous expressions.
xiv Neglecting to march, &c.
xv. Disobedience of orders.
xvi Provocation to duel.
xvii. Giving or accepting a challenge.
xviii. Upbraiding for not challenging, &c
xix. Suffering a person to pass a guard to fight a duel—not arresting persons about to fight.
xx. Drunkenness on duty.
xxi. Escaping from arrest.
xxii. Behaving scandalously.
xxiii. Embezzling, or committing fraud.
xxiv. Wasting or selling stores.
xxv. Not delivering offender to civil authority.
140. Offences punished at discretion of court martial.
xxvi. Preceding offences when commitmitted by soldiers.
xxvii. Disrespect or contempt of commanding officer.
xxviii. Disobedience.
xxix. Striking superior officer.
xxx. Resisting any officer who attempts to quell a quarrel.
xxxi. Not keeping order, redressing abuses, protecting citizens.
xxxii. Being one mile from camp, &c. without leave in writing.
xxxiii. Being absent without leave.
xxxiv. Not retiring to quarters at night.
xxxv. Not repairing to rendezvous, unless, &c.
xxxvi. Sentinel found sleeping, &c.
xxxvii. Occasioning false alarms.
xxxviii. Leaving platoon, &c.
xxxix. Offering violence to persons bringing provisions.
xl. Disturbing courts martial.
xli. Refusing to receive prisoner.
xlii. Releasing a prisoner.
xliii. Not reporting prisoners.
xliv. Crimes not capital, nor specially enumerated.
xlv. Officers absent from divine service, &c.
SECTION
141. Fines.
xlvi. Soldiers absent from or behaving indecently during divine worship.
xlvii. Profane cursing or swearing by officers.
xlviii. Profane cursing and swearing by soldiers.
xlix. Fines by court martial.
l. Fines stopped out of pay.
142. li. Officers wronged by colonel.
lii. Officer or soldier wronged by captain.
liii. Public stores secured.
liv. Oldest officer to command, without regard to corps.
lv. Offenders to be delivered to civil authority.
lvi. Property of deceased persons secured.
lvii. Pay and rations.
143. Courts martial, &c.
lviii. Arrests.
lix. Length of imprisonment before trial.
lx. General and division courts martial, by whom ordered.
lxi. Number of members of general court martial.
lxii. Number of members of division and regimental courts martial.
lxiii. Power of regimental court martial.
lxiv. Post and detachment court martial.
lxv. Courts martial in particular corps.
lxvi. Rank of members of court martial.
lxvii. Time of holding court martial.
lxviii. Rank in court martial.
lxix. Judge advocate.
lxx. Oath of president and members—oath of judge advocate.
lxxi. Witnesses refusing to appear and testify.
lxxii. Oath of witnesses.
lxxiii. Votes in court martial, two thirds necessary to capital sentence.
lxxiv. Proceedings to be transmitted to commanding officer.
lxxv. Pay may be suspended.
lxxvi. Pardon and mitigation of punishment.
144. Construction of the word soldier.
145. Word "selectmen" to include mayor and aldermen.

EXEMPTIONS.

SECTION. 1. The persons, mentioned in this and the two following sections, shall be either absolutely or conditionally exempted from military duty in this state, that is to say: besides the following per- Absolute exempts.

sons absolutely exempted from military duty by the laws of the United States, viz.—the vice president of the United States, the officers, judicial and executive, of the government of the United States, the members of both houses of congress, and their respective officers, all custom house officers with their clerks, all postmasters, post officers, post riders, and stage drivers who are employed in the care and conveyance of the mail of the United States, all ferry-men, employed at any ferry on the post road, all inspectors of exports, all pilots, and all mariners actually employed in the sea service of any citizen or merchant within the United States; the persons hereinafter mentioned shall also be absolutely exempted, notwithstanding their age may be more than eighteen years and less than forty five years, viz:

10 Pick. 153.

Justices of the supreme judicial court and court of common pleas.

Judges of the municipal court and of probate.

Registers of probate and of deeds.

Sheriffs.

All officers who have held, or may hereafter hold, commissions in the army or navy of the United States, for the term of five years.

All officers who have held, or may hereafter hold, commissions in the militia of this or any other state of the United States, for the term of five years, or who have been or shall be hereafter superseded and discharged, or who have held, or shall hereafter hold, commissions in any corps, at the time when it is disbanded, and all staff officers, whose offices shall become vacant by the provisions of the seventy third section.

Ministers of the gospel, of every denomination.

The superintendents, other officers and assistants, employed in or about any department of the Massachusetts general hospital, in Boston and Charlestown, and in the state lunatic hospital at Worcester, during the time of such employment.

1809, 108, § 1.

The officers and guards employed at the state prison in Charlestown, and in any of the jails and houses of correction in the Commonwealth.

Exempts by producing certificates.

SECT. 2. The persons named in this section shall be absolutely exempted from militia duty, upon producing certificates as hereinafter prescribed.

3 Pick. 226.
14 Mass. 374

All enginemen throughout the Commonwealth, and members of the fire department in any town, who shall, within thirty days after their appointment, and afterwards annually, on or before the first Tuesday in May, produce to the commanding officer of the standing company, within whose bounds they severally reside, a certificate of their being enginemen, or members of said department, signed by the selectmen of the respective towns; but, when any member of a volunteer company shall be afterwards appointed an engineman, or member of the fire department, it shall not vacate his enlistment, but, during its continuance, shall exempt him from duty.

12 Mass. 441.
17 Mass. 351.

Every person of either of the religious denominations of quakers or shakers, who shall, on or before the first Tuesday in May, annually, produce to the commanding officer of the company, within whose bounds he resides, a certificate signed by two or more of the elders or overseers, (as the case may be,) and countersigned by the

clerk of the society, with which he meets for religious worship, which shall be in substance as follows:

We, the subscribers, of the society of the people called ———, in the town of ———, in the county of ———, do hereby certify that —— —— is a member of our society, and that he frequently and usually attends religious worship with said society, and we believe is conscientiously scrupulous of bearing arms.

A. B. } Elders or overseers,
C. D. } (as the case may be.)

E. F., Clerk.

Every non-commissioned officer or private, having any bodily infirmity, may be exempted from military duty, if he shall obtain, from the surgeon or surgeon's mate of the regiment or battalion to which he belongs, (or, if there be no such officers commissioned in said regiment, then from some respectable physician, living within the bounds of the same,) a certificate that he is unable to do military duty, on account of bodily infirmity, the nature of which infirmity shall be described in said certificate; and the captain or commanding officer of his company may, on the back of such certificate, discharge the non-commissioned officer or private named therein, from performing military duty, for a term of time which he shall judge reasonable, not exceeding one year, which, when countersigned by the colonel or commanding officer of said regiment or battalion, shall exempt him from all military duty for the time specified, except attendance at the election of officers; and if any such non-commissioned officer or private, having obtained such certificate, shall be refused a discharge, or an approval of a discharge as aforesaid, he may apply to the commanding officer of the brigade, and if, upon examination of the case, such commanding officer shall be satisfied that said non-commissioned officer or private ought to be discharged, he may discharge him from military duty for such time not exceeding one year, as he shall judge reasonable, by certifying the same under his hand upon the surgeon's certificate.

3 Pick. 386. 11 Mass. 456. 540. 7 Pick. 251. 9 Mass. 322. 14 Mass. 290. 1809, 108, § 29.

SECT. 3. All persons hereafter mentioned in this section, notwithstanding their age be more than eighteen years, and less than forty five years, shall, upon the condition hereinafter mentioned, be exempted from all militia duty, except that of keeping themselves constantly furnished with the arms and equipments required by law, and of carrying or sending them on the first Tuesday of May, annually, at one o'clock in the afternoon, to the place of inspection or view of arms of the company, within whose bounds each of such persons resides, and in which he is enrolled, and of attending elections of company officers, as hereinafter provided:

Conditional exempts. 1809, 108 § 1. 1809, 108, § 1. 1821, 92, §§ 105. 1. 1822, 102, §§ 3, 7. 1828, 123, 1829, 115, § 1. 1834, 152, § 1.

All officers who have held, or may hereafter hold, commissions in the army or navy of the United States, for a term less than five years:

All officers who have held or may hereafter hold, commissions in the militia of this or any other state of the United States, for a term less than five years:

Every person, who has been, for seven successive years, since he was, by the laws of the United States, or of this Commonwealth, liable to be enrolled in the militia, a member of the fire department of the city of Boston, who shall, on or before the first Tuesday of May

in each year, produce to the commanding officer of the company, within whose bounds he resides and in which he is enrolled, a certificate signed by the mayor of said city, that he has served as above mentioned; upon condition, nevertheless, that each of the persons exempted by this section, (excepting those who have held commissions in the army and navy of the United States,) shall pay to the treasurer of the town, in which such person resides, the sum of two dollars annually, and shall produce his receipt therefor, to the commanding officer of the company, on or before the first Tuesday in May in each year; and such treasurer shall keep a separate account of the money so paid; and the selectmen of the several towns, and the mayor and aldermen of any city, shall appropriate all money, which has been or shall be so paid, to the use of the several companies in such town or city, in proportion to the number of active privates borne on their rolls, on the first Tuesday of May in each year, in such manner, at such times, and for such purposes, as shall be required by the commander in chief; and any selectmen, or mayor and aldermen, who shall neglect or refuse to comply with the provisions aforesaid, shall severally be liable to the penalty, provided in such case in the one hundred and fifth section.

Exemption for six months after first enrolment. 9 Mass. 31. 2 Pick. 172. 1 Pick. 194. 3 Pick. 262.

SECT. 4. No soldier shall be held to do duty, until the expiration of the six months allowed him, after his first enrolment in the militia of the United States, to procure equipments; but he may, during that time, vote in the election of officers.

ENROLMENT.

Who shall be enrolled, and when.

SECT. 5. Every able bodied white citizen, resident within this Commonwealth, who is or shall be of the age of eighteen years and under the age of forty five years, excepting persons absolutely exempted by the preceding sections, idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of any infamous crime, shall be enrolled in the militia, and every such citizen, not holden by law to perform duty in the militia in any other manner, shall be enrolled in the company, within whose bounds he resides, by the captain or commanding officer of the same, and the clerk of said company shall assist his commanding officer in the performance of said duty. Such enrolments shall be made, from time to time, as each citizen shall arrive at the age of eighteen years, or shall come to reside within said bounds, or, without being exempted, shall cease to be holden to do duty elsewhere, and the commanding officer shall, without delay, notify such citizen of his enrolment, by a proper non-commissioned officer of such company, by whom such notice may be proved; and any notice or warning, by a non-commissioned officer, to attend any inspection, training, muster or election of officers, shall be a legal notice of his enrolment. All non-commissioned officers and privates, discharged from any company raised at large, or having belonged to any such company, which is disbanded, shall be enrolled as privates in the standing company, within the bounds of which they severally reside; and, in all cases of doubt, respecting the age of any person enrolled, the burden of proof shall be upon him.

Notice of enrolment.

Soldiers of any disbanded company, or discharged from volunteer corps, to be enrolled. U. S. St. 1792 and 1803; 1809, 108, §§ 16 & 20, and § 34, art. 15; 1825, 144, § 2.

ORGANIZATION.

Militia how organized. 16 Mass. 523.

SECT. 11. The commander in chief, with the advice of the council, is authorized to arrange the militia into divisions, brigades, regiments, battalions and companies, conformably to the laws of the United States, and to make such alterations therein, as from time to time may be deemed necessary; and each division, brigade and regiment shall be numbered at the formation thereof, and a record made of such numbers in the adjutant general's office.

Divisions, &c. to be numbered, U. S. stat. May, 8, 1792, § 3. 1809, 108, § 2.

Orders of commander in chief how distributed. U. S. stat. 1792, § 6.

SECT. 12. All orders, from the commander in chief to the several corps, shall be distributed by the adjutant general, and he shall obey all such orders, relative to carrying into execution and perfecting any system of military discipline, established by law.

Volunteers how organized.

SECT. 13. The several volunteer companies of cavalry, artillery, light infantry, riflemen and grenadiers, in each brigade of militia, in which they exist in sufficient numbers, and are conveniently located for the purpose, shall be organized by the commander in chief, with the advice of the council, into regiments or separate battalions.

Battalions and regiments of cavalry, &c., of how many companies to consist. 1809, 108, §§ 14 and 15. 1834, 152, § 3.

SECT. 14. Each battalion of cavalry or artillery shall consist of not less than two nor more than three companies, and each regiment of cavalry or artillery of not less than four companies; and whenever the companies of artillery, cavalry, light infantry, riflemen or grenadiers, shall not exist in sufficient numbers, or shall not be so located as to render such separate organization expedient, in the opinion of the commander in chief, they shall remain attached to the several regiments of infantry to which they now belong.

Orders and returns of volunteer companies not attached to regiments.

SECT. 15. All companies, which are attached to divisions or brigades, and not to regiments, shall be subject to the immediate order of the commanding officers of such divisions or brigades, until they are otherwise organized; and the commanding officers of divisions or brigades shall receive all returns and orders, have all the authority and perform all the duties, with regard to such companies, which are prescribed in this chapter to be received, exercised and performed, by the commanding officers of regiments and battalions, with regard to the companies of their respective regiments and battalions.

Volunteer companies twice refusing to elect officers; may be disbanded. 1809, 108, § 16.

SECT. 16. If any company, raised at large, shall at any time be destitute of commissioned officers, and, having been twice ordered to fill vacancies, shall neglect or refuse to fill them, such company may be disbanded, and the men who belonged to it shall in such case be enrolled, as is provided in the fifth section.

Volunteers holden for seven years, except, &c. § 19. 1809, 108, § 34, art. 14.

SECT. 17. Every non-commissioned officer and private, of any company raised at large, shall be holden to do duty therein, for the term of seven years, from the time of his enlistment, unless such person shall, after his enlistment, become exempt by law, or be discharged, as is provided in the nineteenth section; but no exemption, existing at the time of his enlistment, shall be in such case an exemption or excuse from military duty therein.

Volunteers exempted from duty in standing companies, provided, &c. 3 Pick. 506.

SECT. 18. Every non-commisioned officer and private, in any company raised at large, shall be exempted from military duty in the standing company, within whose limits he resides, provided he keeps himself properly armed and equipped and uniformed; and when notified of his enrolment in such standing company, or otherwise re-

quested, produces within a reasonable time, to the commanding officer of such standing company, a certificate from the commanding officer of his own company, that he does active duty therein; and if any such non-commissioned officer or private remove out of the limits, within which his company is raised, he shall continue to be a member thereof, provided he complies with the provisions aforesaid. 1825, 153, § 4. 1828, 132, § 1.

SECT. 19. Every commanding officer of a brigade, upon application of the commanding officer of any company, raised at large, in his brigade, may discharge any non-commissioned officer or private from such company, and he shall forthwith be enrolled in the standing company. Volunteers, how discharged by brigadier. 1809, 108, § 34, art. 15.

SECT. 20. Each brigadier general may raise, by voluntary enlistment, and organize, within his brigade, a band of music, not to exceed twenty four musicians, including one master and two deputy masters, and may divide such band into sections, not exceeding three, and establish them in such parts of his brigade, as he may think most for the good of the service, and may grant to the master, deputy masters and privates, warrants as such; and such band shall be under the direction and command of the officer commanding the brigade. Brigade bands.

The master and deputy masters shall teach, lead and command such band, and issue all orders directed by said commanding officer; and the said commanding officer shall order at least one section of said band, to attend at each regimental review within the brigade. Duty of masters and deputy masters.

And each member of such band shall provide himself with such uniform, as may be directed by the commander in chief, and keep himself provided with such instrument or instruments, as may be directed by the commanding officer of the brigade; and, for any neglect, deficiency or misconduct, shall forfeit such sums as are prescribed in such case, in the one hundred and second section, and may be dismissed from the band by the commanding officer of the brigade. Members to provide themselves with uniforms and instruments. Penalties, § 102. 1809, 108, § 17. 1821, 92, § 3.

SECT. 21. The commanding officer of each company of artillery may enlist three men to serve as drivers. Artillery drivers. 1809, 108, § 14.

HOW OFFICERED.

SECT. 22. The officers and non-commissioned officers of the militia shall be such as are described in this section: General staff.

A commander in chief.

An adjutant general, and a quarter master general, with the rank of brigadier general.

Aids to the commander in chief, not exceeding four in number, with the rank of lieutenant colonel.

To each division, there shall be one major general, and two aids de camp, with the rank of major; one division inspector, with the rank of lieutenant colonel; one division quarter master, with the rank of major; one judge advocate, with the rank of major. Division officers.

To each brigade, there shall be one brigadier general; one brigade inspector, with the rank of major, to serve also as brigade major; one brigade quarter master, with the rank of captain; one aid de camp, with the rank of captain. Brigade officers.

To each regiment, there shall be one colonel, one lieutenant colonel, and one major; one adjutant, one quarter master, and one pay- Regimental officers.

master, each with the rank of lieutenant; one surgeon, one surgeon's mate, one chaplain, one sergeant major, one sergeant quarter master, one drum major, one fife major.

Battalion officers.

To each separate battalion, there shall be one major; one adjutant and one quarter master, each with the rank of lieutenant; one surgeon; one sergeant major, and one sergeant quarter master.

Company officers.

To each company of infantry, light infantry, or riflemen, there shall be one captain; one lieutenant; one ensign; four sergeants; four corporals; one or more fifers, or buglers; and one or more drummers.

To each company of artillery, there shall be one captain, two lieutenants, four sergeants, four corporals, one or more drummers, and one or more fifers.

To each company of cavalry, there shall be one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, and one or more trumpeters.

To every two or more companies of cavalry, artillery, light infantry, or riflemen, in a brigade not attached to any regiment, there shall be one surgeon.

To every company, there shall be one clerk, who shall be one of the sergeants.

Provided nevertheless, that every corps, organized before the eighth day of May, in the year one thousand seven hundred and ninety two, shall continue to be officered as before that time.

In cases of vacancy, sickness, and absence, officers next in rank to command. 1809, 108, § 13. 1820, 85.

SECT. 23. Whenever the office of major general, brigadier general, colonel, major commandant, or captain, shall be vacant, or such officer shall be sick or absent, the officer next in rank shall command the division, brigade, regiment, battalion, or company, until the vacancy be supplied: and whenever the office of quarter master general shall be vacant, the duties thereof shall be performed by the adjutant general.

Companies without officers, how commanded.

SECT. 24. Whenever a company shall have neither commissioned nor non-commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, shall appoint suitable persons, within said company, to be non-commissioned officers of the same, and shall appoint one of the non-commissioned officers to be clerk, and indorse the appointment on his warrant, and administer the oath to him, and certify the same, as required by the fifty first and sixty sixth sections: and the senior non-commissioned officer of a company without commissioned officers, shall command the same, except upon parade, and except as is provided in the following section.

§§ 51. 66.

Companies without officers refusing to elect, how commanded.

SECT. 25. Whenever any company shall be first enrolled, or shall be without officers, from any cause whatever, and an election of officers shall be ordered, and such company shall neglect or refuse to elect any officer, or no persons elected shall accept, the commanding officer of the regiment or battalion, to which such company belongs, shall detail some officer of the staff, or of the line of the regiment, to train and discipline said company, until some officer shall be elected or appointed by the commander in chief, as provided in the fifty ninth section; and such officer shall have the same power and authority, and be subject to the same liabilities, as if he were captain of such

§ 59.

fines, and moneys received, &c., to be recorded. 1809, 108, § 8.

ures, and other moneys collected by him, with the persons' names of whom they were collected, and the times when, and for what offence, neglect, default or deficiency they were incurred, shall also be recorded in said book, which shall not be alienated from the company, and shall always be open to the inspection of any officer of the company.

Orders, by whom distributed. U. S. st. 1792, § 6. 1809, 108, § 8.

SECT. 30. All general orders shall be distributed by the adjutant general, all division orders by one of the aids of the commanding officer of the division, all brigade orders by the brigade major, all regimental and battalion orders by the adjutant, all company orders by the clerk, or by any non-commissioned officer or private, whenever they shall be severally required by the commanding officer.

Inspection returns of companies how made.

SECT. 31. Every captain or commanding officer of a company shall make a return of the state of his company, comprehending the names of all the men belonging thereto, and all their arms, equipments and ammunition, to the commanding officer of the regiment or battalion, in the month of May annually, according to the form furnished by the adjutant general; and the commanding officer of any divisionary corps shall make a duplicate return to the adjutant general within said month.

Returns of regiments and battalions. —of brigades. 1809, 108, § 34, Art. 13. U. S. st. 1792, § 6.

Every commanding officer of a regiment or battalion shall make a return of the state of his regiment or battalion, to the commanding officer of the brigade, in the month of June annually; and every commanding officer of a brigade shall make out duplicate returns of the state of his brigade, one of which he shall transmit to the commanding officer of the division to which he belongs, and the other to the adjutant general, in the month of July annually.

Muster returns. U. S. st. 1792, § 10.

SECT. 32. The brigade major and inspector shall make returns to the adjutant general, once in each year, of the militia of the brigade to which he belongs, reporting therein the actual situation of the arms, accoutrements, and ammunition of the several corps, and every other thing, which, in his judgment, may relate to the government of the militia, and to the general advancement of good order and military discipline.

Adjutant general's returns to the governor and president. U. S. st. 1792, § 6, and 1803, § 1.

SECT. 33. The adjutant general shall make proper abstracts from the returns of the commanding officers of brigades and divisionary corps, and lay the same before the commander in chief annually.

He shall also make a return annually in duplicate of all the militia in the state, with their arms, accoutrements, and ammunition, according to such directions, as he may receive from the secretary at war of the United States, one copy of which he shall deliver to the commander in chief, and transmit the other to the president of the United States, on or before the first Monday in January annually.

Blank forms of rolls and returns. § 6. U. S. st. 1792, 1809, 108, § 27. 5 Greenl. 438.

SECT. 34. The adjutant general shall furnish blank forms of rolls and of the different returns that may be required, and explain the principles upon which they should be made.

Annual lists of volunteer companies to be furnished to colonels. 1809, 108, § 34, Art. 12.

SECT. 35. The captain or commanding officer of every company raised at large shall, annually, in the month of April, make out a list or lists of the names of the men belonging to his company, and deliver the same to the commanding officer of each regiment, within whose bounds any of such men reside.

EQUIPMENTS.

SECT. 36. Every citizen when first enrolled in the militia and notified, shall, within six months thereafter, provide himself with a good musket or firelock, with a bore sufficient for balls of the eighteenth part of a pound, a sufficient bayonet and belt, two spare flints, and a knapsack, a cartridge box to contain not less than twenty four cartridges suited to the bore of his musket or firelock; twenty four such cartridges, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch, and powder-horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder.

Soldiers how to be equipped within six months after enrolment.

The commissioned officers shall be severally provided with a sword or hanger; and all soldiers shall, after said six months, be constantly provided with arms, accoutrements, and ammunition, agreeably to the laws of the United States. The arms, ammunition, and accoutrements of the militia shall be inspected by the brigade inspectors, at the annual reviews of the militia, composing their several brigades.

Officers, how equipped. Soldiers to keep equipped. Arms, &c. to be inspected.

SECT. 37. No private shall be considered unable to provide himself with the arms and equipments, required in the preceding section, unless he shall, between the first day of April and the first Tuesday in May, produce to the commanding officer of the company to which he belongs, a certificate of such inability from the overseers of the poor of the town, where he resides; and such commanding officer shall forthwith lay said certificate before the selectmen of the town; and the selectmen shall forthwith, at the expense of their respective towns, provide for every such private the arms and equipments required as aforesaid, and they shall deposit the same in some safe and convenient place, and shall permit the commanding officer of the company, to which said private belongs, to deliver such arms and equipments to such private, whenever he shall be required by law to use the same; and the said commanding officer shall be responsible for the safe return of such arms and equipments to the place of deposit: and if the selectmen shall neglect to provide arms and equipments as aforesaid, each of them shall forfeit the sums provided in such case by the one hundred and fifth section.

Inability of private to equip himself, how proved. Equipments to be supplied by selectmen. Penalty for neglect to furnish. § 105. 1809, 108, § 9.

SECT. 38. All parents, masters, and guardians, shall furnish minors under their care, enrolled in the militia, with the arms and equipments required by law; and if any parent, master, or guardian shall neglect to provide such minor with any of such arms and equipments, he shall be liable to the fines and forfeitures, provided in such case by the one hundred and fourth and ninety ninth sections, for every such deficiency or neglect, unless he shall, before the first Tuesday in May annually, produce to the commanding officer of the company, in which such minor is enrolled, a certificate from the overseers of the poor of the town, in which such minor resides, of his inability to provide arms and equipments as aforesaid, and upon the production of such certificate, the same proceedings shall be had, as are prescribed by the preceding section, and under the same penalty,

Minors, how equipped. —when unable, how equipped. 1809, 108, § 28. §§ 104. 99.

SECT. 39. Every officer of the line and staff, and every officer and soldier of any uniformed company, shall provide himself with an uniform complete, which shall be such as the commander in chief

What uniform to be provided. 1821, 92, § 2.

shall prescribe, and subject to such restrictions, limitations, and alterations as he may order; and every such soldier deficient therein shall be liable to the penalty provided in the ninety ninth section.

§ 99.

Cavalry, how equipped.

SECT. 40. Every non-commissioned officer and private in a company of cavalry shall furnish himself with a serviceable horse, at least fourteen hands and a half high, a good saddle, bridle, mail pillion and valise, holsters, and a breast-plate and crupper, a pair of boots and spurs, a pair of pistols, a sabre, and a cartouch box to contain twelve cartridges suited to his pistols, and shall be liable, for deficiencies at any parade, to the forfeitures provided in such case in the ninety ninth section; and if any non-commissioned officer or private shall, for more than three months, be unprovided with a horse and equipments as aforesaid, the commanding officer of his company may apply to the commanding officer of the brigade, who shall discharge such non-commissioned officer or private from such company.

If unprovided with horse, &c. more than three months, to be discharged. 1809, 108, § 15, U. S. st. 1792, § 4.

Artillery, how equipped.

SECT. 41. Each officer, non-commissioned officer, and private in the artillery, shall furnish himself with a sword or hanger and belt, and shall be liable for any deficiency to the penalty provided in such case in the ninety ninth section; and every company of artillery shall have the field pieces, apparatus and other articles specified in the forty fourth section.

§ 99.

—to have cannon, &c. § 44.

Uniform, arms, &c. exempt from attachment, &c.

SECT. 42. Every officer, non-commissioned officer and private, shall hold his uniform, arms, ammunition and accoutrements required by law, free from all suits, distresses, executions, or sales for debt or payment of taxes.

ARTICLES FURNISHED.

Colors to be furnished and preserved.

SECT. 43. Each regiment and battalion shall be furnished by the Commonwealth with the state and regimental colors, and their staffs, belts and sockets, and the commanding officer of such regiment or battalion shall be responsible for the safe keeping of the same.

Instruments of music to be furnished and preserved. 1809, 108, § 27.

Each company of artillery, infantry, grenadiers, light infantry and riflemen, shall be furnished with a drum and fife, or bugle horn, and each company of cavalry with a trumpet, and all of them with more or other instruments of music, as the commander in chief shall order; and each commanding officer of a brigade is authorized to draw orders upon the quarter master general, or officer acting as such, in favor of the commanding officers of regiments, battalions and companies, for such colors and instruments of music; and the commanding officers of companies shall be responsible for the safe keeping of the instruments of music, delivered to them for the use of their companies.

Blank rolls, &c. to be furnished. § 34.

Blank rolls, returns, company orders, and notifications to the soldiers, shall be furnished by the adjutant general, as provided in the thirty fourth section.

Cannon, &c. to be furnished to artillery; 1809, 108, § 14.

SECT. 44. Each company of artillery shall be provided, by the quarter master general or officer acting as such, with two good brass field pieces, of such calibre as the commander in chief shall direct, with carriages and apparatus complete; with an ammunition cart, forty round shot, forty rounds of cannister shot, tumbrils, harness, implements, laboratory and ordnance stores, which may, from time to time, be necessary for their complete equipment for the field; and a quantity of powder, annually, not exceeding one hundred pounds, to

The adjutant general, by the commander in chief;

The quarter master general, by the commander in chief, with the advice and consent of the council;

The aids to the commander in chief, by the commander in chief;

The division inspectors and division quarter masters, by the commander in chief:

The aids de camp of major generals, by the respective major generals:

The judge advocates, by the respective major generals, and approved by the commander in chief:

The brigade majors, and inspectors, brigade quarter masters, and aids de camp to brigadier generals, by the respective brigadier generals:

Adjutants, pay masters, quarter masters, chaplains, surgeons, and surgeons' mates of regiments, by the respective colonels;

Adjutants, quarter masters and surgeons of battalions, by the respective commanding officers:

1814, 73, § 2.

Surgeons of two or more independent companies in a brigade, by the brigadier general.

Non-commissioned officers, how appointed. 1809, 108, §§ 5. 8.

SECT. 50. The non-commissioned officers in the militia shall be appointed in manner following:

Sergeant majors, sergeant quarter masters, drum majors and fife majors of regiments, by the commanding officer of the regiment:

Sergeant majors and sergeant quarter masters of battalions, by the officer commanding:

Non-commissioned officers of companies, by the respective captains, who shall forthwith return the same in writing to the commanding officer of the regiment or battalion:

Clerks, by the commanding officers of the respective companies.

Officers, how commissioned.

SECT. 51. All commissioned officers shall be commissioned by the commander in chief, according to the respective offices and grades, to which they may be elected or appointed.

Warrants of non-commissioned officers.

Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment or battalion.

Certificates of clerks' appointments. 11 Pick. 355. 8 Pick. 449.

Clerks shall have their appointments certified on the back of their warrants, by the commanding officers of their respective companies.

Persons ineligible to military offices. When such persons elected, commander in chief to appoint. 1835, 144, § 2.

SECT. 52. No idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able bodied, male citizens, shall be eligible to any office; and whenever it shall appear to the commander in chief, that any person, thus ineligible, has received a majority of votes cast at any election of officers, he shall not commission him, but, with the advice and consent of the council, shall declare said election null and void, and appoint some person to fill the vacancy.

Rank of officers, how determined.

SECT. 53. All commissioned officers shall take rank, according to the date of their commissions; and when two of the same grade bear an equal date, their rank shall be determined by lot, to be drawn by them before the commanding officer of the division, brigade, regiment, battalion, company or detachment, or president of a court martial, as the case may be.

Commission shall express date of appointment.

The day of the appointment or election of any officer shall be expressed in his commission, and shall be considered as the date of his

commission. Whenever he is transferred to another corps or station of the same grade, the date of the original appointment shall be so expressed and considered the date of his commission.

U. S. st. 1792, § 8; 1809, 108, § 12.

SECT. 54. Whenever any officer shall lose his commission, upon his affidavit made before any judge or justice of a court of record, and produced to the adjutant general, a duplicate commission shall issue of the same tenor and date.

Loss of commission supplied. 1809, 108, § 12.

SECT. 55. Whenever any person shall be elected major general, he shall be notified of his election by the secretary of the Commonwealth, and shall, within thirty days after such notice, signify to the secretary his acceptance of said office, otherwise he shall be taken to have refused the same.

Major general, notified of his election, to signify his acceptance within 30 days.

SECT. 56. The major general of each division shall order elections to fill all vacancies which shall occur in his division in the office of brigadier general, field officer, captain or subaltern officer; and such elections shall be ordered, throughout each division, at least once in each year, the elections of company officers first, and those of field officers next.

Major generals to order elections of all commissioned officers. 1809, 108, § 6.

SECT. 57. All electors shall be notified of elections at least ten days previously thereto.

Electors to have 10 days notice. 1809, 108, § 6.

SECT. 58. No officer, below the rank of a field officer, shall preside at any election of any officer above the rank of a subaltern officer; nor shall any officer, who is a candidate for the vacant office, preside at the election, except to adjourn the meeting, if no field officer appear to preside.

Who may preside at elections.

When it shall appear that any person has a majority of written votes of the legal electors, the presiding officer shall forthwith notify him of his election, and make return of every election, or neglect or refusal to elect, to the commanding officer of the division; and every person so elected and notified shall declare his acceptance, if a brigadier general or field officer, within ten days, or, if a company officer, forthwith, otherwise it shall be taken that he has refused such office. And if, before the meeting for the election of any officer is dissolved, the person chosen shall signify to the presiding officer his refusal to accept such office, the same shall be recorded and make part of his return, and he shall cause the electors to proceed to the choice of some other person. Elections may be adjourned, not exceeding twice, and each adjournment for a period, not exceeding two days, and no company election shall be legal, unless a majority of the qualified voters of the company are present at such election, nor unless it be notified in the manner prescribed in the eighty ninth section.

Officers elected how notified. Elections and refusals, how returned. Acceptances when notified. Refusals at the time, recorded. Elections may be twice adjourned; two days each. What number of electors must be present. 1825, 153, § 10.

§ 89.

The original roster of the brigade, regiment, or battalion, or the original roll of the company, as the case may be, shall be produced at all such elections, by the person having the legal custody of the same.

Rosters and rolls to be produced at elections.

SECT. 59. Whenever the electors shall neglect or refuse to elect some person to fill a vacant office, the commander in chief, with the advice and consent of the council, shall appoint some suitable person to the same; and if any company raised at large shall, at any two or more elections, neglect or refuse to elect any officer, it may be disbanded by the commander in chief.

When electors refuse, governor to appoint. In case of refusals to elect, officers to be appointed—volunteers disbanded on refusing twice.

The commanding officer of the division shall return all elections,

Returns of elec-

tions, and refusals. New election ordered, unless, &c. 1809, 108, § 6.

and refusals or neglects to elect, to the commander in chief, and unless, in the case above provided, he shall be notified by the commander in chief of his intention to make an appointment, he may (if necessary,) order a new election.

Elections in companies without officers may be ordered by colonel. 1825, 153, § 1.

SECT. 60. Whenever any company shall be newly enrolled, or from any other causes, shall be without commissioned officers, the commanding officer of the regiment or battalion, without any order from the commanding officer of the division, may order an election of officers to the same as soon as may be, and preside, or detail some field officer to preside; and all proceedings shall be had as before provided.

Commissions, how transmitted. 1809, 108, § 6.

SECT. 61. All commissions shall be transmitted to the commanding officers of divisions, and by them, through the proper officers, to the officers elected.

Notice given, if officers refuse to be qualified. 1821, 32, § 2.

SECT. 62. Whenever any person, elected or appointed to any office, shall refuse to accept his commission, or to qualify himself at the time of his acceptance, the major general shall certify the fact on the back thereof, and return the same to the adjutant general; and if the office be elective, a new election shall be ordered.

Candidates not to treat with ardent spirits. 1829, 115, § 3.

SECT. 63. It shall not be lawful for any candidate for any office in the militia, either pending or after an election, to treat with ardent spirits the persons attending such election.

Persons on military duty, privileged from arrest on civil process. 1809, 108, § 11.

SECT. 64. No officer, non-commissioned officer, or private, shall be arrested on any civil process, while going to, remaining at, or returning from, any place, at which he may be ordered to attend, for election of officers or other military duty.

OFFICERS HOW QUALIFIED.

Oath of commissioned officers. 1809, 108, § 7.

SECT. 65. Every commissioned officer, before he enters on the discharge of the duties of his office, or exercises any command, shall take and subscribe the following oaths and declarations.

"I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. 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."

"I, A. B., do solemnly swear, that I will support the constitution of the United States."

How administered and certified.

Which oaths each commissioned officer shall take and subscribe, before some justice of the peace, or before some general or field officer, who has previously taken and subscribed them himself; and, on the back of every commission, the following form of certificate of qualification shall be printed, and shall be signed by the person, before whom such officer is qualified:

Form of certificate.

This may certify that A. B., commissioned as within on this day of A. D. , personally appeared and took and subscribed the oaths required by the constitution and laws of this Commonwealth, and a law of the United States, to qualify him to discharge the duties of his office. Before me,

SECT. 66. Every clerk of a company, before he enters upon the duties of his clerkship, shall be sworn to the faithful discharge of his duty, by taking the following oath, before the commanding officer of the company to which he belongs, who is hereby authorized to administer the same, viz :

Clerk's oath. 1809, 108, § 8.

"I, A. B., do solemnly swear, that I will faithfully and impartially perform all the duties incumbent on me, as clerk of the company to which I belong, according to the best of my abilities and understanding. So help me God."

The commanding officer of such company shall, at the time of administering said oath, certify on the back of the warrant of the sergeant, appointed to be clerk, that he was duly qualified, by taking the oath required by law.

Certificate.

HOW OFFICERS ARE DISCHARGED.

SECT. 67. Whenever any officer of the militia shall in writing request his discharge, and his request shall be approved by the commanding officers of the regiment or battalion, brigade and division, to which he belongs, the commander in chief may discharge him from the office which he holds.

Discharges of officers upon their own request. 1821, 32, § 1.

SECT. 68. No commanding officer shall approve a resignation, as provided in the preceding section, if the same be offered between the first day of May and the first day of November, unless the reasons for such resignation be very urgent and proved to his satisfaction, and the rolls, orderly book, roster, and all other documents, which were in the custody of the officer resigning, shall be taken care of, for his successor or the officer having a right to the custody of the same, before his discharge is delivered to him.

Time and conditions of resignations. 1809, 108, § 34, art. 8. 11.

SECT. 69. If any officer shall unreasonably refuse to approve any resignation, and the same be made to appear to the officer or officers above him in command, he or they may approve the same notwithstanding, and the commander in chief may, in all cases, discharge the officer, if it shall appear to him proper.

Remedy in case of unreasonable refusal to approve resignations.

SECT. 70. No officer shall resign while under arrest.

No resignations while under arrest. 1809, 108, § 34, art. 8.

SECT. 71. No officer shall be discharged by the commander in chief unless upon his own request, except in the following cases :

With the advice and consent of the council, upon petition of one or more of his superior officers.

Discharges without request.

When it shall appear to the commander in chief, that he has become unable or unfit to discharge the duties of his office, and to exercise proper authority over his inferior officers and soldiers, or that he has been convicted of any infamous crime.

Of persons unable and unfit, and convicts.

When the commanding officer of his division shall certify, that he has, either before or after receiving his commission, removed his residence, out of the bounds of his command, to so great a distance, that in the opinion of such commanding officer, it is inconvenient that he should exercise his command.

Persons who have removed.

When such commanding officer shall certify, that he has been absent from his command more than one year, without leave of such commanding officer.

Absent more than one year without leave.

Upon address of both houses of the legislature to the governor.

Upon address of legislature.

Upon sentence of a court martial, after a trial according to law.

By sentence of court martial.

By disbanding of corps. 1809, 108, § 34, art. 2. 8. 9. 1835, 144, §§ 2. 3.

When the corps to which he belongs is disbanded according to law. In all which cases, he may be discharged by the commander in chief, and every officer shall perform the duties of his office (except he be under arrest) until he be so discharged, whether upon his own request or as above provided.

Discharges by appointment in the army.

SECT. 72. When any officer of the militia of this Commonwealth shall accept any appointment in the army of the United States, his office shall thereby become vacant, and be again filled according to law; and if, after accepting such appointment, he shall exercise any of the powers and authority of such office, he shall suffer the penalty provided in such case, in the one hundred and first section.

Penalty for continuing to act § 101.

Expiration of commissions of staff.

SECT. 73. The commissions of all staff officers, appointed by any commanding officer, without the approval of any other officer, shall expire after such commanding officer shall be discharged, or vacate his office, as soon as his successor is commissioned.

Resignation of clerks and non-commissioned officers. 9 Pick. 41.

SECT. 74. Any non-commissioned officer or clerk of a company may resign his office to the commanding officer of his company, and be discharged from it by him.

DISCIPLINE, INSPECTION, TRAININGS AND REVIEWS.

System of discipline. U. S. stat. 1820, § 1. 1829, § 1.

SECT. 75. The system of discipline and field exercise, which is ordered to be observed by the regular army of the United States, in the different corps of cavalry, infantry, artillery, light infantry and riflemen, or such other system, as may at any time hereafter be directed for the militia, by the laws of the United States, shall be observed by the militia, in the discipline and exercise of said corps respectively.

Inspection on first Tuesday of May. 1809, 108, §§ 8. 18. 1821, 92, § 4.

SECT. 76. Every commanding officer of a company shall parade his company on the first Tuesday in May, annually, at one o'clock in the afternoon, for the purpose of inspecting, examining and taking an exact account of all the equipments of his men, and for noting all delinquencies of appearance and deficiencies of equipment, and for correcting his company roll, in order that a thorough inspection may be made of all the militia in the Commonwealth; and the clerk shall note all deficiencies and delinquencies, and revise and correct the company roll, under the direction of the commanding officer. Every commanding officer of a company shall exercise and discipline as well as inspect his company on said day.

Selections from militia law to be read. 1809, 108, § 34, art. 36.

SECT 77. Such sections of this chapter, as the commander in chief may from time to time order, shall be read at the head of each company on the day of inspection.

Company parades.

SECT. 78. There shall be parades, as hereafter provided in this section, of all troops, except the standing companies, who shall not be required to parade on the days named therein.

Each commanding officer of a company shall parade his company, by his own order, one day in each year, for discipline and instruction, and shall use his best exertions, in perfecting them in the exercise and evolutions prescribed by law.

Reviews. 1809, 108, §§ 18. 25. 1822, 102, § 1. 1829, 115, § 5.

There shall also be an inspection and review in each year, and the commanding officer of each division shall order the troops to parade for that purpose, in such bodies and corps, and at such times, as he shall think expedient, regard being had to the scattered or com-

Time and place of review.

pact situation of the troops; provided that no regiment or battalion be divided. The commanding officer of the brigade shall appoint the place, and give notice to the commanding officer of the division. But, if all the troops, to be inspected and reviewed, belong to one regiment or battalion, then the commanding officer of the regiment or battalion shall appoint the place, and give notice to the brigadier general; and the places, appointed for inspections and reviews, shall be as central, as, in the judgment of the officer appointing the place, may be convenient. Provided that no officer, non-commissioned officer or private, shall be obliged to march more than fifteen miles from his residence to any review, except of a regiment or battalion, or less body of men.

No person to march more than 15 miles to any review, except, &c. 13 Mass, 220. 1809, 108, § 25.

SECT. 79. Each division, brigade and regiment shall, when in the field, take rank according to its number, beginning with the lowest number as highest in rank, and the companies in each regiment or battalion shall form according to the rank of the officers present commanding them; and whenever distinct corps shall parade, join, or do duty together, the senior officer present shall command without regard to corps.

Rank of divisions, &c. in the field. U. S. st. 1792, § 3. Senior officer to command.

Whenever any company, destitute of commissioned officers, shall parade with other troops, the commanding officer present shall detail some commissioned officer or officers present to command the same, unless the officer, detailed by the commanding officer of the regiment, to discipline and command them by the provisions of the twenty fifth section, shall be present.

Company without officers, how commanded at reviews. 1809, 108, § 13, § 34, art. 16. 20. § 25.

SECT. 80. Every commanding officer, when on duty, is hereby authorized to ascertain and fix necessary bounds and limits to his parade, (not including any road on which people travel, so as to prevent their passing) within which no spectator shall have a right to enter, without leave from such commanding officer, and in case any person shall intrude within the limits of the parade, after being once forbidden, he may be confined under guard, during the time of parade, or a shorter time, at the discretion of the commanding officer; and any person, who shall resist any sentry who attempts to put him out of such limits, or keep him out of the same, may be arrested by order of such commanding officer, and carried before some court or magistrate, to be examined or tried for such assault, or disturbance and breach of the peace, upon complaint thereof.

Bounds of parade may be fixed. Punishment of intrusion. 1809, 108, § 19. 13 Mass. 299.

SECT. 81. The brigade majors and inspectors shall attend the inspections and reviews of the regiments and battalions in their several brigades, during the time of their being under arms, inspect their arms, ammunition and accoutrements, superintend their exercises and manœuvres, and introduce the system of military discipline, required by law and by the orders which shall be received from time to time from the commander in chief, and shall make returns as provided in the thirty second section.

Brigade majors, &c. to attend inspections of regiments, &c. U. S. st. 1792, § 10. § 32.

SECT. 82. The adjutant general shall attend all reviews when the commander in chief reviews the militia.

Adjutant general, when to attend reviews. U. S. st. 1792 § 6.

SECT. 83. The ball cartridges, required by law, shall be inspected at such place, as may be appointed by the officer commanding the field. No non-commissioned officer or private shall, unnecessarily, or without order from a superior officer, come to any parade, with

Ball cartridges, how inspected.

Penalty for bringing loaded arms, except, &c. § 100. 1809, 108, § 34, art. 18. 30.

his musket, rifle or pistol loaded with ball, slugs or shot, or shall so load the same while upon parade, under the penalty provided in such case by the one hundredth section, nor shall, unnecessarily, or without order from a superior officer, discharge his musket, rifle or pistol when going to, returning from, or being upon parade, under the penalty provided in such case in said section.

Treating with ardent spirits forbidden. 1829, 115, § 3.

SECT. 84. No officer shall treat with ardent spirits, on days of military duty, any person or persons performing such duty.

No parades on days of certain town meetings, except, &c. 1809, 108, § 26, § 34, art. 19.

SECT. 85. No officer, non-commissioned officer or private shall be holden to perform any military duty on any day (except the first Tuesday in May) appointed for a meeting in the town in which he resides, for the election of governor, lieutenant governor, senators, electors of president or vice president of the United States, or representatives to congress or the general court, except in case of invasion, insurrection, riot or tumult made, or threatened, or in obedience to the orders of the commander in chief.

Penalty for ordering them. § 101.

Any officer, who shall order his men to parade, contrary to the provisions of this section, shall be liable to the penalties provided in such case, in the one hundred and first section.

Commander in chief may order escort, &c.

SECT. 86. The commander in chief shall have power to order out such portions of the militia as may seem to him expedient, for the performance of escort and other duties.

Voluntary parades not prohibited.

SECT. 87. Nothing herein contained shall be so construed, as to prevent any company from meeting for the purpose of drill, funeral, or other escort, or any voluntary service, nor to impair any obligation, arising under any constitutional article, or articles of agreement, adopted by any company, so far as regards the members who have signed the same, unless they are repugnant to law; and all fines, penalties and assessments, incurred by any officers or soldiers of such company, under any such constitutional article, or articles of agreement, signed by them, and which have been approved by the commander in chief, may, in addition to any other remedy thereon, be recovered by complaint, in the manner prescribed by the one hundred and twelfth section, so far as the same is applicable thereto; and the forms may be varied according to the exigency of the case.

Constitution of companies binding, so far, &c. 1822, 102, § 1.

Remedy for breach thereof. § 112.

NOTIFICATIONS.

Who shall notify trainings. 1809, 108, § 18. 13 Mass. 433. 9 Pick. 41. 557.

SECT. 88. Whenever the commanding officer of any company shall order out his company, for inspection of arms, company training, or inspection and review, or for election of officers, he shall issue his orders, to some one or more of the non-commissioned officers or privates, to notify the men enrolled in said company, to appear at the time and place appointed; and each non-commissioned officer and private, so ordered, shall give notice of the time and place, appointed for the parade of such company, to every person whom he shall be ordered to notify, under the penalties prescribed in such case, by the one hundredth section.

§ 100.

Requisites of notifications. 8 Mass. 279. 9 Pick. 40. 4 Pick. 25. 123. 16 Mass. 194. Time of, for trainings.

SECT. 89. No notice shall be legal, except the same be given by the non-commissioned officer or private, ordered to notify, to each man, either verbally or by leaving, at his usual place of abode, a written or printed order, signed by such non-commissioned officer or private, four days at least previously to the time appointed, if for in-

spection of arms, company training, or inspection and review; and ten days previously thereto, if for election of officers; provided, nevertheless, that in case of invasion, insurrection, riot, or any unforeseen or sudden occasion, any verbal, written or printed notice, however short, shall be legal and binding: and whenever any company shall be paraded, the commanding officer thereof may verbally notify the men so paraded, to appear, at some future day, not exceeding thirty days from the time of such parade, and such notice shall be sufficient as it respects the persons present. Notifications may be proved as is provided in the one hundred and twelfth section.

——for elections.
——on sudden emergencies.
Verbal notice on parade.
1809, 108, § 18.
1821, 92, § 5.
§ 112.

SECT. 90. Any notice to appear at any inspection of arms, company training, inspection and review, or election of officers, shall be a sufficient notice of enrolment, if given by a non-commissioned officer, according to the provisions of the preceding section.

What sufficient notice of enrolment.
U. S. st. 1803, § 2.

SECT. 91. Whenever any company shall be without commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, or the officer detailed by him to discipline the same, as provided in the twenty fifth section, shall, in writing, order any non-commissioned officers, or privates, to notify the persons liable to do duty in such company, to appear for any duty required by law, at the time and place mentioned in such order; and if any non-commissioned officer or private, so ordered, shall refuse or neglect to notify as aforesaid, he shall incur the penalty provided in such case, by the one hundredth section.

Company without officers, how notified.
1825, 153, § 1.
§ 25.
Penalty for refusing to notify.
§ 100.

SECT. 92. The adjutant general shall furnish blank orders, for the commanding officers of companies, to order their non-commissioned officers and privates, to notify their men to attend all the inspections, trainings, reviews, and elections of officers, which may be ordered; also blank notifications or orders to be left with the men.

Adjutant general to furnish blank orders and notifications.
1809, 108, § 27.

SECT. 93. The clerk shall record, in the orderly book, all company orders and notifications; but the same shall not be necessary to the recovery of any penalty.

Orders and notifications to be recorded by clerk.
1809, 108, § 8.

EXCUSES.

SECT. 94. All excuses, for the non-appearance of any non-commissioned officer or private, shall be made to the commanding officer of his company, within twenty days after any training or other military duty, from which he shall have been absent; and on the delinquent's producing satisfactory evidence of his inability to appear, his commanding officer may excuse him; and no commanding officer shall receive any excuse for non-appearance, after the expiration of the said twenty days. No excuse shall avail such non-commissioned officer or private, on any prosecution for the recovery of any fine or forfeiture, unless proved to have been made to the commanding officer, before the expiration of the twenty days, as aforesaid, or unless said delinquent shall satisfy the court or justice, before whom the case may be tried, that it was not in his power to make such excuse, within twenty days as aforesaid. All commanding officers shall inform their clerks of any excuses for non-appearance, which they may allow.

Excuses to be made within 20 days, unless, &c.
1821, 92, § 11.
1809, 108, § 34, art. 32.
4 Pick. 66.
Clerks to be informed of excuses.

SECT. 95. No commanding officers of companies shall receive any excuses, for any deficiencies of equipment; and every com-

Deficiencies in equipments, not to be excused.

manding officer of a company, who shall, at any time, excuse any person under his command, for any deficiency, or, after the expiration of the time allowed, for unnecessary absence or neglect, shall be liable to be tried by a court martial.

Penalty.

Certain conditional exemptions not to be excuses, unless, &c. §§ 2, 3. 11 Mass. 456, 540. 17 Mass. 51. § 94.

SECT. 96. Whenever any person shall be exempted from military duty, upon presenting the evidence of the cause of his exemption to his commanding officer, as provided in the second and third sections, within or before a certain time, and shall omit to comply with this regulation, it shall not avail him, by way of excuse, upon any prosecution for any particular absence or default, unless the provisions, respecting the time of making excuses, in the ninety fourth section, have been complied with.

Who may excuse in companies without officers. § 25. 1825, 123, § 1.

SECT. 97. Any officer, detailed to train and discipline any company without officers, according to the provisions of the twenty fifth section, shall have the same power, as the commanding officer of a company, to excuse absences of the non-commissioned officers and privates of the said company.

FINES AND PENALTIES.

Fines for unnecessary absence. 1809, 108, § 34, art. 33. 1829, 115, § 4.

SECT. 98. Every non-commissioned officer and private, holden by law to do military duty in any company, and unnecessarily neglecting to appear, at the time and place appointed for such duty, shall forfeit and pay, for every such neglect, the sums hereinafter mentioned.

For unnecessarily neglecting to appear at inspection on the first Tuesday in May, four dollars.

At any company training, three dollars.

13 Mass. 433.

At inspection and review, five dollars.

At any meeting for the election of officers, one dollar.

For unnecessarily neglecting to appear, when ordered, or disobeying any order, in case of any tumult, riot, or other cause, as provided in the one hundred and thirty fourth, one hundred and thirty fifth, one hundred and thirty sixth sections, or advising any other person to do the like, fifty dollars.

§§ 134-5-6.

Fines for deficiencies in equipments. 1809, 108, § 34, art. 30, 31.

SECT. 99. Every non-commissioned officer or private, who shall appear at any inspection on the first Tuesday in May, or at any company training, or at any inspection and review, whose equipments are deficient, or of a bad quality, shall forfeit and pay the sums hereinafter mentioned, for each of the following articles deficient, of a bad quality, or in bad condition:

A musket of bore sufficient for a ball of the eighteenth part of a pound, a bayonet or belt, an iron or steel ramrod, either or all of them, one dollar.

A cartridge box and twenty four cartridges, suited to the bore of his musket, and containing a proper quantity of good powder and ball, and a serviceable knapsack, either or all of them, thirty cents; provided, nevertheless, that the ball cartridges may be produced and kept, according to the provisions of the eighty third section; and the knapsacks may be dispensed with at company trainings.

§ 83.

Two spare flints, a priming wire and brush, either or all of them, twenty cents; provided, that none of the above forfeitures shall be incurred by any private, in a standing or rifle company, who appears

with a good rifle and powder horn, knapsack, shot pouch, and a quarter of a pound of powder, and twenty balls suited to the bore of his rifle.

In any company raised at large, for deficiency or bad quality of the uniform of the company, two dollars.

In any company of cavalry, for deficiency or bad quality of a sword or sabre, belt and pistols, all or either of them, one dollar.

Of any other article of equipment, fifty cents.

In any company of artillery, for deficiency or bad quality of a sword and belt, all or either of them, one dollar.

Of any other article of equipment, thirty cents.

In a company of riflemen, for a deficiency or bad quality of a rifle, and a sufficient ramrod, both or either of them, one dollar.

Of any other article of equipment, fifty cents.

—for neglects and offences.

SECT. 100. Every non-commissioned officer and soldier, guilty of the several neglects and offences hereinafter mentioned, shall forfeit and pay the sums, severally prescribed for each offence or neglect, besides any other penalties thereto annexed:

Quitting guard, &c. 5 Pick. 189.

For quitting his guard, section, platoon, or company, not less than two nor more than ten dollars.

Discharging musket, &c. § 83.

For discharging his musket, rifle or pistol, when going to, returning from, or upon, parade, contrary to the provisions of the eighty third section, not less than five nor more than twenty dollars.

Refusing to warn. 10 Pick. 134. § 88.

For refusing or neglecting to give notice or warning, when ordered by the commanding officer of his company, contrary to the provisions of the eighty eighth section, not less than twenty nor more than one hundred dollars.

Refusing to warn in company without officers. §§ 25. 91.

For refusing or neglecting to give notice or warning in a company without officers, when ordered by the commanding officer of the regiment or battalion, or the officer detailed to command the company, according to the provisions of the twenty fifth and ninety first sections, not less than twenty nor more than one hundred dollars.

Loading with ball, &c. on parade, &c. § 83.

For loading his arms upon parade with ball, slug or shot, or coming upon parade with them so loaded, contrary to the provisions of the eighty third section, not less than five nor more than twenty dollars.

Refusing to act as clerk. § 26.

For refusing to perform the duties of clerk, when required according to the provisions of the twenty sixth section, not less than ten nor more than twenty dollars.

Refusing to enrol and to return roll in company without officers. § 7.

When clerk of a company without commissioned officers, for refusing to enrol persons liable to military duty, and to return a roll as provided in the seventh section, when ordered so to do, not less than twenty nor more than fifty dollars.

Contempt, disorderly conduct, tumult or riot, disobedience, neglect of duty.

For behaving with contempt to an officer, or conducting in a disorderly manner, or exciting or joining in any tumult or riot, or being guilty of any other unmilitary conduct, disobedience of orders, or neglect of duty, when under arms or on duty, not less than five nor more than twenty dollars.

Persons committing last mentioned, may be put under guard.

For any of the offences mentioned in the preceding paragraph, any non-commissioned officer or private, guilty thereof, may be put under guard by the commanding officer of the company, regiment, or of the field, and so kept for a longer or shorter time, not exceeding the

The adjutant general, by the commander in chief;

The quarter master general, by the commander in chief, with the advice and consent of the council:

The aids to the commander in chief, by the commander in chief;

The division inspectors and division quarter masters, by the commander in chief:

The aids de camp of major generals, by the respective major generals:

The judge advocates, by the respective major generals, and approved by the commander in chief:

The brigade majors, and inspectors, brigade quarter masters, and aids de camp to brigadier generals, by the respective brigadier generals:

Adjutants, pay masters, quarter masters, chaplains, surgeons, and surgeons' mates of regiments, by the respective colonels;

Adjutants, quarter masters and surgeons of battalions, by the respective commanding officers:

1814, 73, § 2.

Surgeons of two or more independent companies in a brigade, by the brigadier general.

Non-commissioned officers, how appointed. 1809, 108, §§ 5. 8.

SECT. 50. The non-commissioned officers in the militia shall be appointed in manner following:

Sergeant majors, sergeant quarter masters, drum majors and fife majors of regiments, by the commanding officer of the regiment:

Sergeant majors and sergeant quarter masters of battalions, by the officer commanding:

Non-commissioned officers of companies, by the respective captains, who shall forthwith return the same in writing to the commanding officer of the regiment or battalion:

Clerks, by the commanding officers of the respective companies.

Officers, how commissioned.

SECT. 51. All commissioned officers shall be commissioned by the commander in chief, according to the respective offices and grades, to which they may be elected or appointed.

Warrants of non-commissioned officers.

Every non-commissioned officer's warrant shall be given and signed by the commanding officer of his regiment or battalion.

Certificates of clerks' appointments. 11 Pick. 355. 8 Pick. 449.

Clerks shall have their appointments certified on the back of their warrants, by the commanding officers of their respective companies.

Persons ineligible to military offices. When such persons elected, commander in chief to appoint. 1835, 144, § 2.

SECT. 52. No idiot, lunatic, common drunkard, vagabond, pauper, nor any person convicted of any infamous crime, nor any other than white, able bodied, male citizens, shall be eligible to any office; and whenever it shall appear to the commander in chief, that any person, thus ineligible, has received a majority of votes cast at any election of officers, he shall not commission him, but, with the advice and consent of the council, shall declare said election null and void, and appoint some person to fill the vacancy.

Rank of officers, how determined.

SECT. 53. All commissioned officers shall take rank, according to the date of their commissions; and when two of the same grade bear an equal date, their rank shall be determined by lot, to be drawn by them before the commanding officer of the division, brigade, regiment, battalion, company or detachment, or president of a court martial, as the case may be.

Commission shall express date of appointment.

The day of the appointment or election of any officer shall be expressed in his commission, and shall be considered as the date of his

commission. Whenever he is transferred to another corps or station of the same grade, the date of the original appointment shall be so expressed and considered the date of his commission.

U. S. st. 1792, § 8; 1809, 108, § 12.

SECT. 54. Whenever any officer shall lose his commission, upon his affidavit made before any judge or justice of a court of record, and produced to the adjutant general, a duplicate commission shall issue of the same tenor and date.

Loss of commission supplied. 1809, 108, § 12.

SECT. 55. Whenever any person shall be elected major general, he shall be notified of his election by the secretary of the Commonwealth, and shall, within thirty days after such notice, signify to the secretary his acceptance of said office, otherwise he shall be taken to have refused the same.

Major general, notified of his election, to signify his acceptance within 30 days.

SECT. 56. The major general of each division shall order elections to fill all vacancies which shall occur in his division in the office of brigadier general, field officer, captain or subaltern officer; and such elections shall be ordered, throughout each division, at least once in each year, the elections of company officers first, and those of field officers next.

Major generals to order elections of all commissioned officers. 1809, 108, § 6.

SECT. 57. All electors shall be notified of elections at least ten days previously thereto.

Electors to have 10 days notice. 1809, 108, § 6.

SECT. 58. No officer, below the rank of a field officer, shall preside at any election of any officer above the rank of a subaltern officer; nor shall any officer, who is a candidate for the vacant office, preside at the election, except to adjourn the meeting, if no field officer appear to preside.

Who may preside at elections.

When it shall appear that any person has a majority of written votes of the legal electors, the presiding officer shall forthwith notify him of his election, and make return of every election, or neglect or refusal to elect, to the commanding officer of the division; and every person so elected and notified shall declare his acceptance, if a brigadier general or field officer, within ten days, or, if a company officer, forthwith, otherwise it shall be taken that he has refused such office. And if, before the meeting for the election of any officer is dissolved, the person chosen shall signify to the presiding officer his refusal to accept such office, the same shall be recorded and make part of his return, and he shall cause the electors to proceed to the choice of some other person. Elections may be adjourned, not exceeding twice, and each adjournment for a period, not exceeding two days, and no company election shall be legal, unless a majority of the qualified voters of the company are present at such election, nor unless it be notified in the manner prescribed in the eighty ninth section.

Officers elected how notified. Elections and refusals, how returned. Acceptances when notified. Refusals at the time, recorded. Elections may be twice adjourned; two days each. What number of electors must be present. 1825, 153, § 10.

§ 89.

The original roster of the brigade, regiment, or battalion, or the original roll of the company, as the case may be, shall be produced at all such elections, by the person having the legal custody of the same.

Rosters and rolls to be produced at elections.

SECT. 59. Whenever the electors shall neglect or refuse to elect some person to fill a vacant office, the commander in chief, with the advice and consent of the council, shall appoint some suitable person to the same; and if any company raised at large shall, at any two or more elections, neglect or refuse to elect any officer, it may be disbanded by the commander in chief.

When electors refuse, governor to appoint. In case of refusals to elect, officers to be appointed—volunteers disbanded on refusing twice.

The commanding officer of the division shall return all elections,

Returns of elec-

tions, and refusals.
New election ordered, unless, &c.
1809, 108, § 6.

and refusals or neglects to elect, to the commander in chief, and unless, in the case above provided, he shall be notified by the commander in chief of his intention to make an appointment, he may (if necessary,) order a new election.

Elections in companies without officers may be ordered by colonel.
1825, 153, § 1.

SECT. 60. Whenever any company shall be newly enrolled, or from any other causes, shall be without commissioned officers, the commanding officer of the regiment or battalion, without any order from the commanding officer of the division, may order an election of officers to the same as soon as may be, and preside, or detail some field officer to preside; and all proceedings shall be had as before provided.

Commissions, how transmitted.
1809, 108, § 6.

SECT. 61. All commissions shall be transmitted to the commanding officers of divisions, and by them, through the proper officers, to the officers elected.

Notice given, if officers refuse to be qualified.
1821, 32, § 2.

SECT. 62. Whenever any person, elected or appointed to any office, shall refuse to accept his commission, or to qualify himself at the time of his acceptance, the major general shall certify the fact on the back thereof, and return the same to the adjutant general; and if the office be elective, a new election shall be ordered.

Candidates not to treat with ardent spirits.
1829, 115, § 3.

SECT. 63. It shall not be lawful for any candidate for any office in the militia, either pending or after an election, to treat with ardent spirits the persons attending such election.

Persons on military duty, privileged from arrest on civil process.
1809, 108, § 11.

SECT. 64. No officer, non-commissioned officer, or private, shall be arrested on any civil process, while going to, remaining at, or returning from, any place, at which he may be ordered to attend, for election of officers or other military duty.

OFFICERS HOW QUALIFIED.

Oath of commissioned officers.
1809, 108, § 7.

SECT. 65. Every commissioned officer, before he enters on the discharge of the duties of his office, or exercises any command, shall take and subscribe the following oaths and declarations.

"I, A. B., do solemnly swear, that I will bear true faith and allegiance to the Commonwealth of Massachusetts, and will support the constitution thereof. 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."

"I, A. B., do solemnly swear, that I will support the constitution of the United States."

How administered and certified.

Which oaths each commissioned officer shall take and subscribe, before some justice of the peace, or before some general or field officer, who has previously taken and subscribed them himself; and, on the back of every commission, the following form of certificate of qualification shall be printed, and shall be signed by the person, before whom such officer is qualified:

Form of certificate.

This may certify that A. B., commissioned as within on this day of A. D. , personally appeared and took and subscribed the oaths required by the constitution and laws of this Commonwealth, and a law of the United States, to qualify him to discharge the duties of his office. Before me,

SECT. 66. Every clerk of a company, before he enters upon the duties of his clerkship, shall be sworn to the faithful discharge of his duty, by taking the following oath, before the commanding officer of the company to which he belongs, who is hereby authorized to administer the same, viz: Clerk's oath. 1809, 108, § 8.

"I, A. B., do solemnly swear, that I will faithfully and impartially perform all the duties incumbent on me, as clerk of the company to which I belong, according to the best of my abilities and understanding. So help me God."

The commanding officer of such company shall, at the time of administering said oath, certify on the back of the warrant of the sergeant, appointed to be clerk, that he was duly qualified, by taking the oath required by law. Certificate.

HOW OFFICERS ARE DISCHARGED.

SECT. 67. Whenever any officer of the militia shall in writing request his discharge, and his request shall be approved by the commanding officers of the regiment or battalion, brigade and division, to which he belongs, the commander in chief may discharge him from the office which he holds. Discharges of officers upon their own request. 1821, 32, § 1.

SECT. 68. No commanding officer shall approve a resignation, as provided in the preceding section, if the same be offered between the first day of May and the first day of November, unless the reasons for such resignation be very urgent and proved to his satisfaction, and the rolls, orderly book, roster, and all other documents, which were in the custody of the officer resigning, shall be taken care of, for his successor or the officer having a right to the custody of the same, before his discharge is delivered to him. Time and conditions of resignations. 1809, 108, § 34, art. 8. 11.

SECT. 69. If any officer shall unreasonably refuse to approve any resignation, and the same be made to appear to the officer or officers above him in command, he or they may approve the same notwithstanding, and the commander in chief may, in all cases, discharge the officer, if it shall appear to him proper. Remedy in case of unreasonable refusal to approve resignations.

SECT. 70. No officer shall resign while under arrest. No resignations while under arrest. 1809, 108, § 34, art. 8.

SECT. 71. No officer shall be discharged by the commander in chief unless upon his own request, except in the following cases:

With the advice and consent of the council, upon petition of one or more of his superior officers. Discharges without request.

When it shall appear to the commander in chief, that he has become unable or unfit to discharge the duties of his office, and to exercise proper authority over his inferior officers and soldiers, or that he has been convicted of any infamous crime. Of persons unable and unfit, and convicts.

When the commanding officer of his division shall certify, that he has, either before or after receiving his commission, removed his residence, out of the bounds of his command, to so great a distance, that in the opinion of such commanding officer, it is inconvenient that he should exercise his command. Persons who have removed.

When such commanding officer shall certify, that he has been absent from his command more than one year, without leave of such commanding officer. Absent more than one year without leave.

Upon address of both houses of the legislature to the governor. Upon address of legislature.

Upon sentence of a court martial, after a trial according to law. By sentence of court martial.

By disbanding of corps. 1809, 108, § 34, art. 2. 8. 9. 1835, 144, §§ 2. 3.

When the corps to which he belongs is disbanded according to law. In all which cases, he may be discharged by the commander in chief, and every officer shall perform the duties of his office (except he be under arrest) until he be so discharged, whether upon his own request or as above provided.

Discharges by appointment in the army.

Penalty for continuing to act § 101.

SECT. 72. When any officer of the militia of this Commonwealth shall accept any appointment in the army of the United States, his office shall thereby become vacant, and be again filled according to law; and if, after accepting such appointment, he shall exercise any of the powers and authority of such office, he shall suffer the penalty provided in such case, in the one hundred and first section.

Expiration of commissions of staff.

SECT. 73. The commissions of all staff officers, appointed by any commanding officer, without the approval of any other officer, shall expire after such commanding officer shall be discharged, or vacate his office, as soon as his successor is commissioned.

Resignation of clerks and non-commissioned officers. 9 Pick. 41.

SECT. 74. Any non-commissioned officer or clerk of a company may resign his office to the commanding officer of his company, and be discharged from it by him.

DISCIPLINE, INSPECTION, TRAININGS AND REVIEWS.

System of discipline. U. S. stat. 1820, § 1. 1829, § 1.

SECT. 75. The system of discipline and field exercise, which is ordered to be observed by the regular army of the United States, in the different corps of cavalry, infantry, artillery, light infantry and riflemen, or such other system, as may at any time hereafter be directed for the militia, by the laws of the United States, shall be observed by the militia, in the discipline and exercise of said corps respectively.

Inspection on first Tuesday of May. 1809, 108, §§ 8. 18. 1821, 92, § 4.

SECT. 76. Every commanding officer of a company shall parade his company on the first Tuesday in May, annually, at one o'clock in the afternoon, for the purpose of inspecting, examining and taking an exact account of all the equipments of his men, and for noting all delinquencies of appearance and deficiencies of equipment, and for correcting his company roll, in order that a thorough inspection may be made of all the militia in the Commonwealth; and the clerk shall note all deficiencies and delinquencies, and revise and correct the company roll, under the direction of the commanding officer. Every commanding officer of a company shall exercise and discipline as well as inspect his company on said day.

Selections from militia law to be read. 1809, 108, § 34, art. 36.

SECT 77. Such sections of this chapter, as the commander in chief may from time to time order, shall be read at the head of each company on the day of inspection.

Company parades.

SECT. 78. There shall be parades, as hereafter provided in this section, of all troops, except the standing companies, who shall not be required to parade on the days named therein.

Each commanding officer of a company shall parade his company, by his own order, one day in each year, for discipline and instruction, and shall use his best exertions, in perfecting them in the exercise and evolutions prescribed by law.

Reviews. 1809, 108, §§ 18. 25. 1822, 102, § 1. 1829, 115, § 5. Time and place of review.

There shall also be an inspection and review in each year, and the commanding officer of each division shall order the troops to parade for that purpose, in such bodies and corps, and at such times, as he shall think expedient, regard being had to the scattered or com-

pact situation of the troops; provided that no regiment or battalion be divided. The commanding officer of the brigade shall appoint the place, and give notice to the commanding officer of the division. But, if all the troops, to be inspected and reviewed, belong to one regiment or battalion, then the commanding officer of the regiment or battalion shall appoint the place, and give notice to the brigadier general; and the places, appointed for inspections and reviews, shall be as central, as, in the judgment of the officer appointing the place, may be convenient. Provided that no officer, non-commissioned officer or private, shall be obliged to march more than fifteen miles from his residence to any review, except of a regiment or battalion, or less body of men.

No person to march more than 15 miles to any review, except. &c. 13 Mass, 220. 1809, 108, § 25.

SECT. 79. Each division, brigade and regiment shall, when in the field, take rank according to its number, beginning with the lowest number as highest in rank, and the companies in each regiment or battalion shall form according to the rank of the officers present commanding them; and whenever distinct corps shall parade, join, or do duty together, the senior officer present shall command without regard to corps.

Rank of divisions, &c. in the field. U. S. st. 1792, § 3. Senior officer to command.

Whenever any company, destitute of commissioned officers, shall parade with other troops, the commanding officer present shall detail some commissioned officer or officers present to command the same, unless the officer, detailed by the commanding officer of the regiment, to discipline and command them by the provisions of the twenty fifth section, shall be present.

Company without officers, how commanded at reviews. 1809, 108, § 13, § 34, art. 16. 20. § 25.

SECT. 80. Every commanding officer, when on duty, is hereby authorized to ascertain and fix necessary bounds and limits to his parade, (not including any road on which people travel, so as to prevent their passing) within which no spectator shall have a right to enter, without leave from such commanding officer, and in case any person shall intrude within the limits of the parade, after being once forbidden, he may be confined under guard, during the time of parade, or a shorter time, at the discretion of the commanding officer; and any person, who shall resist any sentry who attempts to put him out of such limits, or keep him out of the same, may be arrested by order of such commanding officer, and carried before some court or magistrate, to be examined or tried for such assault, or disturbance and breach of the peace, upon complaint thereof.

Bounds of parade may be fixed.

Punishment of intrusion. 1809, 108, § 19. 13 Mass. 299.

SECT. 81. The brigade majors and inspectors shall attend the inspections and reviews of the regiments and battalions in their several brigades, during the time of their being under arms, inspect their arms, ammunition and accoutrements, superintend their exercises and manœuvres, and introduce the system of military discipline, required by law and by the orders which shall be received from time to time from the commander in chief, and shall make returns as provided in the thirty second section.

Brigade majors, &c. to attend inspections of regiments, &c. U. S. st. 1792, § 10. § 32.

SECT. 82. The adjutant general shall attend all reviews when the commander in chief reviews the militia.

Adjutant general, when to attend reviews. U. S. st. 1792 § 6.

SECT. 83. The ball cartridges, required by law, shall be inspected at such place, as may be appointed by the officer commanding the field. No non-commissioned officer or private shall, unnecessarily, or without order from a superior officer, come to any parade, with

Ball cartridges, how inspected.

Penalty for bringing loaded arms, except, &c. § 100. 1809, 108, § 34, art. 18. 30.

his musket, rifle or pistol loaded with ball, slugs or shot, or shall so load the same while upon parade, under the penalty provided in such case by the one hundredth section, nor shall, unnecessarily, or without order from a superior officer, discharge his musket, rifle or pistol when going to, returning from, or being upon parade, under the penalty provided in such case in said section.

Treating with ardent spirits forbidden. 1829, 115, § 3.

SECT. 84. No officer shall treat with ardent spirits, on days of military duty, any person or persons performing such duty.

No parades on days of certain town meetings, except, &c. 1809, 108, § 26, § 34, art. 19.

SECT. 85. No officer, non-commissioned officer or private shall be holden to perform any military duty on any day (except the first Tuesday in May) appointed for a meeting in the town in which he resides, for the election of governor, lieutenant governor, senators, electors of president or vice president of the United States, or representatives to congress or the general court, except in case of invasion, insurrection, riot or tumult made, or threatened, or in obedience to the orders of the commander in chief.

Penalty for ordering them. § 101.

Any officer, who shall order his men to parade, contrary to the provisions of this section, shall be liable to the penalties provided in such case, in the one hundred and first section.

Commander in chief may order escort, &c.

SECT. 86. The commander in chief shall have power to order out such portions of the militia as may seem to him expedient, for the performance of escort and other duties.

Voluntary parades not prohibited.

SECT. 87. Nothing herein contained shall be so construed, as to prevent any company from meeting for the purpose of drill, funeral, or other escort, or any voluntary service, nor to impair any obligation, arising under any constitutional article, or articles of agreement, adopted by any company, so far as regards the members who have signed the same, unless they are repugnant to law; and all fines, penalties and assessments, incurred by any officers or soldiers of such company, under any such constitutional article, or articles of agreement, signed by them, and which have been approved by the commander in chief, may, in addition to any other remedy thereon, be recovered by complaint, in the manner prescribed by the one hundred and twelfth section, so far as the same is applicable thereto; and the forms may be varied according to the exigency of the case.

Constitution of companies binding, so far, &c. 1822, 102, § 1.

Remedy for breach thereof. § 112.

NOTIFICATIONS.

Who shall notify trainings. 1809, 108, § 18. 13 Mass. 433. 9 Pick. 41. 557.

SECT. 88. Whenever the commanding officer of any company shall order out his company, for inspection of arms, company training, or inspection and review, or for election of officers, he shall issue his orders, to some one or more of the non-commissioned officers or privates, to notify the men enrolled in said company, to appear at the time and place appointed; and each non-commissioned officer and private, so ordered, shall give notice of the time and place, appointed for the parade of such company, to every person whom he shall be ordered to notify, under the penalties prescribed in such case, by the one hundredth section. § 100.

Requisites of notifications. 8 Mass. 279. 9 Pick. 40. 4 Pick. 25. 123. 16 Mass. 194. Time of, for trainings.

SECT. 89. No notice shall be legal, except the same be given by the non-commissioned officer or private, ordered to notify, to each man, either verbally or by leaving, at his usual place of abode, a written or printed order, signed by such non-commissioned officer or private, four days at least previously to the time appointed, if for in-

spection of arms, company training, or inspection and review; and ten days previously thereto, if for election of officers; provided, nevertheless, that in case of invasion, insurrection, riot, or any unforeseen or sudden occasion, any verbal, written or printed notice, however short, shall be legal and binding: and whenever any company shall be paraded, the commanding officer thereof may verbally notify the men so paraded, to appear, at some future day, not exceeding thirty days from the time of such parade, and such notice shall be sufficient as it respects the persons present. Notifications may be proved as is provided in the one hundred and twelfth section.

——for elections.
——on sudden emergencies.
Verbal notice on parade.
1809, 108, § 18.
1821, 92, § 5.
§ 112.

SECT. 90. Any notice to appear at any inspection of arms, company training, inspection and review, or election of officers, shall be a sufficient notice of enrolment, if given by a non-commissioned officer, according to the provisions of the preceding section.

What sufficient notice of enrolment.
U. S. st. 1803, § 2.

SECT. 91. Whenever any company shall be without commissioned officers, the commanding officer of the regiment or battalion, to which such company belongs, or the officer detailed by him to discipline the same, as provided in the twenty fifth section, shall, in writing, order any non-commissioned officers, or privates, to notify the persons liable to do duty in such company, to appear for any duty required by law, at the time and place mentioned in such order; and if any non-commissioned officer or private, so ordered, shall refuse or neglect to notify as aforesaid, he shall incur the penalty provided in such case, by the one hundredth section.

Company without officers, how notified.
1825, 153, § 1.
§ 25.
Penalty for refusing to notify.
§ 100.

SECT. 92. The adjutant general shall furnish blank orders, for the commanding officers of companies, to order their non-commissioned officers and privates, to notify their men to attend all the inspections, trainings, reviews, and elections of officers, which may be ordered; also blank notifications or orders to be left with the men.

Adjutant general to furnish blank orders and notifications.
1809, 108, § 27.

SECT. 93. The clerk shall record, in the orderly book, all company orders and notifications; but the same shall not be necessary to the recovery of any penalty.

Orders and notifications to be recorded by clerk.
1809, 108, § 8.

EXCUSES.

SECT. 94. All excuses, for the non-appearance of any non-commissioned officer or private, shall be made to the commanding officer of his company, within twenty days after any training or other military duty, from which he shall have been absent; and on the delinquent's producing satisfactory evidence of his inability to appear, his commanding officer may excuse him; and no commanding officer shall receive any excuse for non-appearance, after the expiration of the said twenty days. No excuse shall avail such non-commissioned officer or private, on any prosecution for the recovery of any fine or forfeiture, unless proved to have been made to the commanding officer, before the expiration of the twenty days, as aforesaid, or unless said delinquent shall satisfy the court or justice, before whom the case may be tried, that it was not in his power to make such excuse, within twenty days as aforesaid. All commanding officers shall inform their clerks of any excuses for non-appearance, which they may allow.

Excuses to be made within 20 days, unless, &c.
1821, 92, § 11.
1809, 108, § 34, art. 32.
4 Pick. 66.
Clerks to be informed of excuses.

SECT. 95. No commanding officers of companies shall receive any excuses, for any deficiencies of equipment; and every com-

Deficiencies in equipments, not to be excused.

manding officer of a company, who shall, at any time, excuse any person under his command, for any deficiency, or, after the expiration of the time allowed, for unnecessary absence or neglect, shall be liable to be tried by a court martial.

Penalty.

Certain conditional exemptions not to be excuses, unless, &c.
§§ 2, 3.
11 Mass. 456, 540.
17 Mass. 51.
§ 94.

SECT. 96. Whenever any person shall be exempted from military duty, upon presenting the evidence of the cause of his exemption to his commanding officer, as provided in the second and third sections, within or before a certain time, and shall omit to comply with this regulation, it shall not avail him, by way of excuse, upon any prosecution for any particular absence or default, unless the provisions, respecting the time of making excuses, in the ninety fourth section, have been complied with.

Who may excuse in companies without officers.
§ 25.
1825, 123, § 1.

SECT. 97. Any officer, detailed to train and discipline any company without officers, according to the provisions of the twenty fifth section, shall have the same power, as the commanding officer of a company, to excuse absences of the non-commissioned officers and privates of the said company.

FINES AND PENALTIES.

Fines for unnecessary absence.
1809, 108, § 34, art. 33.
1829, 115, § 4.

SECT. 98. Every non-commissioned officer and private, holden by law to do military duty in any company, and unnecessarily neglecting to appear, at the time and place appointed for such duty, shall forfeit and pay, for every such neglect, the sums hereinafter mentioned.

For unnecessarily neglecting to appear at inspection on the first Tuesday in May, four dollars.

At any company training, three dollars.

13 Mass. 433.

At inspection and review, five dollars.

At any meeting for the election of officers, one dollar.

For unnecessarily neglecting to appear, when ordered, or disobeying any order, in case of any tumult, riot, or other cause, as provided in the one hundred and thirty fourth, one hundred and thirty fifth, one hundred and thirty sixth sections, or advising any other person to do the like, fifty dollars.

§§ 134-5-6.

Fines for deficiencies in equipments.
1809, 108, § 34, art. 30, 31.

SECT. 99. Every non-commissioned officer or private, who shall appear at any inspection on the first Tuesday in May, or at any company training, or at any inspection and review, whose equipments are deficient, or of a bad quality, shall forfeit and pay the sums hereinafter mentioned, for each of the following articles deficient, of a bad quality, or in bad condition:

A musket of bore sufficient for a ball of the eighteenth part of a pound, a bayonet or belt, an iron or steel ramrod, either or all of them, one dollar.

A cartridge box and twenty four cartridges, suited to the bore of his musket, and containing a proper quantity of good powder and ball, and a serviceable knapsack, either or all of them, thirty cents; provided, nevertheless, that the ball cartridges may be produced and kept, according to the provisions of the eighty third section; and the knapsacks may be dispensed with at company trainings.

§ 83.

Two spare flints, a priming wire and brush, either or all of them, twenty cents; provided, that none of the above forfeitures shall be incurred by any private, in a standing or rifle company, who appears

with a good rifle and powder horn, knapsack, shot pouch, and a quarter of a pound of powder, and twenty balls suited to the bore of his rifle.

In any company raised at large, for deficiency or bad quality of the uniform of the company, two dollars.

In any company of cavalry, for deficiency or bad quality of a sword or sabre, belt and pistols, all or either of them, one dollar.

Of any other article of equipment, fifty cents.

In any company of artillery, for deficiency or bad quality of a sword and belt, all or either of them, one dollar.

Of any other article of equipment, thirty cents.

In a company of riflemen, for a deficiency or bad quality of a rifle, and a sufficient ramrod, both or either of them, one dollar.

Of any other article of equipment, fifty cents.

—for neglects and offences.

SECT. 100. Every non-commissioned officer and soldier, guilty of the several neglects and offences hereinafter mentioned, shall forfeit and pay the sums, severally prescribed for each offence or neglect, besides any other penalties thereto annexed:

Quitting guard, &c. 5 Pick. 189.

For quitting his guard, section, platoon, or company, not less than two nor more than ten dollars.

Discharging musket, &c. § 83.

For discharging his musket, rifle or pistol, when going to, returning from, or upon, parade, contrary to the provisions of the eighty third section, not less than five nor more than twenty dollars.

Refusing to warn. 10 Pick. 134. § 88.

For refusing or neglecting to give notice or warning, when ordered by the commanding officer of his company, contrary to the provisions of the eighty eighth section, not less than twenty nor more than one hundred dollars.

Refusing to warn in company without officers. §§ 25. 91.

For refusing or neglecting to give notice or warning in a company without officers, when ordered by the commanding officer of the regiment or battalion, or the officer detailed to command the company, according to the provisions of the twenty fifth and ninety first sections, not less than twenty nor more than one hundred dollars.

Loading with ball, &c. on parade, &c. § 83.

For loading his arms upon parade with ball, slug or shot, or coming upon parade with them so loaded, contrary to the provisions of the eighty third section, not less than five nor more than twenty dollars.

Refusing to act as clerk. § 26.

For refusing to perform the duties of clerk, when required according to the provisions of the twenty sixth section, not less than ten nor more than twenty dollars.

Refusing to enrol and to return roll in company without officers. § 7.

When clerk of a company without commissioned officers, for refusing to enrol persons liable to military duty, and to return a roll as provided in the seventh section, when ordered so to do, not less than twenty nor more than fifty dollars.

Contempt, disorderly conduct, tumult or riot, disobedience, neglect of duty.

For behaving with contempt to an officer, or conducting in a disorderly manner, or exciting or joining in any tumult or riot, or being guilty of any other unmilitary conduct, disobedience of orders, or neglect of duty, when under arms or on duty, not less than five nor more than twenty dollars.

Persons committing last mentioned, may be put under guard.

For any of the offences mentioned in the preceding paragraph, any non-commissioned officer or private, guilty thereof, may be put under guard by the commanding officer of the company, regiment, or of the field, and so kept for a longer or shorter time, not exceeding the

Non-commissioned officer may be reduced to the ranks.

time, when his company is dismissed from duty, for the day; and any non-commissioned officer, for any offence mentioned in this chapter, or any disobedience of orders or unmilitary conduct, may be reduced to the ranks by the commanding officer of his regiment or battalion, with the advice of the commanding officer of his company, or without such advice, if the disobedience or unmilitary conduct occur during a regimental or battalion parade, besides in all such cases, incurring the fine here mentioned.

Fines of officers.

SECT. 101. Officers shall be liable to the following fines:

For ordering parade on days of election. § 85.

Any officer, who shall parade his company on the days of elections, contrary to the provisions of the eighty fifth section, besides being liable to a court martial, shall forfeit and pay not less than fifty nor more than three hundred dollars.

Acting as an officer after accepting commission in the army. § 72.

Any officer, who shall exercise his power and authority as an officer of the militia, after accepting an appointment in the army of the United States, contrary to the provisions of the seventy second section, shall forfeit a sum not exceeding three hundred dollars.

Disobeying any order in case of tumults, &c. §§ 134—5—6.

Any officer who shall disobey any order or precept, in case of tumults, riots, and other causes, as provided in the one hundred and thirty fourth, one hundred and thirty fifth and one hundred and thirty sixth sections, shall forfeit not exceeding five hundred dollars, besides being cashiered and liable to an imprisonment, as therein provided.

Refusing to certify, or falsely certifying compensation list. § 125.

Any officer, who shall refuse to make or certify, or shall falsely certify, any lists of persons, entitled to the compensation provided in the one hundred and twenty fifth section, shall forfeit not less than twenty nor more than one hundred dollars.

Fines by court martial. 1798, 30, § 1. 1809, 168, § 34, Art. 19. 1821, 92, § 9. 1834, 152, § 4.

Any fine, not exceeding two hundred dollars, may be inflicted on any officer, by sentence of a general or division court martial, as a part of [or] the whole of such sentence.

Neglect or misconduct of band.

SECT. 102. Every master, deputy master, and musician, of a brigade band, for absence from military duty or neglect thereof, disobedience of orders, disorderly, or other unmilitary conduct, shall forfeit not less than ten nor more than twenty dollars.

Hired musicians subject to commands and penalties like soldiers. 1809, 108, § 17.

All musicians, on duty with any company, whether hired or enlisted, while actually on duty, shall be subject to the same commands, and liable to the same duties and penalties, as other soldiers of the company.

Giving false information to avoid enrolment. 1809, 108, § 20.

SECT. 103. When information is required for the purpose of enrolling men liable to do duty in a company:

§ 6.

Every person, who shall be liable to do duty in such company, and shall give his name falsely, or refuse to give it, contrary to the provisions of th sixth section, shall forfeit and pay twelve dollars.

—by householders. § 6.

Every keeper of a tavern or boarding house, and every master and mistress of a house, refusing to give information respecting their inmates, contrary to the provisions of the sixth section, shall forfeit and pay twenty dollars.

Fines of citizens.

SECT. 104. The persons hereafter named shall incur the same fines as non-commissioned officers and privates, in like cases:

Neglect of parents, guardians, &c. §§ 36. 38. § 99.

Parents, guardians and masters, not providing equipments required by the thirty sixth and thirty eighth sections, for minors under their care, shall be liable (except as therein excepted) to the fine prescribed for such deficiency by the ninety ninth section.

Non-commissioned officers and privates of companies without officers, when ordered out to be trained and disciplined, as provided in the twenty fifth and one hundred and thirty first sections, shall be liable, for absence, deficiency, misconduct or neglect of duty, to the fines prescribed for similar offences in companies with officers.

Absence, &c. of soldiers in companies without officers. §§ 25. 131. 1809, 108, § 20. 1825, 153, § 1.

SECT. 105. The selectmen of any town, who shall refuse or neglect to perform the duties hereinafter mentioned, shall, each of them, individually, forfeit the sums following, to wit:

Fines of selectmen for neglect &c.

For any neglect or refusal to return a list of the men in any company without officers, as required in the seventh section, not more than fifty nor less than twenty dollars.

—to return a list of men. § 7.

For any neglect to provide arms and equipments for the use of persons unable to procure them, as required by the thirty seventh and thirty eighth sections, a sum not exceeding fifty dollars.

—to provide arms. §§ 37, 38.

For neglect or refusal to examine any list of persons, entitled to compensation for militia duty, or to draw an order for such compensation on the treasurer of the town, according to the provisions of the one hundred and twenty fifth section, not less than twenty nor more than one hundred dollars.

—to examine lists and draw orders. § 125.

For neglect or refusal to appropriate the money, received from conditional exempts, to the use of the companies in the town, as required by the third section, fifty dollars.

—to appropriate money received from exempts. § 3.

For neglect or refusal to make the returns of military stores, required by the forty seventh section, not exceeding twenty dollars.

—to return military stores. § 47.

For appointing any town meeting for elections on the first Tuesday in May, or any day on which the militia may hereafter be required by statute to do military duty, a sum not exceeding one hundred dollars.

For appointing town meeting on days of inspection. 1825, 153, § 1. 1812, 126. 1798, 30, § 1. 1821, 92, § 8. 1834, 152, § 4.

SECT. 106. Whenever the selectmen of any town shall neglect or refuse to perform the duties hereinafter mentioned, the said town shall forfeit and pay the following sums:

Fines of towns.

For refusal or neglect to provide and furnish necessary supplies, equipage and camp utensils, as required by the one hundred and thirty third section, not less than two hundred nor more than five hundred dollars.

Neglect to provide supplies, &c. § 133.

For neglect to keep constantly provided, in some suitable and convenient place in such town, all the articles required by the forty sixth section, in the quantities there required, not less than twenty nor more than five hundred dollars.

—to keep military stores. § 46. 1809, 108, § 24 and 22. 1821, 92, § 7.

For neglect to provide and keep the quantity of powder, prescribed by the forty sixth section, when required as therein provided, not less than twenty nor more than five hundred dollars.

—to keep powder, when required. § 46.

SECT. 107. Any person, who shall purchase, retain or have in his custody or possession, without right, any intrenching tools, implements, arms, equipments or ammunition, the property of the Commonwealth, marked, branded, or known to him to be such, shall pay a fine not exceeding ten times the value of the article.

Fines for having in possession without right, certain articles belonging to the Commonwealth. 1814, 75, § 2.

PROSECUTIONS FOR FINES.

SECT. 108. The fines mentioned in this section shall be recovered by indictment, or by an action on the case, by any person what-

Fines prosecuted by indict-

ment or action on the case.

§ 101.

§ 105.

§ 7.

§ 106.

§ 107.

Fines, recovered by complaint or action on the case, by commander of regiment, &c.

For refusal to give notice in company without officers. §§ 100. 25.

—of clerk of such company to return roll. §§ 100, 7. 1825, 153, § 1.

—of mayor, aldermen or selectmen to return list of such company. §§ 105. 7.

For quitting platoon, or company, on regimental parade. § 100.

Fines for refusal to perform the duties of clerk. §§ 100. 26. 1825, 153, § 5.

—incurred by members of brigade band. § 102. 1809, 108, § 34, art. 17.

—by sentence of court martial. § 101.

Costs against judge advocate to be paid by county treasurer. 1821, 92, § 9. 1834, 132.

Fines in company without officers.

ever, one half of the sum recovered in such action to be to the use of the Commonwealth, and one half to the use of the prosecutor, viz:

Fines under the one hundred and first section, except fines imposed by courts martial.

Fines under the one hundred and fifth section, except fines for refusal or neglect in the selectmen to return a list of the men belonging to a company without officers, as required by the seventh section.

Fines under the one hundred and sixth section.

Fines under the one hundred and seventh section.

SECT. 109. The fines mentioned in this section shall be recovered by the commanding officer of the regiment or battalion, to which the company of the delinquent belongs, either by complaint or action on the case, to the use of such battalion or regiment:

Fines under the one hundredth section, for refusing to give notice or warning in any company without commissioned officers, when ordered by such commanding officer, or the officer detailed by him to command the same, under the provisions of the twenty fifth section.

Fines under the one hundredth section, for refusal or neglect, in the clerk of such company without officers, to enrol persons liable to military duty or to return a roll of the same, as provided in the seventh section.

Fines under the one hundred and fifth section, for refusal or neglect in the selectmen, to return a list of the men belonging to a company without officers, as required by the seventh section.

Fines under the one hundredth section, incurred by any non-commissioned officer or private, for quitting his guard, section, platoon or company, may be recovered by the commanding officer of the regiment, or by the clerk of the company, when the company is ordered to parade with the regiment, but at all other parades by the clerk of the company only.

SECT. 110. Fines under the one hundredth section, for refusals to perform the duties of clerk, according to the provisions of the twenty sixth section, shall be recovered by the commanding officer of the company, to which the delinquent belongs, by complaint before any police or justices' court, or any justice of the peace, to the use of the company.

Fines under the one hundred and second section, incurred by members of the brigade band, shall be prosecuted by the brigade major, by complaint, as before provided, to the use of the Commonwealth.

Fines by sentence of court martial, as provided in the one hundred and first section, shall be prosecuted by the judge advocate, or person appointed to act as such at the court martial, by an action on the case, to the use of the Commonwealth; and if any judgment for costs shall be rendered against any judge advocate in such case, the officer, to whom the execution upon such judgment is delivered, shall demand payment of the execution of the treasurer of the county, in which such judgment is rendered, and the said treasurer shall pay the same, and it shall be allowed to said county, in the settlement of said treasurer's account with the Commonwealth.

SECT. 111. All fines for absences, defaults, neglects or offences, mentioned in the ninety eighth, ninety ninth and one hundredth sec-

tions, when incurred by any non-commissioned officer or private, in any company without officers, (except the fine for refusing to give notice, when ordered by the commanding officer of a regiment, and that for refusing to return a roll) shall, on complaint of the officer detailed, as provided in the twenty fifth section, to train and discipline such company, be prosecuted, substantially, in the like manner, as they are to be prosecuted by the clerks, in the following section; one half of the amount recovered to be to the use of the regiment, and the other half to the use of the officer; and the officer so prosecuting shall be a competent witness in the case.

§§ 98-9-100. 1825, 153, §§ 1 and 7.

§ 25.

SECT. 112. All fines, incurred by any soldier, not appearing when ordered, or disobeying any order, in case of riot, tumult, or other cause, specified in the one hundred and thirty fourth, one hundred and thirty fifth, or one hundred and thirty sixth sections, or advising any other person to do the like; by musicians in any company, under the one hundred and second section; by persons giving false information or refusing to give information, with regard to themselves or other persons liable to be enrolled in any company, under the one hundred and third section; by parents, guardians or masters of minors, enrolled in any company under the one hundred and fourth section; and all fines and forfeitures, incurred by the non-commissioned officers and privates of any company, under the provisions of this chapter, which are not otherwise provided for, shall be prosecuted for and recovered by the clerk of such company, or any person appointed to perform the duties of clerk, as provided in this chapter, one half to be to the use of such clerk, and one half to the commanding officer of such company, to the use of the company, in manner following, viz:

Fines for absence or disobedience in case of riot, &c. §§ 134-5-6. By musicians. For giving false information. §§ 102, 103. By parents, guardians or masters. § 104. All fines not otherwise provided for to be recovered by clerk.

The clerk of each company, after the expiration of twenty days, and within forty days, after the day of any parade or election of officers, shall make and subscribe an information against the offending non-commissioned officers or privates, who have not been excused by the commanding officer of the company, according to the provisions of the ninety fourth section, or who have not, within the twenty days aforesaid, paid to such clerk the fines or forfeitures, which they may have incurred; which information shall be left with some justice of the peace, or filed in some police or justices' court, (as the case may be) in the county, in which such offending non-commissioned officer or private resides; and the information shall be in substance as follows:

Information, when and where filed.

§ 94.

1809, 108, § 35. 1821, 92, § 11.

To A. B. Esq., justice of the peace, within and for the county of , or to the justices of the justices' court within and for the county of , or to the justice of the police court, within and for (as the case may be):

Form of information.

I, the subscriber, clerk of the company commanded by , do hereby give information against the following person, (or persons), who, being duly enrolled in said company, and being duly notified to meet with said company, on the day of in the year , (for inspection of arms, company training, inspection or review, or election of officers, as the case may be), was (or were, as the case may be), guilty of the offences and did incur the forfeitures, set against his name, (or their respective names, as the case may be):

Names.	*Offences.*	*Forfeitures.*	*Sums.*
A. B. non-com. officer; C.D. private.	For unnecessarily neglecting to appear on said day:	has forfeited	
E. F.	For being deficient of a on said day:	has forfeited	
G. H.	For being on said day guilty of coming on to the parade with his arms loaded:	has forfeited	
I. K.	For unnecessarily discharging his musket, rifle or pistol, (as the case may be), in going to, or returning from, or on, the place of parade, (as the case may be), without the orders of an officer:	has forfeited	
L. M.	For leaving his guard, section, platoon or company, (as the case may be), without the leave of an officer:	has forfeited	

(And in the same manner, substantially, all other offences are to be set forth against offending non-commissioned officers and privates):

I, therefore, agreeably to my oath of office, and in compliance with the requisitions of the law in this behalf, request you (or the justices of said court, or the said court, as the case may be), to issue a summons, directed to each of the persons, named in the above information, to appear before you (or the said court as the case may be) and show cause, if any he has, why it should not be adjudged, that he pay the forfeiture, set against his name, for the offence (or offences), which he is therein alleged to have committed.

Dated at this day of in the year

A. B., Clerk of the company commanded by

When summons to be issued. 1 Mass. 443.

And the justice or court, to whom such information is directed, shall file the same, and, when moved thereunto by said clerk, shall, within nine months, and not afterwards, issue a summons to each person, informed against as aforesaid, to be served at least seven days before the time appointed for showing cause.

Form of summons of justice.

The summons, if issued by a justice of the peace, shall be substantially in the following form:

———ss.

[Seal.] To the sheriff of said county, or either of his deputies, or either of the constables of the town of in the county aforesaid, greeting:

In the name of the Commonwealth of Massachusetts, you are hereby required to summon C. D. of , in the county aforesaid, to appear before me, E. F,, one of the justices of the peace for the county aforesaid, at in , on the day of at of the clock in the noon, then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited

for [here insert the offence, and the time when and place where it was committed]. Hereof fail not, and make due return of this writ and your doings thereon, unto myself, on or before the said hour of the day of

Dated at aforesaid, the day of in the year

E. F., Justice of the Peace.

If issued from any police or justice's court, the said summons shall be in the following form : —— of police or justice's court.

——ss.

The Commonwealth of Massachusetts.

[Seal.] To the sheriff of the county of or either of his deputies, or either of the constables of the town of in said county, greeting :

We command you to summon C. D., of in said county, to appear before our justices of our justices court, (or our justice of our police court as the case may be) to be holden at within and for our on then and there to show cause, if any he has, why judgment should not be rendered, that he has forfeited for (here insert the offence and the time and place where it was committed.) Hereof fail not, and have you there this writ with your doings thereon.

Witness W. S. Esq., at on the day of in the year

T. P., Clerk.

(or, witness my hand and seal at on the day of in the year of our Lord

A. B., Justice of said court.

as the case may be.)

When the person summoned shall appear, he may plead the general issue, and give any special matter in evidence. General issue may be pleaded.

Upon the trial of such complaint, made by the clerk of a company, it shall be sufficient for the complainant to prove, that he is clerk of the company, and, for this purpose, he shall produce his warrant as a non-commissioned officer, and prove the signature thereto of the colonel or commanding officer of the regiment or battalion, and that at the time of signing such warrant he was reputed to be, and acted as such colonel or commanding officer ; and thereupon it shall be presumed that such complainant was appointed a non-commissioned officer, by the captain or commanding officer of such company, and that a legal return of such appointment was made to the colonel or commanding officer of the regiment, until the contrary be shown. What is sufficient evidence for the prosecution.

He shall then show, upon the back of his warrant, a legal certificate of his appointment as clerk, and qualification as such, by taking the oaths required by law ; and, for this purpose, he shall prove the signature of the captain or commanding officer of such company, and that he is such captain or commanding officer, by producing his commission as such ; but if the clerk be appointed clerk pro tempore, his appointment may be proved by the records of the company. 3 Pick. 262. 4 Pick 66. 5 Pick. 230. 8 Pick. 449.

He shall then produce the roll of the company, and prove that the defendant resided within the limits of the company, that he was enrolled therein, at the time he was notified of such meeting, and that

he had been enrolled six months; but if it appear that the defendant came within the bounds of the company within that time, and that he is of sufficient age, it shall be presumed, if nothing to the contrary appear, that he has been enrolled in some other company before, for six months.

He shall then produce the order of the commanding officer of such company, to notify the said meeting or meetings thereof, and prove his signature thereto, and that the defendant was legally notified of the time and place of such meeting or meetings.

If it is required by law, that the order for such military duty shall, in such case, be given by any officer, superior to the commanding officer of a company, then the orders of such superior officer, and all intermediate orders of officers, transmitting the same to the commanding officer of the company, shall be proved, and that the persons, purporting by said orders to be such officers, are such; and for this purpose, it shall be sufficient to produce the transmitted written or printed copies of such orders, and the regimental or battalion or other last order, transmitting the same to the commanding officer of the company, and to prove the signature of the proper officer to such regimental, battalion, or other last order, transmitting the same, and also to prove that all the officers above mentioned are reputed to be such officers, and act as such.

The absence or offence of the defendant shall then be proved, to show that he is liable to the fine alleged to be incurred by him, and, in case of absence, the burden of proof shall be upon him to show that his absence was necessary.

The evidence above described shall be taken to be *prima facie* sufficient to support the complaint, until the same, or some material part of the same, be disproved by the defendant.

Secondary evidence, when received.

Whenever it appears, that any document or paper, above mentioned, cannot be produced, satisfactory secondary evidence thereof shall be received.

Clerk, &c. may be a witness. 4 Pick. 251.

And upon the hearing of such case, the testimony of the clerk or any other non-commissioned officer or private, who was ordered to notify the whole or any part of the company, shall be sufficient to prove due notice to the defendant, and that he neglected to appear, unless such evidence be invalidated; but the clerk shall be a witness to no other matter.

Exemptions and excuses for infirmity, how proved, § 2. 7 Pick. 251.

§ 94.

The certificate of the surgeon of the regiment, approved and countersigned, according to the provisions of the second section, shall be conclusive evidence of exemption from military duty; and his single certificate, that the defendant was unable to perform military duty, at the time of his absence, shall be *prima facie* evidence, that he ought to be excused for a particular absence, if the provisions of the ninety fourth section have been complied with; but any permanent disability, which renders the enrolment of the defendant illegal, or such temporary excuse, may be proved by parol.

Commanding officer may be a witness. 11 Pick. 355.

The commanding officer of a company may be a witness to prove any fact whatsoever.

Execution, when issued.

And if such defendant shall make default, or judgment shall be rendered against him, and he neglect, for two days after, to satisfy the same with legal costs, then execution shall be issued therefor; and

the execution, issued by a justice of the peace, shall be in substance as follows, but if by a police or justices' court, it shall be so altered as to conform to the summons :

———ss.

The Commonwealth of Massachusetts.

[Seal.] To the sheriff of said county, or either of his deputies, or either of the constables of the town of ———, in the same county, greeting :

Form of execution. 1809, 108, § 35.

Whereas, E. L., clerk of the company commanded by———, in said county, on the —— day of ——, before J. D. Esq., one of our justices of the peace for our county aforesaid, recovered judgment against T. P. of ———, for the sum of ———, fine or forfeiture, and ——— costs of prosecution, as to us appears of record, whereof execution remains to be done : We command you, therefore, that of the money of the said T. P., or of his goods or chattels, within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied, unto the said E. L., the aforesaid sums, being ——— in the whole ; and also, that out of the money, goods and chattels of the said T. P., you levy twenty five cents more for this writ, together with your own fees ; and for want of such money, goods or chattels of the said T. P., to be by him shown unto you, or found within your precinct to the acceptance of the said E. L., for satisfying the aforesaid sums, we command you to take the body of the said T. P. and him commit unto our jail in B., and we command the keeper thereof accordingly to receive the said T. P. into our said jail, and him safely to keep, until he pay the full sums above mentioned, with your fees, [or] that be be discharged by the said E. L., or otherwise by order of law. Hereof fail not, and make return of your doings therein unto our said justice, within twenty days next coming.

Witness our said justice at B. the —— day of —— in the year one thousand eight hundred and

J. D., Justice of the Peace.

Amendments of complaint. 1809, 108, § 36.

And it shall be lawful to amend the complaint or summons, in any stage of the proceedings, without payment of costs ; but the defendant shall be allowed an adjournment or continuance of the case, if justice requires it. And no clerk shall be liable to pay costs to any defendant, in any case, in which the commanding officer of his company has certified, upon the information of the clerk, his approval of the same. And no appeal shall be allowed from any such judgment, except the forfeiture adjudged exceed ten dollars, exclusive of costs.

When no costs against complainant.

Appeals when allowed. 1 Mass. 443.

Similar complaints by other officers.

Any complaint, by any other officer, shall be prosecuted in the like manner, so far as the same is applicable thereto, the forms being varied accordingly ; and he shall prove his authority by producing his commission, and other competent evidence which may be necessary.

Imprisonment on execution. 1821, 96.

SECT. 113. No person shall be imprisoned upon any execution, issued upon any complaint and judgment described in the preceding section, for a longer time than six days, but he shall be discharged by the keeper of the jail to which he is committed, at the expiration thereof, and the judgment debtor shall remain liable for the amount of the judgment and the costs of imprisonment ; and execution for

the whole of the same may be sued out against the property of such debtor, in due form of law.

To whose use fines accrue.

SECT. 114. The clerk of each company shall pay over, upon demand, to the commanding officer thereof, one half of the fines and forfeitures collected or recovered by him, and such commanding officer shall give his receipt therefor, and expend the same in defraying such company expenses, as a majority of the commissioned officers of such company shall judge necessary; and the clerk shall retain one half of all the fines and forfeitures to his own use. The clerk of each company shall annually return, under oath, to the brigade major, an account of all fines received by him, with the captain's receipt thereon, for his part of the same, and the brigade major shall transmit the same to the commander in chief.

Clerk to make annual return of fines received by him.

COURTS MARTIAL.

No court martial except on written complaint, signed, &c.

SECT. 115. All complaints, upon which courts martial are ordered, shall be in writing and signed by the complainant, and shall clearly specify the offence, and the time when and place where it was committed.

Offences to be tried within one year, unless, &c. 1809, 108, § 34. Art. 6.

No officer shall be tried by court martial, for any offence committed more than one year before the complaint, unless his absence or other manifest impediment has prevented a complaint within that time.

Respondent to be put under arrest.

SECT. 116. Every officer to be tried by court martial shall be put under arrest, so as to be suspended from the exercise of his office.

Copy of charges to be delivered ten days before trial. 1809, 108, § 34, Art. 3 and 8.

The judge advocate shall deliver to the accused a copy of the charges against him, and a notice of the time and place of trial, ten days at least before the day of trial; and if he shall object, that he has not received the same as aforesaid, and the court shall be satisfied thereof, they shall adjourn, so as to allow the time required to elapse, after the delivery of the notice and copies.

If not delivered court may adjourn.

Courts martial to consist of president, &c. When held.

SECT. 117. Courts martial shall consist of a president, judge advocate, not more than four nor less than three members, present at the organization of the court, and a marshal, and shall be holden between the first day of December and the last day of March, in the day time.

How often.

There shall be only one general and one division court martial in any one division in one year.

General courts martial, how to be appointed, and who may be tried by them.

General courts martial shall be appointed, for the trial of all officers above the rank of captain, by the orders of the commander in chief, issued to the divisions, which, in his opinion, can most conveniently furnish members for the same; and he shall appoint a president, not below the rank of brigadier general, and a marshal of said court.

Division courts martial, how to be appointed, and who may be tried by them.

Division courts martial shall be appointed, for the trial of officers of and under the rank of captain, by the orders of each commanding officer of a division, in his own division, issued to the brigades, regiments, battalions, and companies, which, in his opinion, can most conveniently furnish members for the same; and he shall appoint a president of the rank of colonel or lieutenant colonel and a marshal.

Officers shall be detailed, to sit upon courts martial, in manner following: major generals, by the commander in chief, from the general roster; brigadier generals and officers of any divisionary corps, by the commanding officers of divisions, from the division roster; colonels, lieutenant colonels, and majors, and officers of any company attached to a brigade, by the commanding officers of brigades, from the brigade roster; captains and subalterns, by the commanding officers of battalions, regiments, and other separate corps. And whenever it shall appear that any officer detailed, or to be detailed, is or will be, for some sufficient cause, unable to serve on a court martial, the officer detailing him, having satisfactory evidence thereof, shall certify such inability to the officer ordering the court martial, and shall also, at the same time, detail the officer next in rotation on the roster. No senior officer, or superior in rank to the president, shall in any case be detailed.

Members, how to be detailed.

If any officer detailed is unable to serve.

The officers ordered to detail members shall make returns, without delay, to the officer appointing the court, who shall transmit the same to the judge advocate.

Returns of members detailed.

The judge advocate of each division shall attend all general and division courts martial within his division, when ordered; but when he is prevented by any inability or legal impediment, the officer ordering the court martial shall appoint some person to be judge advocate to the same.

Judge advocate to attend.

When prevented.

If the officer appointed president shall not attend at the opening of the court, the officer highest in rank present shall be president.

If the president does not attend.

Whenever it is found, that by reason of absence, challenge, or any other cause, the number of members of any general or division court martial, (beside the president) qualified to act, is less than three, the court shall adjourn for a suitable time, and the president shall forthwith notify the fact to the commanding officer of the division, in which such general or division court martial is held, and such commanding officer shall himself detail from the division a number of officers of the same rank, as those before detailed, sufficient to complete the court.

If a sufficient number of members do not attend, or cannot serve.

If no judge advocate or marshal shall attend at the opening of the court, the president shall appoint a judge advocate or marshal, and the same shall be entered upon the record and signed by him. The person acting as judge advocate at the commencement of any trial, shall continue to serve during the trial, notwithstanding the attendance or appointment of any other person afterwards.

If the judge advocate or marshal is absent. 11 Pick. 441.

Person serving as judge advocate to continue through the trial.

Officers on a court martial shall take rank by seniority of commission.

Officers, how to take rank.

The court may adjourn, when it appears to them necessary, before any judge advocate appears, and before they are qualified.

The court may adjourn, when. 11 Pick. 445.

SECT. 118. Before any court martial shall proceed to the trial of any officer, the judge advocate shall administer to the president, and each of the members, singly, the following oath:

Members to be sworn.

You, A. B., do swear, that without partiality, favor, fear, prejudice, or hope of reward, you will well and truly try the cause now before you, between the Commonwealth and the person (or persons, if more than one is accused, in the same complaint) to be tried; and *you do* further swear, that you will not divulge the sentence of this

President and members' oath. 1809, 108, § 31.

court martial, until it shall be approved or disapproved of, and that you will not, on any account, at any time whatever, discover the vote or opinion of any member, unless required to give evidence thereof, as a witness, by a court of justice in due course of law. So help you God.

And the president shall administer to the judge advocate the following oath:

Judge advocate's oath.

You, A. B., do swear, that you will faithfully and impartially discharge your duties as judge advocate on this occasion, as well to the Commonwealth as to the accused, and that you will not, on any account, at any time whatever, divulge the vote or opinion of any member of this court martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law. So help you God.

Challenges, how and when made.

No member shall be challenged by the government or the accused, until the president, members, and judge advocate are sworn. Only one member shall be challenged at a time, and the challenge shall be in writing, stating the cause of it. The person challenged shall not vote, but the president and other members shall try whether the challenge be good.

Certain causes of challenge, when received.

Any illegality or irregularity, in the detail of any member of the court, shall be good cause of challenge, by either party; but shall be considered as waived, unless the objection to the detail be taken at the time and in the manner aforesaid.

If the defendant is absent, or withdraws.

If the accused shall neglect to appear and defend, or shall refuse to plead, or withdraw in contempt of the court, the court may proceed to trial and judgment, as if he had pleaded not guilty.

Witnesses how summoned.

Penalty for not appearing.

All persons, summoned by the judge advocate or any justice of the peace, shall be holden to appear and give evidence, before any court martial (but the defendant's witnesses shall have their fees first tendered to them), and the penalties for neglect to appear shall be the same, and the judge advocate may issue a capias, in like manner, as in criminal prosecutions. Before the witnesses testify, they shall be sworn by the judge advocate according to the following form:

Oath of witnesses.

You, A. B., do swear (or affirm, as the case may be,) that the evidence you shall give, in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God (or, this you do under the pains and penalties of perjury, in case the witness shall affirm.)

Evidence of neglect of returns to adjutant general.

Whenever the adjutant general shall be complainant, for neglect or other default in making returns, he shall not be required to be present, and his certificate shall be sufficient *prima facie* evidence, that the return was or was not made, and that a copy of any return is true.

Copies and documents how authenticated.

The judge advocates shall be the certifying officers, to authenticate all copies of papers and documents, used before courts martial, courts of inquiry, or boards of officers, except papers or documents from the adjutant general's office, which shall be certified by him; but copies may also be proved as in other courts.

Proceedings to be in writing.

The statement of the complainant and the defence of the accused, and all motions, arguments and objections to the proceedings, by either party, and the answers thereto, shall be submitted to the court in wri-

ting; all the evidence and proceedings, in and out of the court, and all opinions of the judge advocate, on questions of law arising during the trial, shall be put in writing by him. And after the prosecution and defence shall be concluded, he shall state and sum up the evidence, and give his opinion to the court, upon all matters of law; which opinion, with the judgment, shall also be put in writing by him.

Votes, how taken.

When any question is to be decided, the judge advocate shall receive the vote of each member, beginning with the youngest and proceeding to the eldest. The president shall not vote, and unless two thirds of the members agree that the accused is guilty, he shall be acquitted; and if two thirds of the members shall find him to be guilty, he shall be sentenced to be reprimanded in orders, or to forfeit a sum not exceeding two hundred dollars, or to be dismissed from office, either or all of them, and, in the last case, he may be further adjudged to be disqualified from holding any military office during life or any term of years.

Order to be preserved.

All courts martial are authorized to preserve order during their session; and any person, who shall, in such court, behave in a disorderly or insulting manner, or make any tumult or disturbance, may be arrested by order of said court, and confined not exceeding twenty-four hours, and fined by the court not exceeding five dollars, either or both; and, if the fine be not paid, the judge advocate shall issue a mittimus, forthwith, to commit such person to prison, in the same manner and with the same effect, as upon executions from justices of the peace, in cases of prosecutions for non-payment of other military fines and costs.

Records, how authenticated and transmitted.

The record of the trial and judgment, with the papers used therein, or copies thereof, certified by the judge advocate, shall all be authenticated by his certificate and signature, and sealed up and transmitted by him to the officer who ordered the court, who shall annex thereto his approval or disapproval of the same, and the reasons thereof in writing, and transmit the same, as soon as may be, to the adjutant general's office to be kept and preserved.

Approval or disapproval of sentence.

Pay roll.

The judge advocate shall also make up and certify the pay roll of the court martial, and transmit the same to the adjutant general's office.

Copies allowed.

The officer ordering the court and the party tried thereat shall be entitled to receive, upon request from the adjutant general, a copy of the record; the party tried paying a reasonable sum for his copy.

Judgment of disqualification may be reversed.

The judgment of disqualification may (after approval) be reversed in whole or in part by the commander in chief, with the advice of the council; but all other parts of the sentence, when approved, shall remain in full force.

1809, 108, §§ 31, 34, art. 3, 4. 6 and 8.
1821, 92, §§ 9 and 14.
1822, 102, §§ 5 and 6.
1825, 153, § 3.
Res. Feb. 1818.

SECT. 119. Every commissioned officer shall be liable to be tried by a court martial for the following offences:

What offences may be tried by court martial.

For unmilitary or unofficer-like conduct when on duty.

For neglect of any of the duties required in this chapter.

For disobedience of orders, or any act contrary to the provisions of this chapter.

For oppression or injury of any under his command.

For any combination or attempt to break, resist, or evade the laws,

1809, 108, § 34.
Art. 1. 5. 7. 17. 19. 34.
1825, 153, §§ 1. 7.

or any lawful orders given to any person whatsoever, or advising any person so to do.

For insult to any superior officer in the exercise of his office.

For presuming to exercise his command while under arrest; in which case, if guilty, he shall be removed from office.

For neglect or refusal, when commanding officer, to order out the troops under his command, when required by law or ordered by his superior officer.

For excusing, as commanding officer of a company, any person under his command, for deficiency or unnecessary absence, or after the expiration of the time allowed by law.

For neglect or refusal to make a draft or detachment, when legally ordered so to do.

For neglect or refusal to cause prosecutions to be commenced for fines, when it shall be necessary.

§ 85. For parading the troops under his command on days of election, contrary to the provisions of [the] eighty fifth section.

For receiving any fee or gratuity for a certificate, as surgeon or surgeon's mate, of inability to do military duty.

For neglect, when detailed to train and discipline a company, or to make complaint on any neglect or violation of duty, as provided in this chapter, or for any other neglect for which a commanding officer of the company would be liable.

§§ 129-30-1-2. For neglect or refusal to march, to make any draft, or for disobedience to any order in case of rebellion or insurrection, as provided in the one hundred and twenty ninth [section], one hundred and thirtieth, one hundred and thirty first, and one hundred and thirty second sections; in which case the offender shall be cashiered.

§§ 134-5-6. For refusal or neglect to obey any precept or order to call out the militia, or any order issued in obedience thereto, in case of tumult, riot, or other cause, as provided by the one hundred and thirty fourth, one hundred and thirty fifth, and one hundred and thirty sixth sections, or for advising any officer or soldier to do the like; in which cases, the offender shall be cashiered, beside being subject to fine or imprisonment, as provided in said one hundred and thirty fifth section. § 135.

Boards of officers. 1809, 108, § 32. SECT. 120. The commander in chief, whenever in his opinion it shall be necessary, may call boards of officers, for settling military questions, or for other purposes relative to good order and discipline.

Courts of inquiry, how organized. SECT. 121. General and division courts of inquiry shall consist of three officers and the judge advocate of the division, in which they are held; and they may be ordered and organized in the like manner as courts martial, and, under the same regulations, may examine into the nature of any transaction, or any imputation or accusation against any officer, made by an inferior.

Vacancies, how filled. All vacancies shall be filled as in courts martial.

Oaths. The judge advocate shall administer, to each of the officers composing a court of enquiry, the following oath:

—of president and members. You, A. B., do swear that you will well and truly examine and inquire into the matter now before you, without fear, favor, partiality, prejudice, or hope of reward. So help you God.

After which, the president shall administer to the judge advocate the following oath:

You, A. B., do swear that you will impartially record the proceedings of the court, and the evidence to be given in the case now in hearing. So help you God. —of judge advocate.

Witnesses shall be summoned in the same manner, take the same oath, and be examined and cross-examined by the parties in the same way, as on trials before courts martial; but the court shall not give their opinions on the merits of the case, unless specially required so to do. Witnesses.

Judge advocates shall attend courts of inquiry in their division, in the same manner as they attend courts martial; and special judge advocates for the court shall be appointed, in the same manner in like cases. All the proceedings therein shall be recorded, and, with the papers and documents used therein, authenticated and transmitted, by the judge advocate, to the officer who ordered the court, in like manner as in the case of courts martial. Judge advocates to attend.

SECT. 122. No officer, appointing a court martial, court of inquiry, or board of officers, shall order a guard for the same, unless, in his opinion, it be necessary for their protection, and all pay and fees shall be such as are provided in the one hundred and twenty fourth section. No guard, unless, &c. 1814, 181, § 6. § 124.

COMPENSATION.

SECT. 123. There shall be paid, to the officers hereinafter mentioned, the following sums as a compensation for their services: Compensation,

To the senior aid of a major general, twelve dollars annually; to a brigade major or inspector, twenty five dollars annually; to the adjutant of a regiment or battalion, twelve dollars annually. —to aids, brigade majors, and adjutants.

To the adjutant of a regiment or battalion of cavalry, artillery, grenadiers, light infantry, or riflemen, twenty five dollars annually; and to the adjutant of every other regiment or battalion, twelve dollars annually.

SECT. 124. There shall be allowed to all officers composing courts martial, courts of inquiry, and military boards, and witnesses attending before them, five cents for every mile they shall necessarily travel, in going to and returning from the place of trial, and the following sums for each day of their attendance upon the same: Pay of members of courts martial, &c. 1814, 181, § 2. 1822, 102, § 5.

To the president of any court martial, court of inquiry, or military board, three dollars. —of president.

To the judge advocate of the same, four dollars; to be in full compensation also for all services of preparing papers before, and making copies after any trial, inquiry or investigation. —of judge advocate.

To the marshal and other members of such court or board, two dollars. —of marshal and members.

To each witness attending on such court or board, one dollar. —of witnesses.

Fees for subpœnas and service of them shall be the same as in civil cases. Fees.

No allowance shall be made for pay or returns for any military guard, unless such guard is ordered by the officer appointing the court, nor shall the above compensation be made to officers in actual service and receiving pay. No allowance for guard, unless, &c.

SECT. 125. There shall be paid, to each member of a company raised at large, the sum of five dollars, annually, from the treasury of Allowance to members of volunteer companies.

1834, 152, § 4. 1835, 144, § 1.

the town, in which he resides; provided, he shall keep himself constantly armed, uniformed and equipped, and shall perform all the active duty required by law.

Compensation list, how made out and certified.

The commanding officer of every such company, on or before the first day of November, annually, shall make out and certify a list of the men in his company, residing in each town, entitled to such pay for the preceding year, to the selectmen of such town, who, within ten days after, shall examine the said list, and order the treasurer of said town to pay to each person the sum to which he is entitled.

How examined and paid.

And if any soldiers of a volunteer company prefer that the sums due to them be paid to the use of such company, an order may be drawn upon the back of said list, payable to any person to the use thereof, and the said list being examined as aforesaid, the treasurer of the town shall pay to such person, to the use of such company, the sums respectively due to the soldiers, who have signed such order, and take his receipt therefor.

Action for non-payment.

If such treasurer shall, upon demand, refuse to pay any of the said sums, each person entitled thereto may maintain an action of assumpsit against the town therefor.

Penalty for neglect to certify and examine. § 101.

If any such commanding officer shall refuse to make or certify any such list, or shall certify the same falsely, he shall forfeit the sum provided in such case, by the one hundred and first section; or if any selectmen shall refuse to examine the same, or to draw such order, each person so offending shall forfeit the sum provided in such case, by the one hundred and fifth section. And the amount of money, so paid from the treasury of any town, shall be reimbursed out of the treasury of the Commonwealth, upon an order drawn by the treasurer of the town, in form substantially as follows:

§ 105.

Commonwealth to reimburse towns.

To the Treasurer of the Commonwealth of Massachusetts.

Pay to —— —— the sum of ———, being the amount paid out of the treasury of the town, (city, or district, as the case may be,) of ———, by order of the selectmen, (or mayor and aldermen, as the case may be,) thereof to (here insert the number of persons paid,) individuals for militia services, performed by them during the past year.

A. B., Treasurer of ———.

1834, 152, § 3. 1835, 144.

And the treasurer shall make oath to the truth of the facts stated in said order, before some justice of the peace, who shall certify the same upon said order.

Compensation to soldiers or their families when injured or killed.

SECT. 126. If any officer, non-commissioned officer or private, shall be killed, or die of wounds received on military duty, or shall be wounded or otherwise disabled, when on such duty, he, or his widow, child, or children, shall receive from the general court just and reasonable relief.

Pay of troops in actual service. 1814, 70.

SECT. 127. The militia, while in actual service, shall receive the same pay and rations, as the regular troops of the United States; and the rations shall be valued at twenty cents each.

Additional pay to uniformed troops.

Every non-commissioned officer and private, who shall provide himself with an uniform and blanket, when called into service, shall receive, monthly, in addition to his stated pay, as follows; sergeants and musicians, four dollars; corporals and privates, three dollars and seventy five cents; and if he shall not so provide himself, he shall be

—— to those without uniform.

allowed monthly, two dollars and fifty cents. And every non-commissioned officer and private, who shall provide his own arms and equipments required by law, and keep himself so armed and equipped, shall receive therefor the additional sum of fifty cents per month.

To those providing their own arms.

When the militia are discharged from actual service, they shall be allowed pay and rations to their respective homes, at the rate of fifteen miles per day.

When discharged, how long paid.

SECT. 128. All pay rolls, claims for compensation or allowance, and all military accounts whatever, unless it is otherwise specially provided by law, shall be transmitted to the adjutant general and examined, and if found correct, certified by him. They shall then, unless it is otherwise specially provided by law, be presented to the committee of the legislature, on accounts, for allowance; and all claims and accounts, which shall be allowed by them, shall be paid to the persons to whom they are severally due, or to their order, at the treasury of the Commonwealth.

Pay rolls and claims for compensation, how examined and certified.

How allowed and paid. 1822, 102, § 6.

CALLING OUT THE MILITIA IN CASE OF WAR, INVASION, INSURRECTION, TUMULTS OR RIOTS.

SECT. 129. Whenever any invasion of the state, or insurrection therein, shall be made or threatened, the commander in chief shall call upon the militia to repel or suppress the same; and he may order out any divisions, brigades, regiments, battalions or companies; or may order to be detached any parts or companies of the same, or any number of men to be drafted from the same, and may cause officers to be detailed, sufficient with those attached to the troops, to organize the forces; and if such invasion or insurrection, or any imminent danger thereof, in any part of the state, shall be so sudden, that the commander in chief cannot be informed, and his orders received and executed, in season to resist or suppress the same, any commanding officer of a division, in such part of the state, may order out his division, or any part thereof, in the same manner as the commander in chief might do; and when any troops are in the field for such purposes, the senior officer of the troops present shall command, until the commander in chief, or some officer detailed by him, shall take the command.

Militia, how called out in case of invasion or insurrection. 1809, 108, § 24.

SECT. 130. Whenever any draft from the militia shall be ordered, the non-commissioned officers and privates (except so many as shall offer to serve voluntarily) shall be drafted by lot from the company, and the officers regularly detailed from the roster.

Drafts how made. 1809, 108, § 24.

SECT. 131. If any company without officers be ordered to march, or any draft or detachment be ordered therefrom, the commanding officer of the regiment or battalion, to which they are attached, shall detail some officer to command such company, who shall have the same authority to order them to appear, to command them in the field, or to make any draft or detachment therefrom, as the captain of such company would have, and shall be under the same responsibility.

Drafts in companies without officers. 1809, 108, § 24.

SECT. 132. Every officer, who, when ordered, shall unnecessarily neglect to march to the place of rendezvous, or shall otherwise disobey any lawful order, shall be punished as is provided in such

Penalty for officers neglecting to march, or disobeying.

§§ 119. 139. 140. For soldiers.

cases, in the one hundred and nineteenth, one hundred and thirty ninth, or one hundred and fortieth sections, and every soldier ordered out, detached or drafted, who shall not appear at the time and place, armed and equipped as the law directs, or who shall not have some able bodied and proper substitute, so armed and equipped, at such time and place, or shall not pay to the captain of his company the sum of fifty dollars, within twenty four hours from such time, shall be taken to be a soldier absent without leave, and dealt with accordingly, as in actual service; and each non-commissioned officer and soldier shall take with him provisions for not less than three days, when so ordered.

1809, 108, § 24.

Selectmen to provide carriages, &c.

SECT. 133. The selectmen of every town, to which any men so ordered out, detached, or drafted belong, when required in writing by the commanding officer of any regiment or detachment, shall provide carriages to attend them with further supplies of provisions, and to carry the necessary baggage, and shall provide the necessary camp equipage and utensils, until they are notified by the commanding officer to desist; and they shall present their accounts, as is provided in the one hundred and twenty eighth section; and if they shall neglect or refuse to provide the same, or any part thereof, such town shall be liable to the penalty provided in such case, in the one hundred and sixth section; and the officer, to whom any articles above mentioned shall be delivered, shall be responsible that care be taken of the same.

§ 128. Penalty on towns for neglect. 1809, 108, § 24. § 106.

In case of tumults, riots, mobs, &c. how the militia are to be ordered out.

SECT. 134. When there shall be, in any county, any tumult, riot, mob, or any body of men acting together by force, with intent to commit any felony, or to offer violence to persons or property, or by force and violence to break and resist the laws of the Commonwealth, or any of the same be threatened, and the fact be made to appear to the commander in chief, or to any court of record sitting in said county, or if no such court be sitting therein, then to any justice of any such court, or if no such justice be within the county, then to the sheriff thereof; the commander in chief may issue his order, or such court, justice or sheriff may issue a precept, directed to the commanding officer of any division, brigade, regiment, battalion, or corps, to order his command, or any part thereof, (describing the kind and number of troops,) to appear at a time and place therein specified, to aid the civil authority in suppressing such violence, and supporting the laws; which precept, if issued by a court, shall be in substance as follows:

Form of precept.

———ss.

Commonwealth of Massachusetts.

L. S.

To { *insert the officer's title.* } A. B. commanding { *insert his command.* }

Whereas it has been made to appear to our justices of our———, now holden at———, within and for the county of———, that (*here state one or more of the causes above mentioned,*) in our county of———, and that military force is necessary to aid the civil authority in suppressing the same; now therefore, we command you that you cause, (*here state the number and kind of troops required,*) armed, equipped, and with ammunition, as the law directs, and with proper

officers, either attached to the troops, or detailed by you, to parade at ———, on ———, then and there to obey such orders as may be given them, according to law. Hereof fail not at your peril; and have you there this writ, with your doings returned thereon.

Witness, L. S., Esq., at ———, on the —— day of ——, in the year

C. D., Clerk.

Any [*And*] if the same be issued by any justice or sheriff, it shall be under his hand and seal, and otherwise varied to suit the circumstances of the case. 1786, 59, §§ 1 and 2.

SECT. 135. The officer, to whom the order of the commander in chief, or such precept shall be directed, shall forthwith order the troops, therein mentioned, to parade at the time and place appointed; and if he shall refuse or neglect to obey such order or precept, or if any officer shall neglect or refuse to obey any order, issued in pursuance thereof, he shall be cashiered, as provided in the one hundred and nineteenth section, and be further punished by a fine as provided in such case, in the one hundred and first section, or by imprisonment not exceeding six months, upon indictment and conviction thereof. And any non-commissioned officer or soldier, who shall neglect or refuse to appear at the place of parade, to obey any order issued in such case, or any person, who shall advise or endeavor to persuade any officer or soldier, to refuse or neglect to appear at such place or to obey any such order, shall suffer the penalty provided in such case, in the ninety eighth section. Penalty of officers, for disobeying. § 119. § 101. —of soldiers and others. 1786, 59, §§ 3. 4 and 5. § 98.

SECT. 136. Such troops shall appear at the time and place appointed, armed and equipped and with ammunition, as for inspection of arms, and shall obey and execute such orders, as they may then and there receive, according to law. Troops to appear at rendezvous, and obey, &c.

RULES AND ARTICLES FOR GOVERNING THE TROOPS OF THE COMMONWEALTH, AND THE MILITIA IN ACTUAL SERVICE.

SECT. 137. The following rules and articles are established and declared to be in force, for governing all the troops and militia of the Commonwealth, in actual service, in field, camp or garrison. All suttlers and retainers to an army, all drivers, conductors, and all persons, receiving pay or hire for any services, in or with the troops or militia, while they are in actual service in the field, camp or garrison, shall be taken to be soldiers, and governed by these rules and articles. Who shall be taken to be soldiers. 1786, 37, preamble, art. 34 and 57.

SECT. 138. The offenders described in this section shall suffer death, or such other punishment, as may be inflicted upon them, by sentence of a court martial, according to the nature of the offence: Offences punished by death, or, &c.

Art. i. Any officer or soldier, who shall begin, excite, cause or join in any meeting or sedition in any company, regiment, party, post, detachment, guard or body of soldiers, in the service of the Commonwealth. Sedition. 1786, 37, art. 5, U. S. art. War, 7.

Art. ii. Any officer or soldier, who being present at, or knowing, any meeting or sedition, does not use his utmost endeavors to suppress the same, or, knowing of any intended meeting or sedition, does not give information thereof to his commanding officer. Not suppressing sedition, nor giving information of it. Art. 6, U. S. art. 8.

Art. iii. Any officer or soldier, who shall desert. Desertion. Art. 8, U. S. art. 20.

Advising desertion. Art. 9, U. S. art. 23.

Art. iv. Any officer or soldier, who shall advise any other officer or soldier to desert.

Misbehaving before an enemy, abandoning post, &c. Art. 27, U. S. art, 52.

Art. v. Any officer or soldier, who shall misbehave himself before an enemy, run away, or shamefully abandon any fort, post or guard, or speak or do any thing to induce others to do the like at such time.

Abandoning post or colors to plunder. Art. 32, U. S. art. 52.

Art. vi. Any officer or soldier, who shall abandon his post or colors, to plunder.

Making known or falsifying the watchword. Art. 28, U. S. art. 53.

Art. vii. Any officer or soldier, who shall make known the watchword to any person not entitled to receive it, according to the rules and discipline of war ; or who shall give a parol or watchword, different from what he has received.

Forcing a safeguard. U. S. art. 55.

Art. viii. Any officer or soldier, who shall force a safeguard.

Harboring or relieving an enemy. Art. 29, U. S. art. 56.

Art. ix. Any officer or soldier, who shall knowingly harbor or protect an enemy, or relieve them with money, victuals, arms or ammunition.

Corresponding with an enemy. Art. 30, U. S. art. 57.

Art. x. Any officer or soldier, who shall directly or indirectly hold correspondence with, or give intelligence to the enemy.

Compelling commander to surrender. Art. 33, U. S. art. 59.

Art. xi. Any officers or soldiers, who shall compel the commander of any garrison, post, fortress or guard, to surrender or abandon it.

No sentence of death except by court martial. Art. 59, U. S. art. 87.

Art. xii. No person shall be sentenced to death, except by a general court martial, and in cases expressly mentioned in the foregoing articles.

Offences of officers punished by cashiering.

SECT. 139. The offenders described in this section, shall be cashiered, in addition to any other punishment which may be lawfully inflicted :

Using traitorous or contemptuous expressions. Art. 3, U. S. art. 5.

Art. xiii. Any officer, who shall use traitorous or contemptuous words, against the authority and government of the United States, or the authority, government, or legislature of the Commonwealth.

Neglecting to march, &c.

Art. xiv. Any officer, who shall refuse or neglect to march to the place of rendezvous, to make any draft, or disobey any lawful order in case of war, invasion or insurrection, as provided in the one hundred and twenty ninth, one hundred and thirtieth, one hundred and thirty first, or one hundred and thirty second sections.

§§ 129-30-1-2.

Disobedience of orders.

Art. xv. Any officer, who shall refuse or neglect to obey any precept or order to call out the militia, or any order issued in obedience to such order, contrary to the provisions of the one hundred and thirty fourth, one hundred and thirty fifth, or one hundred and [*thirty*] sixth sections, or shall advise or persuade any other officer or soldier to do the like.

§§ 134-5-6.

Provocation to duel. Art. 10, U. S. art. 24.

Art. xvi. Any officer, who shall use any reproach or provocation to another, in speech, gesture, or writing, to induce him to fight a duel.

Giving or accepting a challenge, &c. Art. 10 and 11, U. S. art. 25.

Art. xvii. Any officer, who shall give or send a challenge to any officer or soldier, to fight a duel, or accept any such challenge, when sent to himself, or who is a second in a duel, or promoter or carrier of a challenge.

Art. xviii. Any officer, who shall upbraid another for not sending, or for refusing a challenge.

Upbraiding for not challenging &c. Art. 13, U. S. art. 28.

Art. xix. Any officer, commanding a guard, who shall knowingly and willingly suffer any person to pass the same, in order to fight a duel, or any officer, knowing or believing, or having reason to believe, any challenge to be given or accepted, carried or promoted, by any officer or soldier under his command, shall not immediately arrest and bring him for trial.

Suffering a person to pass a guard to fight a duel. Not arresting persons about to fight. Art. 11, U. S. art. 26.

Art. xx. Any officer found drunk on his guard or other duty.

Drunkenness on duty. Art. 22, U. S. art. 45.

Art. xxi. Any officer under arrest, who shall leave his confinement before he is set at liberty by his commanding or other superior officer, or the officer who confined him.

Escaping from arrest. Art. 55, U. S. art. 77.

Art. xxii. Any officer convicted of behaving in a scandalous or infamous manner.

Behaving scandalously. Art. 56, U. S. art. 83.

Art. xxiii. Any officer, store keeper, or commissary, embezzling or committing any fraud, concerning any property of the Commonwealth, or of any officer or soldier, besides being criminally liable for the same.

Embezzling or committing any fraud.

Art. xxiv. Any officer selling, or designedly, or through neglect, wasting, the ammunition, military stores, implements or other property of the Commonwealth, in his care or possession.

Wasting or selling stores. Art. 17, U. S. art. 36 and 37.

Art. xxv. Any officer, who shall refuse to deliver over any other officer or soldier to the civil authority, or who shall shelter or conceal any witnesses, contrary to the provisions of the one hundred [*and*] forty second section.

Not delivering offender to civil authority. Art. 62, U. S. art. 33. § 142.

SECT. 140. The offenders described in this section shall suffer such punishment, according to the nature of the offence, as may be inflicted upon them, by sentence of a court martial:

Offences punished at discretion of court martial.

Art. xxvi. Any non-commissioned officer or private, guilty of the offences described in the last section, for which an officer would be cashiered.

Preceding offences, when committed by soldiers. Art. 3, 10, 11, 13, 22, 55, 56.

Art. xxvii. Any officer or soldier, who shall behave himself with disrespect or contempt towards the commander in chief, the commanding officer of the troops, or his own commanding officer.

Disrespect or contempt of commanding officer. Art. 4, U. S.

Art. xxviii. Any officer or soldier, who shall disobey the lawful command of his superior officer.

Disobedience. Art. 7, U. S. art. 9.

Art. xxix. Any officer or soldier, who shall strike his superior officer, or draw or lift up any weapon against him, or offer any violence against him in the execution of his office.

Striking superior officer. Art. 7, U. S. art. 9.

Art. xxx. Any officer or soldier, who shall refuse to obey, or shall resist, or draw or lift any weapon against, or offer any violence to any officer of any rank, (inferior or superior) attempting to part or quell any quarrel in any company, regiment, or body of men, (his own or any other,) or who shall not submit, when arrested by any such officer, in such case, by the authority hereby given.

Resisting, &c., any officer who attempts to quell a quarrel. Art. 12, U. S. art. 27.

Art. xxxi. Any officer, commanding in quarters, garrisons, or on a march, who shall not keep good order, and, to the utmost of his power, redress all abuses and disorders, committed by those under his command, or who, upon complaint made to him of any beating,

Not keeping order—redressing abuses—protecting citizens.

Art. 14, U. S. art. 32.

ill treatment, riot, or disquieting of any citizens or subjects of the United States, shall omit to use means to punish the offender or offenders, and cause reparation to be made to the party injured, so far as the offenders' pay will go.

Being one mile from camp, &c. without leave in writing. Art. 18, U. S. art. 41.

Art. xxxii. All non-commissioned officers and privates, found one mile from the camp, fort or post, without leave in writing from the commanding officer.

Being absent without leave.

Art. xxxiii. Any officer or soldier, who shall be out of his camp, post, or quarters, without leave from his superior officer.

Not retiring to quarters at night. Art. 20, U. S. art. 43.

Art. xxxiv. Any non-commissioned officer or private, who shall not retire to his quarters or tent, at the beating of the retreat.

Not repairing to rendezvous, unless, &c. Art. 21, U. S. art. 44.

Art. xxxv. Any officer or soldier, who shall not repair, at the time fixed, to the place of parade or exercise, or other rendezvous appointed by the commanding officer, unless prevented by sickness or evident necessity, or who shall go from guard or such place of rendezvous, without leave from his commanding officer, before he is regularly dismissed or relieved.

Sentinel found sleeping, &c. Art. 23, U. S. art. 46.

Art. xxxvi. Any sentinel, who shall be found sleeping on his post, or who shall leave it before he shall be regularly relieved.

Occasioning false alarms. Art. 24, U. S. art. 49.

Art. xxxvii. Any officer or soldier, who shall occasion false alarms in camp, garrison or quarters, by discharging fire-arms, drawing of swords, beating of drums, or by any other means whatsoever.

Leaving platoon, &c. Art. 25, U. S. art. 50.

Art. xxxviii. Any officer or soldier, who without urgent necessity, or leave of his superior officer, shall leave his platoon, division, or guard.

Offering violence to persons bringing provisions. Art. 26, U. S. art. 51.

Art. xxxix. Any officer or soldier, who shall do violence, or offer any insult or abuse to any person, who brings provisions or other necessaries to the camp, garrison or quarters.

Disturbing court martial. Art. 49, U. S. art. 76.

Art. xl. Any person, who shall use menacing words, signs or gestures in presence of a court martial then sitting, or cause any disorder or riot to disturb their proceedings.

Refusing to receive prisoner. Art. 52, U. S. art. 60.

Art. xli. Any officer or non-commissioned officer, commanding a guard or provost marshal, who refuses to receive a prisoner, committed to his charge, by any officer of the forces of this Commonwealth, when a statement of the charge, in writing, signed by such officer, is delivered to him.

Releasing a prisoner. Art. 55, U. S. art 81.

Art. xlii. Any officer or soldier releasing a prisoner without proper authority, or suffering him to escape.

Not reporting prisoners. Art. 54, U. S. art. 82.

Art. xliii. Every officer or provost marshal, to whom prisoners are committed, who shall not, within twenty four hours after, or as soon as he shall be released from his guard, notify to his and to their commanding officers, their names and crimes, and the names of the officers who committed them.

Crimes not capital, nor specially enumerated. Art. 61, U. S. art. 99.

Art. xliv. All offenders guilty of crimes not capital, and of disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles.

Officers absent from divine service, &c.

Art. xlv. Officers, who shall unnecessarily absent themselves from divine service, or behave indecently or irreverently, at any place

of worship, shall, upon judgment of a court martial, be publicly and severely reprimanded by the president. Art. 1, U. S. art. 2.

SECT. 141. Officers and soldiers shall be subject to the following fines: Fines.

Art. xlvi. Any non-commissioned officer or private, absenting himself from, or behaving indecently and irreverently at, divine worship, not exceeding one dollar, and for each offence after the first, to be confined twenty four hours in addition thereto. Soldiers absent from or behaving indecently during divine worship. Art. 1, U. S. art. 2.

Art. xlvii. Any officer, guilty of profane cursing and swearing, for each offence two dollars. Profane cursing or swearing by officers. Art. 2, U. S. art. 3.

Art. xlvii. Any non-commissioned officer or private, guilty of profane cursing and swearing, for each offence not exceeding one dollar. Profane cursing and swearing by soldiers. Art. 2. U. S. art. 3

Art. xlix. Any fine not exceeding two hundred dollars may be inflicted by a court martial, as a part or the whole of the sentence; and so much of the same, as cannot be stopped out of the pay of the offender, shall be recovered as provided in the one hundred and tenth section. Fines by court martial. 1821, 92, § 9. § 110.

Art. l. All fines may be stopped out of the pay of the offender; and the field officers of every regiment may appoint some suitable person in the regiment, to receive all fines incurred for any breach of these articles, and may direct the same to be properly applied to the relief of the sick, wounded or needy soldiers of such regiment; and the receiver shall account to such officers for all sums so received. Fines stopped out of pay. Art. 60, U. S. art. 2.

SECT. 142. The following rules shall also be observed in actual service:

Art. li. If any officer shall think himself to be wronged by his colonel, or the commanding officer of his regiment or battalion, and shall, upon due application made to him, be refused redress, he may complain to the commander in chief, or commander of the forces in service, who shall examine the case and see that justice is done. Officer wronged by colonel. Art. 15, U. S. art. 34.

Art. lii. If any inferior officer or soldier shall think himself to be wronged by his captain, or the commanding officer of his company, he may complain to the commanding officer of his regiment or battalion, who shall convene a regimental court martial, for the purpose of doing justice to the complainant; from which either party may appeal to a general court martial, but if the appeal be vexatious, the party appealing may be punished at the discretion of the court martial. Officer or soldier, wronged by captain. Art. 16, U. S. art. 25.

Art. liii. All public stores taken from the enemy shall be secured to the use of the Commonwealth. Public stores secured. Art. 31, U. S. art 58.

Art. liv. When different corps of foot, or horse and foot, join or do duty together upon marches, guards, or in quarters, or camp, the oldest officer by commission shall command, without respect to corps, and give the orders necessary to the service. Oldest officer to command without regard to corps. Art. 35 and 36, U. S. art. 62.

Art. lv. Whenever any officer or soldier shall be accused of a capital crime, or of having used violence, or committed any offence against the person or property of any citizen or subject of the United States, such as is punishable by the known laws of the United States, or of the state where it is committed, the commanding officer and the officers of every army, detachment, regiment, battalion or com- Offenders to be delivered to civil authority.

pany, to which the accused belongs, upon application duly made by or in behalf of the party injured, shall use their utmost endeavors to deliver over the accused to the civil magistrate, and to aid the officers of justice in apprehending and securing the accused, to bring him to trial. And if any commanding officer or any officers shall wilfully neglect or refuse, upon application aforesaid, to deliver over the accused, or to aid the officers of justice, or shall detain, shelter or conceal any witnesses in any case, they shall be punished as is provided in the one hundred and thirty ninth section.

§ 139.

Property of deceased persons, secured. U. S. art. 94.

Art. lvi. When any officer or soldier shall die or be killed in the service of the Commonwealth, his commanding officer shall order some suitable person to secure all his property and effects, and to take an inventory of them in the presence of two commissioned officers, who shall attest the same, and to preserve the said effects and inventory, until they shall be demanded by his legal representative.

Pay and rations § 127.

Art. lvii. The pay and rations of troops in actual service shall be such as are provided by the one hundred and twenty seventh section.

Courts martial, &c. §§ 115-16-17. 18-19-20-21. 22.

SECT. 143. Courts martial in actual service shall be ordered and held, and shall proceed in the same manner as the militia courts martial, provided in the one hundred and fifteenth, one hundred and sixteenth, one hundred and seventeenth, one hundred and eighteenth, one hundred and nineteenth, one hundred and twentieth, one hundred and twenty first, and one hundred and twenty second sections, except so far as the same may be repugnant to the following regulations:

Arrests. Art. 50, U. S. art. 77.

Art. lviii. When any officer or soldier shall commit any offence deserving punishment, if an officer, he shall be put under arrest and confined to his quarters, and his sword shall be taken from him by the commanding officer; and if a non-commissioned officer or soldier, he shall be imprisoned, until he can be tried by a court martial, or discharged by proper authority.

Length of imprisonment before trial. Art. 51, U. S. art. 79.

Art. lix. No officer or soldier, under arrest and imprisoned, shall continue in confinement more than eight days, or until a court martial can be conveniently assembled.

General and division court martial, by whom ordered.

Art. lx. A general court martial may be ordered by the general, commanding any separate army in the field, garrison or quarters, as well as by the commander in chief; and a division court martial by a major general, or by a commanding officer of a division, as organized for field service.

Number of members of general court martial. Art. 37.

Art. lxi. A general court martial in actual service shall consist of not less than thirteen commissioned officers; and the president shall not be the commander in chief, nor the commanding officer of the army, detachment or garrison where the offender shall be tried, nor under the rank of a field officer.

Number of members of division and regimental court martial. Art. 46, 47, U. S. art. 67.

Art. lxii. Division courts martial shall consist of not less than nine, and regimental courts martial of not less than five, officers, when that number can be conveniently assembled, nor less than three in any case.

Power of regimental court martial.

Art. lxiii. Regimental courts martial shall not have the power to try commissioned officers, but they shall be tried by general or divi-

sion courts martial according to their rank; nor shall they inflict any heavier punishment than a fine equal to one month's pay, or than one month's imprisonment. Art. 46, U. S. art. 67.

Art. lxiv. Any officer commanding a fort, castle, quarters, or any body of men, composed of detachments from different regiments, or of independent companies, may assemble courts martial like regimental courts martial, and with the same powers. Post and detachment court martial. Art. 48, U. S. art. 66.

Art. lxv. Whenever the matters to be examined shall be peculiar to troops of a particular arm, the courts martial shall be composed as far as possible of officers of that arm. Court martial in particular corps. Art. 58.

Art. lxvi. No officer below the rank of captain shall sit at the trial of any officer of the rank of field officer. Rank of members of court martial. Art. 44.

Art. lxvii. No court martial shall sit except between the hours of eight in the morning and three in the afternoon, except in cases which require an immediate example. Time of holding court martial. Art. 44.

Art. lxviii. Members of courts martial belonging to different corps shall take rank according to seniority. Rank in court martial. Art. 38.

Art. lxix. The judge advocate of the division, in which the offence was committed, or some other judge advocate, or, in their absence, some suitable person, shall be appointed to be judge advocate of the court, by the officer ordering the same. Judge advocate. Art. 39.

Art. lxx. The judge advocate shall administer to the president and each member of the court the following oath: Oath of president and members.

You swear, that you will well and truly try and determine, according to your evidence, the matter now before you between the Commonwealth of Massachusetts and the prisoner to be tried; that you will duly administer justice, according to the rules and articles for governing the troops of the said Commonwealth, without partiality, favor or affection, and, if any doubt shall arise, which is not explained by the said articles, according to your conscience, the best of your understanding, and the custom of war in like cases; that you will not divulge the sentence of the court until it shall be approved by the commanding officer; and that you will not, upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of the court martial, unless required by a court of justice, to give evidence as a witness, in due course of law. So help you God.

The president shall then administer the following oath to the judge advocate: Oath of judge advocate. Art. 39, U. S. art. 79.

You, A. B., do swear, that you will faithfully and impartially discharge your duties on this occasion to the Commonwealth as well as to the accused, and that you will not, upon any account, at any time whatsoever, divulge any vote or opinion of any member of this court martial, unless required by a court of justice, to give evidence thereof as a witness, in due course of law. So help you God.

Art. lxxi. All persons, called to give evidence before a court martial, who shall not appear, or shall refuse to testify, without legal excuse, shall be punished at the discretion of such court martial. Witnesses refusing to appear and testify.

Art. lxxii. Witnesses shall be examined upon oath administered by the judge advocate, in the form prescribed by the one hundred and eighteenth section. Oath of witnesses. § 118. Art. 44.

Art. lxxiii. Members of a court martial shall vote, beginning with Votes in courts martial.

Two thirds necessary to capital sentence. Art. 42. 46.

the youngest, and shall give judgment by a majority of voices; but no sentence of death shall be given unless two thirds of the members concur therein.

Proceedings to be transmitted to commanding officer. § 118. Art. 45.

Art. lxxiv. No sentence of any court martial shall be carried into execution, until all the proceedings and evidence, documents, papers, and all matters in and concerning the same, be transmitted in the manner provided in the one hundred and eighteenth section, to the commanding officer of the army, station, camp or post, where the court martial is held, and he approve the same and order it to be carried into execution.

Pay may be suspended.

Art. lxxv. Whenever a court martial shall sentence an officer to be suspended, it may also suspend his pay and emoluments.

Pardon or mitigation of punishment. U. S. art. 89.

Art. lxxvi. Every officer, having power to order a general court martial, may pardon or mitigate any sentence of the court, except sentence of death and cashiering; and he may suspend the execution of these, until the commander in chief shall be informed thereof; and he, with the advice and consent of the council, shall have power to pardon or mitigate the sentence.

Construction of the word "soldier."

SECT. 144. In this chapter, the word soldier shall be construed to include all persons enrolled in the militia, except commissioned officers.

Word "selectmen" to include "mayor and aldermen."

SECT. 145. All the provisions of this chapter, concerning the powers and duties of the selectmen of towns, shall be construed to include the mayor and aldermen of any city.

TITLE V.

CHAPTER 13.

OF CERTAIN STATE OFFICERS.

SECTION

THE GOVERNOR.

1. The salary of the governor.
2. The governor, not to have fees of office.

THE LIEUTENANT GOVERNOR.

3. The salary of the lieutenant governor.

MEMBERS OF THE GENERAL COURT.

4. Pay of members of the council and general court, when taken sick.

THE SECRETARY OF THE COMMONWEALTH.

5. Secretary to be keeper of state seal—his copies to be evidence.
6. " shall cause bills to be engrossed on parchment, and acts of every session to be bound, &c.
7. When a secretary is appointed by the governor, &c.
8. When a secretary is disabled, &c., his deputies may act.
9. Secretary's fees.
10. " to give gratuitous certificates for release of impressed seamen.
11. " salary.
12. " clerks.
13. Salaries of his clerks.

THE TREASURER OF THE COMMONWEALTH.

14. Treasurer to give bond.
15. Bond to be sued, in case, &c.
16. Governor may remove treasurer on request of sureties, in case, &c.
17. On the death, &c. of treasurer, the secretary and others to take charge of his office.

SECTION
18. Inventory of moneys, to be taken by them—duplicate receipts to be given by successor of such treasurer.
19. Receipts given by new treasurer.
20. Treasurer's salary.
21. " clerks.
22. Salaries of clerks.
23. Punishment for fraud, &c. of clerks.
24. Treasurer may prosecute on all securities given to his predecessors.
25. " to transmit annually to the attorney general an account of all bonds. &c.

THE ADJUTANT GENERAL.

26. Adjutant general; appointment and salary.
27. " " to have one clerk with a salary.

THE ATTORNEY GENERAL AND DISTRICT ATTORNEYS.

28. Attorney general, appointment of, &c.
29. " " to appear for the Commonwealth in the supreme court.
30. " " to appear, when required, in other courts.
31. " " shall advise the district attorneys, make annual reports, &c.
32. " " shall give abstract of reports of district attorneys.
33. " " shall attend sessions of legislature, and give opinions, if required, &c.

DISTRICT ATTORNEYS.

34. Four criminal districts established.
35. Northern, southern, middle and western districts.
36. District attorneys, appointment of, &c.
37. Attorney for the Commonwealth in Suffolk.
38. General duties of district attorneys.
39. District attorneys may interchange duties.
40. In their absence, the supreme court may make a special appointment.
41. Annual reports of district attorneys.
42. Tenure of office of attorney general and district attorneys.
43. Salaries of attorney general and district attorneys.
44. Salary of attorney for the Commonwealth in Suffolk.
45. Attorney general, &c., to account for all fees.
46. " " not to receive fees of prosecutors, nor be attorney, in case, &c.

NOTARIES PUBLIC.

47. On the death of notaries, their records, &c., to be delivered to clerks of the courts of common pleas.
48. Penalty for neglecting to deliver over notary's papers.
49. " for like neglect of notary's executors, &c.
50. " for destroying, &c. notaries' records, &c.
51. Clerks of courts of common pleas, to take charge of notaries' records.
52. " to give copies of notaries' records.

COMMISSIONERS TO TAKE DEPOSITIONS, &c. IN OTHER STATES.

53. Commissioners to take depositions, &c., in other states.
54. " to authenticate deeds, if grantor refuses to acknowledge.
55. " validity of their acts.
56. " how qualified.

COMMISSIONERS TO ADMINISTER OATHS TO OFFICERS OF THIS STATE.

57. Appointment of commissioners to qualify public officers—governor, &c. may qualify.

SERGEANT AT ARMS.

58. Sergeant at arms, how and when chosen—to give bond.
59. His general duties—to appoint door keepers and assistants, subject, &c.
60. Shall serve processes, &c.—preserve state house, &c., from injury.
61. Shall appoint watchman, subject, &c. —watchman shall appoint assistant, subject, &c.—their duties.
62. Same subject.
63. Sergeant at arms, &c. to prevent trespasses, &c.
64. " " how removed—vacancy in office, how filled.
65. Salaries of sergeant at arms and watchman—no fee to be taken from visitors.

THE GOVERNOR.

SECTION 1. The salary of the governor shall be three thousand six hundred and sixty six dollars and sixty seven cents, annually; The salary of the governor. 1780, 5.

fice, to the hazard of the public treasury, if, upon examination, such representation shall appear to be true, the governor, with the advice and consent of the council, shall remove him from office and declare the office vacant.

On the death, &c. of treasurer, the secretary and others to take charge of his office. 1791, 59, § 3.

SECT. 17. Upon the death or resignation of the treasurer, or upon any other vacancy in that office, the secretary, with two suitable persons to be appointed by warrant, under the hand and seal of the governor, shall repair to the places where the moneys, papers and other things belonging to the treasury, are usually kept, and, having previously given notice to such late treasurer, or his heirs, executors or administrators, and to his sureties, or one of them, or to such of the said persons, as may be found within the state, to attend thereat, shall seal up and secure, in their presence, if they shall attend, all such moneys, papers and other things, supposed to be the property of the Commonwealth; and they shall give such representatives, or sureties, if required by them, a true list of all boxes and packages, which shall be so sealed up and secured, and shall note, on such list, the place or places wherein the same are deposited.

Inventory of moneys, &c. to be taken by committee.

SECT. 18. After sealing up and securing the effects, mentioned in the preceding section, the secretary, with the two persons appointed as aforesaid, shall, as soon as can be conveniently done, and after notice to the parties mentioned in that section, cause the said boxes and packages to be examined, and a true inventory to be taken of the said moneys and of all bonds, notes, securities, books, and other things appertaining to said office, which shall be required by the said late treasurer, or his representatives or sureties, or either of them; and a copy of said inventory shall be deposited in the secretary's office; and any copies, that may be required, shall also be given to any of the parties, mentioned in the preceding section. And the secretary and said two persons shall safely keep all moneys and other effects, inventoried as aforesaid, until another treasurer shall be chosen or appointed, to whom, when qualified, they shall deliver over the same, taking duplicate receipts from such new treasurer; one of which receipts shall be deposited with the secretary, and the other with the said late treasurer, or his legal representatives or sureties, or one of them.

Duplicate receipts to be given by successor of such treasurer. 1791, 59, § 3.

Receipts given by new treasurer. 1791, 59, § 3.

SECT. 19. Upon every appointment of a new treasurer by the general court, he shall give duplicate receipts, one of which shall be deposited with the secretary; and such receipts shall be sufficient evidence, for his predecessor in office, of the property of the Commonwealth, remaining and delivered over by him, and shall be his sufficient discharge therefor.

Treasurer's salary. 1818, 97.

SECT. 20. The salary of the treasurer shall be two thousand dollars a year, payable quarterly.

His clerks. 1820, 74.

SECT. 21. The treasurer may employ two permanent clerks, and no more, in his office; but he may, during the session of the general court, employ a greater number if he shall find it necessary.

Salaries of clerks. 1820, 74.

SECT. 22. The treasurer's chief clerk shall have a salary of twelve hundred dollars a year; and his assistant clerks shall each have a salary of nine hundred dollars a year, and in the same proportion, for any shorter term of time, for which any of said clerks may be employed; and said salaries shall be payable quarterly.

a report of all the official business done by him during the preceding year, specifying the suits and prosecutions to which he may have so attended, the number of persons prosecuted, the crimes for which, and the counties where, such prosecutions were had, the results thereof, and the punishments awarded therefor.

—shall give abstracts of reports of district attorneys, &c. 1832, 130, § 8.

SECT. 32. The attorney general shall include, in his annual report, an abstract of the annual reports of the several district attorneys, with such observations and statements, as in his opinion, the criminal jurisprudence, and the proper and economical administration of the criminal law of the Commonwealth, shall warrant and require.

—shall attend sessions of legislature and give opinions, if required, &c. 1832, 130, § 8.

SECT. 33. The attorney general shall, when required, attend the legislature during their sessions, and shall give his opinion upon all questions of law, submitted to him by either branch of the legislature, or by the governor and council; and shall give his aid and advice, in the arrangement and preparation of legislative documents and business, when required by either branch of the legislature.

DISTRICT ATTORNEYS.

Four criminal districts established. 1832, 130, § 9.

SECT. 34. For the administration of the criminal law, all the counties, except the county of Suffolk, shall be formed into four districts, as described in the following section.

Northern district. Southern district. Middle district. Western district. 1832, 130, § 9.

SECT. 35. The counties of Essex and Middlesex shall constitute the northern district; the counties of Bristol, Plymouth, Barnstable, Duke's county, and Nantucket, shall constitute the southern district; the counties of Norfolk and Worcester shall constitute the middle district; and the counties of Hampshire, Franklin, Hampden and Berkshire shall constitute the western district.

District attorneys, appointment of, &c. 1832, 130, § 9.

SECT. 36. The several district attorneys, now in office, shall continue to hold their offices, according to the tenor of their respective commissions, unless sooner removed by the governor and council; and, as vacancies occur, the governor, with the advice and consent of the council, shall appoint suitable persons to be district attorneys, who shall respectively reside within the districts, for which they are appointed.

Attorney for the Commonwealth in Suffolk. 1807, 18; 1832, 130, § 9.

SECT. 37. In the county of Suffolk, there shall be appointed by the governor, with the advice and consent of the council, an attorney for the Commonwealth, who shall be a resident in that county, and shall, in addition to the duties specially required of him by law in that county, perform the like duties therein, as are required to be performed by the district attorneys, in their respective districts.

General duties of district attorneys. 1832, 130, § 9.

SECT. 38. The district attorneys shall, within their respective districts, appear for the Commonwealth in the supreme judicial court, the court of common pleas, and the municipal court of the city of Boston, in all cases, criminal or civil, in which the Commonwealth may be a party, or be interested; and they shall also, within their respective districts, perform all the duties, which the attorney general now is, or hereafter may be, authorized to perform, and which are not required to be done by him personally; and they shall, in their respective districts, aid the attorney general in the duties so required of him; provided, that the attorney general, when present, shall have the direction and management of all prosecutions and suits in behalf of the Commonwealth.

Penalty for like neglect of notary's executors, &c. 1798, 62, § 1.

SECT. 49. If the executor or administrator of any deceased notary public shall, for the space of three months, after his acceptance of such appointment, neglect to deposit in the clerk's office, the records and official papers of such deceased notary, which shall come into his hands, he shall forfeit a sum not exceeding five hundred dollars.

Penalty for destroying, &c. notary's records, &c. 1798, 62, § 1.

SECT. 50. If any person shall knowingly destroy, deface, or conceal any records or official papers of any notary public, he shall forfeit a sum not exceeding one thousand dollars, and shall moreover be liable in damages to any party injured.

Clerks of courts of common pleas to take charge of notary's records. 1798, 62, § 2.

SECT. 51. The several clerks of the court of common pleas shall receive and safely keep all the records and official papers of any notary public, which are, in this chapter, directed to be deposited in the offices of said clerks.

—to give copies of notaries' records. 1798, 62, § 2.

SECT. 52. Said clerks shall make and certify copies of any records and official papers of any notary public deposited with them; for which copies they shall be paid the same fees, that such notary public would have been entitled to; and all copies, certified by the said clerks, shall have the same effect in law, as if they had been certified by such notary public.

COMMISSIONERS TO TAKE DEPOSITIONS, &C., IN OTHER STATES.

Commissioners to take depositions, &c., in other states. 1829, 125, § 1.

SECT. 53. The governor may, with the advice and consent of the council, appoint, in each of the United States, one or more commissioners, to continue in office during the pleasure of the governor for the time being; and every such commissioner shall have power to administer oaths and to take depositions and affidavits to be used in this state; and also to take the acknowledgment of any deed, or other instrument, to be recorded in this state.

—to authenticate deeds, if grantor refuses to acknowledge.

SECT. 54. When any grantor shall refuse to acknowledge his deed, the same may be proved in like manner, and the like proceedings shall be had for that purpose, before the commissioner, as are required by the provisions of the fifty ninth chapter, in the like case, before a justice of the peace.

Validity of their acts. 1829, 125, § 1.

SECT. 55. All oaths administered by the said commissioners, all affidavits and depositions taken by them, and all acknowledgments aforesaid certified by them, shall be as effectual in law, to all intents and purposes, as if done and certified by any justice of the peace in this state.

—how qualified. 1829, 125, § 2.

SECT. 56. Before any commissioners appointed as aforesaid shall proceed to perform any of the duties of their office, they shall take and subscribe an oath, before any justice of the peace, or other officer authorized to administer oaths, in the state for which such commissioners may be appointed, that they will faithfully discharge all the duties of their office; which oath shall be filed in the office of the secretary of this Commonwealth, within six months after the taking of the same.

COMMISSIONERS TO ADMINISTER OATHS TO OFFICERS OF THIS STATE.

Appointment of commissioners to qualify public officers.

SECT. 57. The governor, with the advice and consent of the council, shall appoint a suitable number of commissioners to admin-

ister, to public officers appointed under the constitution of this Commonwealth, the oaths required by the said constitution; and all public officers, except those for whom a different provision is made, in such case, by the constitution, may take and subscribe such oaths, either before the governor or lieutenant governor, or any two members of the council, or any two of the said commissioners.

Governor, &c. may qualify. Resolve. Nov. 17, 1780.

SERGEANT AT ARMS.

SECT. 58. There shall be annually chosen in the month of January, by the concurrent vote of the two branches of the legislature, a sergeant at arms, who shall hold his office until another is chosen in his stead, and he shall give bond to the treasurer of the Commonwealth, in the sum of two thousand dollars, for the faithful performance of his duties, and to account for all moneys entrusted to him for the use of the Commonwealth.

Sergeant at arms, how and when chosen. 1835, 154.

—to give bond.

SECT. 59. The sergeant at arms shall see that the chambers and lobbies, occupied by the legislature, are during the session kept in good order, and that the fires are seasonably kindled, diligently tended, and carefully extinguished; and he shall maintain order among the spectators, who may be admitted into the rooms, in which the respective branches hold their sessions, and take proper measures to prevent the interruption of either branch, or any of the committees thereof. He shall, immediately after his election, appoint, subject to the approval of the presiding officers of the two branches, respectively, suitable and proper persons to be door keepers to each house, who shall, during the session, render him all necessary assistance, and perform generally all the duties heretofore performed by assistant messengers; and he shall also appoint, subject to the like approval, such assistants to the said door keepers, as the two houses may respectively direct; and he shall exercise a strict superintendence over all his subordinate officers, giving them all needful directions, and taking care that they promptly perform their several duties.

His general duties.

—to appoint door keepers and assistant, subject, &c.

SECT. 60. Said sergeant at arms shall serve all such processes, and execute all such orders, as may be enjoined upon him by the general court; and he shall attend the members or clerks of either house, when they are charged with messages to the other house. He shall have the general charge and oversight of the state house and its appurtenances, and shall daily visit and inspect all the apartments therein, (except the secretary's office, council chamber, and apartments therewith connected, which shall be under the care of the messenger of the governor and council,) and take all proper precautions against damage thereto, or to the books, papers, or other property therein; and he shall take care that the chambers and lobbies, occupied by the legislature, are kept clean and in good order, during the recesses of the general court.

—shall serve processes, &c.

—preserve state house, &c. from injury.

SECT. 61. Said sergeant at arms shall annually appoint, subject to the approval of the secretary and treasurer, a watchman of the state house, whom he may at any time remove, and for whose fidelity and good conduct in said capacity he shall be responsible; and said watchman shall employ, subject to the approval of the sergeant at arms, a suitable person as an assistant; and he and his assistant shall remain in the state house every night, from nine o'clock in the even-

—shall appoint watchman, subject, &c.

Watchman shall appoint assistant, subject, &c.

Their duties.

ing until sunrise the next morning, and maintain proper watch and guard for the security thereof; and either he or his assistant shall, for the same purpose, remain there during all other hours of the day, when the outside doors are open.

Same subject.

SECT. 62. Said watchman shall visit, each night, all the rooms in the state house in which fires have been kindled during the preceding day, and attend to their safety, and shall open the outer doors of the lower floor, and the gates, every morning, and close the same every evening, except sabbath days, public thanksgivings and fast days, and the keys of said doors and gates, and of the several apartments, shall be so deposited, as that he may have ready access to them; he shall also keep the lower floor and entries of the state house clean and in good order; light, clean, and keep in order the outside lamps; kindle and keep up suitable fires in the offices of the treasurer, adjutant general, and land agent, and keep said offices at all times clean and in good order, and shall perform all such other duties with regard to said offices, as have been heretofore performed by the watchman and messenger of the general court, in the offices of which they have respectively had charge; and said watchman, and his assistant shall be under the control and direction of the sergeant at arms.

Sergeant at arms, &c. to prevent trespasses, &c.

SECT. 63. The sergeant at arms, and the watchman and his assistant, shall take all proper care to prevent any trespass or injury being committed contrary to the provisions of the eighth section of the eleventh chapter; and if any such trespass or injury occur, and the offender be known to either of the said officers, he shall forthwith give notice thereof to the attorney general, or to the attorney of the Commonwealth for the county of Suffolk, in order that such offender may be prosecuted therefor.

Sergeant at arms, how removed. Vacancy in office, how filled.

SECT. 64. The said sergeant at arms shall be removable by the general court, for misconduct or other sufficient cause; and for like cause during the recess, he may be suspended by the governor and council; and any vacancy, which may occur in said office during a session of the general court, shall be filled in the manner prescribed in the fifty eighth section; and whenever a vacancy shall occur during a recess, the governor and council may appoint a suitable person to perform the duties of the office until a new election.

Salaries of sergeant and watchman.

SECT. 65. The sergeant at arms shall have a salary of eight hundred and fifty dollars per year, and the use of the house belonging to the Commonwealth, heretofore occupied by the messenger of the general court; and the watchman shall have a salary of nine hundred dollars per year, in full for the services of himself and his assistant; and said salaries shall be paid quarterly, and the accounts of the sergeant at arms, for the services of the several persons employed by him during the sessions of the general court, shall be audited by the treasurer and reported to the legislature; and no fee or reward shall be taken by the sergeant at arms, or by any person under him, for opening the public rooms in the state house, for the view and inspection of visitors.

No fee to be taken from visitors. 1835, 154.

SECTION
49. Incompatibility of treasurer's office with others.
50. County treasurer, to pay over money according to order of commissioners, except, &c.
51. County treasurer, to account with commissioners, and to be paid as they judge reasonable.
52. Process for collecting county taxes.
53. Further assessments, not to be made, till treasurer's account is allowed.
54. Treasurers may sue bonds, &c., given to their predecessors; and prosecute for injuries,—in case of building, owned jointly by county and town.

SHERIFFS OF COUNTIES.

55. Sheriffs now in office, to continue until, &c.—term of office.
56. When vacancies happen, governor shall appoint.
57. The governor may remove sheriffs.
58. Sheriffs to give bonds to state treasurer.
59. Appointment of deputies.
60. New sheriff to notify coroners.
61. Common pleas to examine sheriffs' bonds, annually; if insufficient, a new one shall be given.
62. Sheriffs' sureties may be discharged, when, &c.
63. Penalty, if sheriff neglects to give bond.
64. Sheriffs' bond may be sued.
65. Judgment to be first recovered, by the party injured.
66. Actions for misfeasances, &c., of sheriffs or deputies, to lie against representatives of deceased sheriffs.
67. Treasurer, to furnish copies of bonds.
68. Sheriff and deputies shall serve all writs, &c.
69. " &c., may serve, where their counties, towns, &c., are parties, &c.
70. " and deputies may serve writs, after their removal from office.
71. " or deputies, may attend juries, for damages, by locating turnpikes, &c., although, &c.
72. " &c., may command aid.
73. " not to have their bodies arrested.
74. Executions, to run against their property, only.
75. Sheriff's liability when such executions shall be returned unsatisfied.
76. After removal, alias executions against their bodies, &c.
77. Defaults of deputies, &c., after death, &c., of sheriff, to be adjudged a breach.

SECTION
78. Limitation of actions against sheriffs.
79. Sheriff, deputy, coroner or constable, not to act as attorneys.
80. Penalty in such case.
" if sheriff, &c., takes a dead body.
82. Sheriffs, to have the custody of the jails, and prisoners.
83. " to keep a calendar of prisoners.
84. " to be answerable for delivery of prisoners to their successors.
85. Mittimusses and other papers, to be kept and delivered over to new sheriffs. —Penalty for neglect.
86. Keepers of jails to continue in office after sheriff's decease, until, &c.
87. When a prisoner dies in jail, his body to be delivered to his friends, &c.
88. Deputies, to account every twelve months.
89. Proportion of fees to be paid by deputies, to sheriff.
90. Sheriffs, to render an account of all monies received, to county treasurers.
91. Compensation allowed to sheriffs in each county.
92. Sheriff, to have a salary for keeping prisoners.

CORONERS.

93. Coroners, to be sworn and give bond.
94. Court of common pleas, to examine into sufficiency of coroners' bonds.
95. Surety of coroner may petition to be discharged.
96. Penalty for neglecting to give bonds—Suits on coroners' bonds.
97. Coroner to execute process where sheriff is a party, &c.
98. Although his county, &c., is a party.
99. During a vacancy in sheriff's office, coroner shall perform all duties of a sheriff.

REGISTER OF DEEDS.

100. Registers to continue in office till term expires.
101. Elections of registers, once in five years.
102. Registers, to be sworn and give bond.
103. Registers, to keep public offices.
104. Fire proof offices, to be provided for registers.
105. When registers shall be removed.
106. Commissioners may appoint a register of deeds, in case, &c.
107. New elections of registers, when to be ordered.

1811, 75, § 3.

order of record, appoint agents to sell any real estate of their county; and all deeds, made on behalf of the inhabitants of the county, by such agents, under their proper hands and seals, and duly acknowledged by them, shall be sufficient, to all intents and purposes, to convey all the right, title, interest, and estate whatever, which the county may then have to the lands so conveyed.

COUNTY JAILS, HOUSES OF CORRECTION, &c.

Counties to provide public buildings, except, &c. 1784, 41, § 1. 1811, 8, § 6. 1834, 151, § 1.

SECT. 9. Each county shall, at the common expense of the county, (except in Suffolk,) provide suitable court houses, jails, houses of correction, fire-proof offices, and all other necessary public buildings for the use of the county; excepting only that Duke's county shall not be required to provide a house of correction.

In Suffolk, public buildings to be provided by Boston alone.

SECT. 10. In the county of Suffolk, the court houses, jails, house of correction, fire-proof offices, and all other necessary public buildings, for the use of the county, shall be provided by the city of Boston, at its own expense.

County jails, &c., how governed.

SECT. 11. The county jails and houses of correction shall be governed and regulated, as is provided in the one hundred and forty third chapter.

If escapes happen by insufficiency of jails, the county liable to reimburse sheriff. 1784, 41, § 1.

SECT. 12. In case of the escape of any prisoner, by reason of the insufficiency of the jail, whereby the sheriff shall be made liable to any party, at whose suit such prisoner was committed, or to whose use any forfeiture was adjudged against him, the county shall reimburse all sums of money, recovered of the sheriff, by such party, on account of such escape.

Jail limits. 1834, 201.

SECT. 13. The limits of the jail yard of each jail shall, except in the case provided for in the following section, extend to all places within the boundaries of the county, in which such jail is situated; provided, that the limits of the jail yard for the county of Norfolk shall include the bridge over the river between Weymouth and Hingham, on the Hingham and Quincy turnpike, and the roads from said bridge to Cohasset; and in the counties of Middlesex and Suffolk, the limits of the jail yard shall extend to the common jurisdiction of said counties, as described in this chapter; and provided also, that in respect to all proceedings on executions issuing upon judgments, which have been or may be recovered on contracts, made between the second day of April, in the year one thousand eight hundred and thirty four, and the day when this chapter shall go into effect as a law, the limits of each jail yard shall be the boundaries of the town in which such jail is situated.

Same subject.

SECT. 14. In respect to all proceedings on executions, issuing upon judgments, which have been or may hereafter be recovered, upon contracts made before the second day of April, in the year one thousand eight hundred and thirty four, the limits of each jail yard shall remain as the same were established previously to that day.

COUNTY COMMISSIONERS.

Commissioners now in office to continue until, &c.

SECT. 15. The county commissioners, now in office, in the several counties, shall continue to hold their offices, according to the provisions of the laws, under which they have been elected; and, as vacancies occur, new elections shall be had, in the manner prescribed in this chapter.

ceedings shall be had, until the whole number of commissioners shall be elected.

Two special commissioners. 1835, 152, § 4.

SECT. 21. In each of the counties, in which county commissioners are to be chosen, as provided in this chapter, there shall also be two special commissioners, who shall be chosen at the same time and in the same manner with the said county commissioners.

Vacancies by death, &c. how filled. 1835, 152, § 4.

SECT. 22. Any vacancy, in the office of the county commissioners or special commissioners, by death, resignation, or otherwise, may be filled in the manner prescribed for the elections of those officers; and such vacancy shall be filled at any time, when the said board of examiners shall think it expedient, and shall issue their warrant therefor; and each person, chosen to fill such vacancy, shall hold the office for the residue of the term, for which his predecessor was elected.

Commissioners, to be of different towns, except, &c.

SECT. 23. Of the said county commissioners, and special commissioners, in all the counties except Duke's county, not more than one shall be chosen from the same town; and in case more than one county commissioner, or special commissioner, from the same town, shall have a majority of the ballots, the person having the largest number, shall be declared to be elected.

Tenure of office. 1835, 152, § 4

SECT. 24. The said county commissioners and special commissioners, except such as may be chosen to fill vacancies, shall hold their respective offices for the term of three years, and until others shall be chosen and qualified in their places; and the same persons may be re-elected from term to term; and before entering upon their official duties, they shall be sworn to the faithful discharge of the same.

Commissioners, to choose a chairman. 1835, 152, § 4.

SECT. 25. The county commissioners in each county shall, at their first meeting after their election, choose, by ballot, a chairman of their board.

Proceedings, if one of board is interested. 1835, 152, § 5.

SECT. 26. In case any of the county commissioners shall be interested in any question before the board, or if a road or any part thereof, upon which they are to act, lies within the town in which any one of them resides, or if any one of them is unable to attend, the other member or members of the board shall give notice to one or both of the special commissioners, as the case may require, who shall forthwith proceed to act in the board, and shall have the same authority in all respects, as the county commissioner who is so disqualified or unable to attend. If a board cannot be organized, in conformity with these provisions, then so much of this section, as relates to a residence in the town, in which the road lies, shall, in such case, be no disqualification.

Where opposing parties appear, three disinterested commissioners must act. 1835, 152, § 5.

SECT. 27. No business, in which opposing parties appear, shall be finally determined, except by consent, unless there shall be three disinterested commissioners present and acting thereon; but the provisions of this and the preceding section shall not extend to the county of Duke's county.

Penalty for neglect of duty of examiners, &c. 1835, 152, § 10.

SECT. 28. If the said board of examiners, selectmen or town clerk shall wilfully neglect to perform any of the duties, required of them in this chapter, each of them so neglecting shall forfeit a sum not exceeding two hundred dollars, to the use of the county where the offence was committed.

ty treasurers, with estimates, to the secretary, &c. 1811, 74, § 2. 1834, 122, § 1.

counts, being so allowed and approved, shall be delivered by the said treasurers to the clerks of the said commissioners, and shall be by them sealed up and transmitted, with the said estimates, on or before the first day of February, annually, to the office of the secretary of the Commonwealth, in order that they may be examined and allowed by the general court, at the same time with the said estimates.

Commissioners and treasurers to publish accounts of the county expenses, annually. 1828, 18.

SECT. 36. The commissioners and treasurers of the several counties, except in the county of Suffolk, shall, at the close of each year, in one or more newspapers, not exceeding three, printed within their respective counties, or in an adjoining county, publish an account of the receipts and expenditures of their respective counties, arranged under distinct heads.

Powers and duties of commissioners, to whom they appertain.

SECT. 37. All the provisions concerning the powers and duties of the county commissioners, and the clerks thereof, which are contained in this and other chapters, shall, except where otherwise specially provided, be construed to include and apply to all other public officers, who, by law, exercise the powers of such commissioners or their clerks, in the respective counties.

BOARD OF EXAMINERS.

Board of examiners in each county, except, &c. of whom to consist. 1835, 152, § 1.

SECT. 38. In each of the counties, except Suffolk and Nantucket, the judge of probate, the register of probate, and the clerk of the court of common pleas, shall be a board of examiners for the county, with the authority respecting the elections of commissioners, and their accounts, which is given them in this chapter; provided always, that if any two of the offices aforesaid shall be held by the same person in any county, the sheriff of such county shall be a member of the said board.

Duty of the board in respect to accounts of commissioners. 1835, 152, § 1.

SECT. 39. The said board of examiners shall, from time to time, examine the accounts of the commissioners, for services rendered by them in the discharge of their duties; and if it shall appear to the said board, that the said accounts ought to be allowed, they shall make a certificate thereof upon the same; and no such account shall be paid by the county treasurer, unless so certified.

Compensation of board of examiners. 1835, 152, § 1.

SECT. 40. The said board of examiners shall be paid for their services, each, at the rate of three dollars a day, for every day employed in the discharge of their duties, and ten cents a mile for travel to and from the place of their meeting; and their accounts shall be audited and settled by the county treasurer.

BOARD OF ACCOUNTS IN SUFFOLK.

In the county of Suffolk, board of accounts to examine and settle accounts. 1821, 109, § 9.

SECT. 41. In the county of Suffolk, the judge of probate, the judge of the municipal court of the city of Boston, and the justices of the police court of said city, shall continue to be the board of accounts; whose duty it shall be to meet, quarter yearly, and as much oftener as may be found necessary, to examine and allow all bills of costs, accounts and charges, arising in the course of proceedings in said municipal and police courts, and in the maintenance and keeping of the prisoners in the jail of the county of Suffolk, and of all other expenses and charges, in keeping said jail and all other places of confinement and punishment, within the city of Boston; and the said board of accounts shall certify all such accounts, charges and expen-

County treasurer to pay over money according to order of commissioners, except, &c. 1785, 76, § 2.

SECT. 50. All moneys received by the county treasurer, for the use of the county, shall be paid by him, as the commissioners shall from time to time direct, except where special provision is made by law, for the payment of such moneys, by order of any court or otherwise.

County treasurer to account with commissioners, and to be paid as they judge reasonable. 1785, 76, § 2.

SECT. 51. Each county treasurer shall account with the commissioners of his county, for all moneys received and paid by him, in behalf of his county; and they shall make him such compensation for his services, as to them shall seem reasonable.

Process for collecting county taxes. 1785, 76, § 3.

SECT. 52. Each county treasurer may enforce the payment of all county taxes, by the like rules and methods, as are prescribed in the eighth chapter, for the treasurer of the Commonwealth in collecting the state taxes.

Further assessments not to be made till treasurer's account is allowed. 1785, 76, § 3.

SECT. 53. No further assessment shall be made on the several towns and places in the county, until the treasurer thereof shall have rendered his account to the general court, as provided in this chapter, and the same shall have been allowed.

Treasurer, may sue on bonds, &c., given to their predecessors, and prosecute for injuries.

SECT. 54. The treasurers of counties may, in their own names and official capacity, prosecute to final judgment and execution, any suits upon bonds, notes and other securities, given to their predecessors in office, and any suits commenced by their predecessors in office and pending at their removal therefrom; and they may also prosecute for any injuries done to the public lands, buildings, or other property of their counties; provided, however, that whenever such injury shall be done to a building owned partly by the county and partly by any town, such prosecution may be maintained either by the treasurer of the county or of such town, whichever of them shall first institute the same.

Case of building, owned jointly by county and town. 1797, 14. 1785, 29, § 4.

SHERIFFS OF COUNTIES.

Sheriffs now in office, to continue until, &c.

SECT. 55. The several sheriffs, now in office, shall continue to hold their offices, according to the tenor of their respective commissions; and all sheriffs, hereafter appointed, shall hold their offices for the term of five years, from the date of their respective commissions, unless sooner removed therefrom, according to the provisions of this chapter.

Term of office. 1830, 110, § 1.

When vacancies happen, governor shall appoint. 1830, 110, § 1.

SECT. 56. Whenever a vacancy shall happen in the office of sheriff, in any county, the governor, with the advice and consent of the council, shall appoint and commission a suitable person to fill such vacancy.

The governor may remove. 1830, 110, § 1.

SECT. 57. The governor, with the advice and consent of the council, may, at any time when he may think proper, remove from office any sheriff, and appoint another in his place.

Sheriffs to give bonds to state treasurer. 1794, 53, § 2.

SECT. 58. Every sheriff shall give such bonds, with sureties, to the treasurer of the Commonwealth, as the court of common pleas shall direct and approve, with condition, that he shall faithfully perform his own duties, and shall also be responsible for all his deputies.

Appointment of deputies.

SECT. 59. Every sheriff may appoint his own deputies; and every deputy sheriff, so appointed, shall, before proceeding to execute any process, be sworn to the faithful discharge of the duties of his office.

SECT. 60. Every person, hereafter appointed sheriff of any county, shall give notice thereof, as soon as may be, to the several coroners of the same county.

New sheriff to notify coroners.

SECT. 61. The court of common pleas shall, once in every year, in each county, examine into the sufficiency of the official bonds given by the respective sheriffs; and if it shall appear that the bond given by any sheriff is insufficient, the court shall cause a record thereof to be made by their clerk, and shall give notice thereof to such sheriff, and require him to give a new bond, to the satisfaction of the said court, within such time as they shall order.

Common pleas to examine sheriff's bonds annually; if insufficient, a new one shall be given. 1794, 53, § 1.

SECT. 62. Whenever any surety upon the official bond of any sheriff, or the heirs, executors or administrators of such surety, shall petition the court of common pleas in the county of such sheriff, to be discharged from such bond, the said court shall cause the sheriff to be served with an attested copy of such petition, and shall require him to give new security to the satisfaction of said court, at such time as they shall order; and, upon such new security being given, such surety, his heirs, executors and administrators, shall be discharged from any further responsibility on said bond.

Sheriff's sureties may be discharged, when, &c. 1824, 23, § 1

SECT. 63. If any sheriff shall neglect or refuse to give bond, as required in any of the cases provided for in this chapter, he shall forfeit the sum of one hundred and fifty dollars, for each month's neglect, and the attorney general shall prosecute for the same; and the court of common pleas shall forthwith certify the fact of such neglect or refusal to the governor and council, and also to the attorney general; and the governor, with the advice of the 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 shown for such neglect, and unless such sheriff shall give security, to the satisfaction of the governor and council, within twenty days after the date of the said certificate.

Penalty, if sheriffs neglect to give bond. 1794, 53, § 2.

SECT. 64. When the condition of the official bond of any sheriff shall be broken, to the injury of any person, such person may at his own expense institute a suit thereon, in the name of the treasurer, and prosecute the same to final judgment and execution; and, in such case, the writ shall be indorsed with the name of the person, for whose benefit the suit is instituted, or with the name of his attorney, and the like proceedings shall be had thereon, to final judgment and execution, as in a suit by a creditor on an administration bond, given to any judge of probate.

Sheriff's bond may be sued. 1805, 99, § 1.

SECT. 65. No such suit on a sheriff's bond shall be instituted, until the party instituting it shall have recovered judgment against the sheriff, his executors or administrators, for a breach of the condition of the bond, or shall have obtained a decree of the judge of probate, allowing a claim for the causes aforesaid; and such judgment or decree, or such part thereof as shall be unsatisfied, with the interest due thereon, shall be the amount for which execution shall be awarded.

Judgment to be first recovered by the party injured, &c. 1805, 99, § 1.

SECT. 66. Any actions for the malfeasance or nonfeasance of a sheriff, or of any of his deputies, may be sued against the executors or administrators of such sheriff, in like manner as if the cause of action survived at common law.

Actions for malfeasance, &c., of sheriffs, or deputies, to lie against representatives of deceased sheriffs. 1805, 99, § 2.

SECT. 67. The treasurer shall deliver an attested copy of any

Treasurer to furnish copies of bonds. 1805, 99, § 3.

sheriff's official bond, to any person applying and paying for the same; and such copy shall be received as competent evidence, in any case relating to such bond; provided, nevertheless, that if, in any such suit, the execution of the bond shall be disputed, the court may order the treasurer to bring the original bond into court, for the purposes of the trial of such action.

Sheriff and deputies shall serve all writs, &c. 1783, 44, § 1.

SECT. 68. The sheriff, and each of his deputies, shall serve and execute, within his county, all writs and precepts, issued by lawful authority, and to him or them directed and committed.

Sheriffs, &c. may serve where their towns, &c. are parties, &c. 4 Pick. 405. 1817, 13; 1808, 19, § 2.

SECT. 69. Any sheriff or deputy sheriff may serve any writs or other process, mentioned in the preceding section, in cases where any county, town, parish or religious society, or any school district is a party or interested, notwithstanding the said officers may at the time be members of such corporations.

Sheriffs and deputies may serve writs after sheriff's removal from office. 1783, 44, § 4. 1808, 46, § 3.

SECT. 70. All sheriffs and their deputies may execute all such precepts, as may be in their hands, at the time of their removal from office; and in every case of a vacancy in the office of sheriff, every deputy sheriff, in office under him, having any writ or precept in his hands, at the time [of] such vacancy happened, shall have the same authority, and shall be under the same obligation to serve, execute, and return such writ or precept, as if such sheriff had continued in office.

Sheriffs, &c. may attend juries, for damages, by locating turnpikes, &c. although, &c. 1824, 106.

SECT. 71. All sheriffs and their deputies may summon and attend juries, for assessing damages sustained by the locating of turnpike roads and railroads, in any cases, where the sheriff or deputies, other than the officer, who shall summon and attend such jury as aforesaid, are members of such turnpike or railroad corporation.

Sheriff, &c. may command aid. 1795, 68. § 1.

SECT. 72. Any sheriff, deputy sheriff, coroner or constable, shall have authority to require suitable aid, in the execution of his office, in any criminal case, or for the preservation of the peace, or for the apprehending or securing of any person for a breach of the peace; and he may require the like aid, in cases of escape or rescue of persons arrested upon civil process.

Sheriffs not to have their bodies arrested. 1783, 44, § 4.

SECT. 73. No sheriff shall have his body arrested, either upon mesne process, or execution in a civil action.

Executions to run against their property only. 1783, 44, § 4.

SECT. 74. 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 thereupon shall be issued against his goods, chattels, and lands, but not against his body.

Sheriff's liability when such execution shall be returned unsatisfied. 1783, 44, § 4.

SECT. 75. If any execution, issued against the goods, chattels, or lands of a person holding 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 shall also give notice of his said proceedings to such sheriff; and if such sheriff shall not, within thirty days next after such notice, pay to the creditor the whole amount of his debt, together with reasonable costs of the copies and notifications aforesaid, the governor, with the advice of the council, shall remove such sheriff from his office, and appoint some other person to the same.

After removal, *alias* executions against their bodies, &c. 1783, 44, § 4.

SECT. 76. When a sheriff shall be removed from office, the clerk of the court, whence any execution against such sheriff shall have been issued and returned not satisfied, shall, as soon as another sheriff is appointed, make out alias executions in common form, as well

against the body, as the goods, chattels and lands of the sheriff so removed.

SECT. 77. Any default or misfeasance in office, of any deputy sheriff or jailer, after the death or resignation of any sheriff, by whom he was appointed, shall be adjudged a breach of the condition of the official bond given by such sheriff.

Defaults of deputies, &c., after death, &c. of sheriff, to be adjudged a breach. 7 Mass. 505. 13 ib. 295. 1808, 46, § 2.

SECT. 78. All actions against sheriffs, for the misconduct and negligence of their deputies, shall be commenced and sued within four years next after the cause of action shall have accrued.

Limitation of actions against sheriffs. 1796, 71.

SECT. 79. No sheriff, deputy sheriff, coroner, or constable, shall appear in any court, or before any justice of the peace, as attorney or counsel, for or in behalf of any party in a suit; nor shall he draw, make, or fill up any writ, declaration, plea, or process, for any such party; nor shall he, with intent to procure himself to be employed in the collection of any demand, or in any manner to make gain or profit therefrom, advise, counsel, or encourage any person directly or indirectly, to commence any suit or process.

Sheriff, deputy, coroner, or constable, not to act as attorney. 1783, 44, § 3. 1822, 20. 6 Pick. 483.

SECT. 80. Every sheriff, deputy sheriff, coroner, or constable, offending against the provisions of the preceding section, shall forfeit the sum of fifty dollars, to be recovered by indictment to the use of his county.

Penalty, in such case. 1783, 44, § 3. 1822, 20.

SECT. 81. If any sheriff, deputy sheriff, coroner, or constable, shall take the body of any deceased person, on mesne process or execution, he shall, upon conviction of such offence, be fined not more than five hundred dollars, or imprisoned for a time not exceeding six months.

Penalty, if sheriff, &c. takes a dead body. 1811, 102, § 2.

SECT. 82. The sheriff of each county shall have the custody, rule, and charge of the jails therein, and of all prisoners in such jails, and shall keep the same himself, or by his deputy or jailer, for whom he shall be responsible.

Sheriffs to have the custody of the jails, and prisoners. 1783, 44, § 1.

SECT. 83. The sheriff of each county shall keep, in a large bound book provided for that purpose only, an exact register or calendar of all prisoners, committed to any prison under his care; and in the said book shall be distinctly and fairly registered the names of all prisoners so committed, their places of abode, additions, time of commitment, for what cause, and by what authority committed; and a description of the persons of such as are committed on criminal prosecutions; and when any prisoner is liberated, the sheriff shall, in the same book, register the name and description of him as aforesaid, the time when, and the authority by which, such liberation was made; and, in case of any escape, the time and manner of the escape shall, as soon as may be after it happens, be also noted in said book.

Sheriff, to keep a calendar of prisoners. 1784, 41, § 4.

SECT. 84. Every sheriff, upon the expiration of his commission, or upon his resignation or removal from office, shall deliver over to his successor all prisoners then in his custody; and, for that purpose, he shall retain the keeping of the jail and of the prisoners therein, until his successor shall be appointed and qualified.

Sheriffs to be answerable for delivery of prisoners to their successors. 1783, 44, § 4.

SECT. 85. All warrants, mittimuses, processes and other official papers, or the attested copies of them, by which any prisoner shall have been committed or liberated, shall be regularly filed in the order of time; and they shall, together with the sheriff's calendar before mentioned, be safely kept in a suitable box for that purpose, and, upon

Mittimuses and other papers, to be kept, and delivered over to new sheriffs.

Penalty for neglect. 1784, 41, § 6.

the expiration of his commission, or upon his death, resignation, or removal from office, shall be delivered to his successor, and, in default of such delivery, such sheriff, or his executors or administrators, shall forfeit the sum of two hundred dollars, to be recovered to the use of the county.

Keeper of jails to continue in office after sheriffs' decease, until, &c. 1808, 46, § 1.

SECT. 86. In case of the death of the sheriff, the jailer, by him appointed, shall continue in that office, and retain the custody, rule and charge of his jail, and of all prisoners then within such jail, or afterwards committed to his custody, until a successor to such deceased sheriff shall be appointed and qualified, or until the governor, by and with the advice of the council, shall remove such jailer and appoint another; and the jailer so appointed by the governor, shall give such bond with sureties, as the governor shall direct and approve, for the faithful performance of the duties of his office; and he shall continue in office during the vacancy in the office of sheriff.

When a prisoner dies in jail, his body to be delivered to his friends, &c. 1811, 102, § 1.

SECT. 87. When any person, imprisoned for any cause, shall die in prison, the sheriff or the keeper of the jail shall deliver the body of such deceased person to his relations or friends, if they shall request it; and, if no application be made therefor, the sheriff or keeper shall bury the same in the common burying-ground; and the expenses therefor shall be paid by the town, in which such person had a legal settlement, if any, otherwise out of the treasury of the Commonwealth.

Deputies to account every twelve months. 1830, 110, § 5.

SECT. 88. The deputies of the sheriffs shall, once in twelve months, at least, and as much oftener as shall be required, render to their respective sheriffs, under oath, a true account of all fees which they shall have received, or which shall accrue to them by virtue of their office.

Proportion of fees to be paid by deputies to sheriff. 1830, 110, § 3. 7 Mass. 34.

SECT. 89. The sheriffs shall receive of their deputies, twenty five per cent. on the amount of fees for travel, service, and levy of all writs and executions.

Sheriffs to render an account of all moneys received to county treasurers. 1830, 110, § 2.

SECT. 90. The several sheriffs shall keep a true account of all moneys received by them, either from their deputies, or otherwise, by virtue of their office; and they shall, on the first Wednesday of January, annually, render to the treasurers of their respective counties, under oath, a true account of the whole amount by them so received.

Compensation allowed to sheriffs in each county. 1830, 110, § 4.

SECT. 91. Out of all moneys received by the sheriffs from their deputies, as provided in the preceding section, they shall retain, for their own use, if they shall have received so much, the sums following, namely: the sheriff of Suffolk, two thousand dollars; the sheriff of Essex, one thousand dollars; the sheriff of Middlesex, one thousand dollars; the sheriff of Worcester, one thousand dollars; the sheriff of Hampshire, six hundred dollars; the sheriff of Hampden, six hundred dollars; the sheriff of Franklin, six hundred dollars; the sheriff of Berkshire, seven hundred dollars; the sheriff of Norfolk, seven hundred and fifty dollars; the sheriff of Bristol, eight hundred dollars; the sheriff of Plymouth, seven hundred dollars; the sheriff of Barnstable, five hundred dollars; the sheriff of Nantucket, four hundred dollars; and the sheriff of Duke's county, two hundred dollars; and the residue of the moneys received by them as aforesaid, shall, at the time of rendering their accounts as aforesaid, be paid over by them to their respective county treasurers, for the use of the county.

SECT. 92. The sheriff shall have, for the safe keeping of the prisoners committed to his custody, such a salary, to be allowed him from the county treasury, as the commissioners in the respective counties shall order; which salary shall not be less than twenty dollars annually for any county; provided, that no sheriff shall receive any rent or emolument, from the jailers and keepers of the houses of correction, for the use and occupation of the dwelling houses, provided for them by the county.

Sheriff, to have a salary for keeping prisoners. 1830, 110, § 6.

CORONERS.

SECT. 93. All coroners shall, before they enter upon the duties of their office, be sworn to the faithful discharge thereof, and shall give bond to the treasurer of the Commonwealth, in the like manner as sheriffs are required to do by the provisions of this chapter.

Coroners, to be sworn, and to give bond. 1783, 43, § 1.

SECT. 94. The court of common pleas shall, once in every year, in each county, examine into the sufficiency of the official bonds, given by the respective coroners; and if it shall appear, that the bond of any coroner is insufficient, the said court shall cause a record thereof to be made by their clerk, and shall give notice thereof to such coroner, and require him to give a new bond, to the satisfaction of the said court, within such time as they shall order.

Court of common pleas, to examine into sufficiency of coroner's bonds. 1813, 189. 1794, 53, § 1.

SECT. 95. Whenever any surety, upon the official bond of any coroner, or the heirs, executors or administrators of such surety, shall petition the court of common pleas, in the county of such coroner, to be discharged from such bond, the like proceedings, in all respects, shall be had thereon, as are provided in this chapter, in case of the like petition by a surety on a sheriff's official bond.

Surety of coroner may petition to be discharged. 1824, 23.

SECT. 96. If any coroner shall neglect or refuse to give bond, as required by this chapter, or if the condition of such bond shall be broken, to the injury of any person, such coroner shall be liable to removal from office, and be subject to the like penalties as sheriffs are, in the like cases, by the provisions of this chapter; and any person interested shall have the like remedies, upon the official bond of such coroner, and in like manner, as are provided by this chapter, in the case of official bonds given by sheriffs.

Penalty for neglecting to give bonds.

Suits on coroner's bonds. 1794, 53, § 2. 1805, 99. 1813, 189.

SECT. 97. Every coroner, within the county for which he is appointed, shall serve and execute all writs and precepts, and perform all other duties of the sheriff, when the sheriff shall be a party or interested in the case.

Coroner to execute process, where sheriff is a party, &c. 1783, 43, § 1.

SECT. 98. Any coroner may serve and execute all writs and precepts, in cases mentioned in the preceding section, where any county, town, parish or religious society, or any school district, are parties or interested, notwithstanding he shall at the time be a member of such corporation.

Although his county, &c. is a party. 1817, 13.

SECT. 99. When the office of sheriff shall be vacant, by death or otherwise, the several coroners of the county are authorized to perform all the duties, which are by law required to be performed by the sheriff, until another sheriff for such county shall be appointed and qualified, and such coroners respectively shall have notice thereof.

During a vacancy in sheriff's office, coroner shall perform all duties of a sheriff. 1783, 43, § 1. 1792, 17.

REGISTERS OF DEEDS.

Registers to continue in office till term expires.

SECT. 100. The several registers of deeds in each county shall continue in office, for the residue of the term, for which they were respectively elected.

Elections of registers, once in five years. 1783, 60, §§ 1. 5.

SECT. 101. At the annual meetings of the several towns, in each county, in the year one thousand eight hundred and thirty six, and every five years afterwards, the inhabitants of said towns, qualified to vote for representatives in the general court, shall elect registers of deeds; each of whom shall hold his office for five years, and until some other person shall be chosen and qualified in his stead, unless he shall be sooner removed from office, by order of the county commissioners, for misconduct in the discharge of his duty.

Registers, to be sworn, and give bond. 1783, 60. 1825, 145, § 2.

SECT. 102. Every register of deeds, whether chosen by the voters in the several towns, or appointed by the county commissioners, as is hereafter provided in this chapter, shall be sworn, before the said commissioners, or some one of them, to the faithful discharge of the duties of his office, and shall also give bond therefor, under the direction of the said commissioners, to the treasurer of the county.

—— to keep public offices. 1783, 60, § 1. 1830, 15.

SECT. 103. Each register of deeds, except as is provided in this chapter for the county of Berkshire, shall reside in the shire town of his county, and shall there have a public office, which he shall keep open every day, except Sundays; and he shall there keep all the books, records, deeds and papers belonging to his office, in the manner prescribed in the fifty ninth chapter.

Fire-proof offices, to be provided for registers. 1811, 165.

SECT. 104. The commissioners shall provide and maintain fire-proof rooms, with suitable alcoves, cases, and boxes, for the safe keeping of all the records, files, papers, and documents belonging to the several registries of deeds.

When registers shall be removed. 1786, 57, § 5.

SECT. 105. Whenever any register of deeds, upon presentment of the grand jury, shall be found guilty of misconduct, in discharging his official duties, or, whenever by reason of infirmity of body or mind, he shall be incapable of rightly discharging in person the duties of his office, the commissioners shall, upon reasonable notice, remove him from office, and may order the books, papers, and other things belonging to the office, to be delivered over to the clerk of the judicial courts of the county, or to any new register appointed or elected as provided in this chapter.

Commissioners may appoint a register of deeds, in case, &c. 1825, 145, § 1.

SECT. 106. In case of the death, resignation, or removal of any register of deeds, the commissioners in the county in which such vacancy shall happen, shall forthwith meet at the place, where their next regular meeting would be held, and shall appoint, on their records, some suitable person to be register of deeds, until the vacancy shall be filled by a new election, in the manner provided in this chapter.

New elections of registers, when to be ordered. 1825, 145, § 3.

SECT. 107. Whenever such a vacancy shall happen in the office of register of deeds in any county, or in any registry district of a county, the commissioners shall forthwith issue notices to the several towns of such county, or of such registry district, respectively, directed to the selectmen of such towns, and requiring them to notify a meeting of the legal voters of their towns, respectively, for the pur-

pose of electing a register of deeds, for the residue of the term for which the former register was elected; and such notice to the selectmen shall prescribe the day and hour when such meetings shall be held, and the time and place of making returns to the said commissioners of the number of votes, and the names of the persons voted for; provided, that the time of making such returns shall never exceed thirty days from the date of such notices.

SECT. 108. The commissioners may adjourn to any day, subsequent to the said return day, at their discretion, for the purpose of counting the votes and declaring the same.

Commissioners may adjourn to count the votes. 1825, 145, § 4.

SECT. 109. In case no election shall be made in the first instance by the qualified voters, the commissioners shall issue a new process, as before, until a choice of register shall be made by the said voters.

In case of no choice, a new election to be had. 1791, 12. 1825, 145, § 4.

SECT. 110. In the county of Berkshire, there shall continue to be three offices for the registry of deeds, which shall be kept in the districts of said county, described in the three following sections.

Special provision for registry districts in Berkshire. 1788, 5.

SECT. 111. The towns of Lenox, Pittsfield, Richmond, Stockbridge, Lee, Tyringham, Becket, Washington, Peru, Hinsdale and Otis, and such unincorporated places as lie between any of the said towns, shall constitute one district for the registry of deeds in the county of Berkshire; and the office of the register for that district shall be kept in the town of Lenox.

Middle district. 1788, 5, § 1. 1805, 42. 1812, 83.

SECT. 112. The towns and unincorporated places in the said county, which lie north of the towns enumerated in the preceding section, shall constitute one district for the registry of deeds in the same county; and the office of the register for that district shall be kept in the town of Lanesborough.

Northern district. 1788, 5, § 2.

SECT. 113. The towns and unincorporated places in the said county, which lie south of the district first above described, shall constitute one district for the registry of deeds in the same county; and the office of the register for that district shall be kept in the town of Great Barrington.

Southern district. 1788, 5, § 4.

SECT. 114. The several registers of deeds, for each of the said districts in the county of Berkshire, shall be elected by the inhabitants of the towns of such district, in the like manner as the registers of deeds in each county are elected by the inhabitants of such county; and, in case of a vacancy in any of the said districts, the same shall be filled in the like manner as in case of a vacancy in a county; and in all things relating to the register of deeds and his office, each of said districts shall be deemed and taken to be a county.

Elections, vacancies, &c., in Berkshire. 1788, 5.

SECT. 115. In the county of Barnstable, all records, deeds and other instruments, made in pursuance of the one hundred and eighth chapter of the statutes of the year one thousand eight hundred and twenty seven, and the fortieth chapter of the statutes of the year one thousand eight hundred and twenty eight, shall have the same effect in law, to all intents and purposes, as the original records of such deeds and instruments, in the registry of said county, would have had.

Special provision respecting Barnstable. 1827, 108, § 1. 1828, 40.

PAPER FOR COUNTY AND OTHER RECORDS.

SECT. 116. All matters, which are to be entered of record in any county, or other office of public record, shall be so entered or re-

Linen paper, to be used for county and other records.

American manufacture to be preferred. 1815, 73.

corded on paper made wholly of linen, of a firm texture, well sized, and well finished; and the clerks and registers of said offices respectively shall, for that purpose, give a preference to linen paper of American or domestic manufacture; provided always, that such paper be marked in water line with the word "linen," and also with the name of the manufacturer.

TITLE VII.

Of towns and town officers.

CHAPTER 15. Of the powers and duties of towns; and the election, qualifications, and duties of town officers.
CHAPTER 16. Of work-houses in towns.
CHAPTER 17. Of keeping watch and ward in towns.
CHAPTER 18. Of securing towns against fires; and the appointment of fire-wards and enginemen.
CHAPTER 19. Of fences and fence viewers; of pounds and the impounding of cattle; and of field drivers.

CHAPTER 15.

OF THE POWERS AND DUTIES OF TOWNS; AND THE ELECTION, QUALIFICATIONS AND DUTIES OF TOWN OFFICERS.

SECTION

OF THE POWERS AND DUTIES OF TOWNS.

1. Bounds of towns, to remain as now established.
2. Perambulations and renewal of boundaries, every five years.
3. Notice of perambulation to adjoining towns.—Penalty for neglect to give notice.
4. Bound-stones to be erected, except, &c.
5. Perambulation of bounds between towns and unincorporated places.
" of towns adjoining other states.
7. Penalty for neglect of selectmen.
8. Towns, to be bodies corporate as heretofore.
9. Districts, to have the powers of towns given by this chapter.

SECTION

10. Towns may sue, and be sued, &c.
11. " may hold property, make contracts, &c.
12. " may grant money; for town schools, the poor, and other necessary charges.
13. " may make by-laws, subject to approval by the court of common pleas.
14. By-laws shall bind all persons coming within the town.
15. " to be published.
16. Towns may accept town ways, &c., laid out by the selectmen.

TOWN MEETINGS.

17. Qualifications of voters in town affairs.
18. Annual, and other meetings.
19. Warrants shall issue for all meetings.
20. The same warrant may include two or more meetings.

SECTION
21. Contents of the warrant.
22. Selectmen shall insert in warrants, any subject requested by ten voters, &c.
23. If selectmen refuse to call a meeting, one may be called by a justice of the peace.
24. If major part of selectmen die, resign, &c., the rest may call meetings.
25. Meetings may be adjourned.

MODERATOR'S POWER AND DUTIES.

26. At town meetings, except, &c., a moderator to be first chosen.
27. During the election of a moderator, the town clerk shall preside, &c.
28. Moderator's powers and duties.
29. No person shall speak without leave of the moderator, &c.
30. Penalty for disorderly conduct in meetings.
31. " on moderator, or other presiding officer, for examining ballots before the poll is closed.
32. When he may administer oaths of office.

THE ELECTIONS, QUALIFICATIONS AND DUTIES OF TOWN OFFICERS.

33. Town officers to be chosen, viz: town clerk, selectmen, assessors, overseers of the poor, treasurer, school committee, surveyors of highways, constables and collectors, tythingmen, field drivers, fence viewers, surveyors of lumber, wood measurers, sealers of leather, &c. —what town officers to be sworn.
34. Certain officers to be chosen by ballot.
35. Penalty for neglecting to choose selectmen, &c.
36. If assessors refuse to serve—the commissioners may appoint persons in the county.
37. If towns neglect to choose selectmen, &c., commissioners may appoint.
38. Officers to be appointed by selectmen; sealer of weights and measures, measurers of wood and bark, hay weighers.
39. Town clerks, to give notice to persons elected, that they may be sworn.
40. Penalty for not taking the oath of office.
41. Town offices vacated by removal from town.
42. Vacancies may be filled by a new choice.
43. No person to be obliged to serve two years successively in same office.

TOWN CLERK.

44. Town clerk shall record all votes.
45. Town clerk shall administer oaths, and make record of their administration.
46. " shall record all births and deaths in his town.
47. Parents and others, to give notice to town clerks of births and deaths.
48. Town clerk may administer oaths to appraisers, &c.
49. " pro tempore, when chosen.
50. In case of death, &c., the selectmen may appoint a town clerk.
51. The clerk pro tempore, to make a record of his election, &c.

SELECTMEN.

52. The selectmen, to be assessors and overseers of the poor, in case, &c.
53. When selectmen are assessors, to be sworn as such.
54. Selectmen to be under oath—Penalty, if not under oath.

ASSESSORS OF TAXES.

55. Assessors' oath.
56. Assistant assessors, to be sworn.
57. Penalty, if assessors neglect to take the oath of office.

TOWN TREASURER.

58. Town treasurer's duty—to give bond.
59. " treasurer may sue on bonds, &c., to his predecessor.
60. " " may be collector of taxes.
61. " treasurer's power and duty as collector.
62. " treasurer to prosecute for trespasses on public property.
63. " treasurer to prosecute for all forfeitures, except, &c.
64. " " to render his accounts annually.
65. " treasurer's compensation.

CONSTABLES.

66. Penalty for refusing to serve as constable.
67. If person elected constable shall not declare his acceptance, &c., a new choice to be made.
68. If he refuses to take the oath, town treasurer shall prosecute.
69. Persons exempted from being constables.
70. Constables, to execute warrants of selectmen.
71. " may serve writs in personal actions, where damages do not exceed seventy dollars.

SECTION

72. Constables, may serve writs where their towns, &c., are parties.
73. " may serve writs of replevin on sheriffs.
74. " may serve process in unincorporated places annexed, &c.
75. " convey persons or property taken, to the jail, &c., out of their town.
76. " to complain of breaches of certain laws.
77. " may command aid.

COLLECTORS OF TAXES.

78. Constables to be collectors of taxes, when, &c.
79. Collectors to certify to selectmen who has paid taxes.
80. " to give bond.

SECTION

SURVEYORS OF HIGHWAYS.

81. Penalty for refusing to serve as surveyor of highways.
82. " on surveyors, for neglect of duty.
83. Surveyors may be prosecuted for deficiency in highways, in case, &c.
84. " shall be liable to towns for such deficiencies, in case, &c.

TYTHINGMEN.

85. Duties of tythingmen respecting the Lord's day.

THE CITY OF BOSTON.

86. Special provision respecting the municipal powers, and duties of the city of Boston

THE DISTRICT OF MARSHPEE.

87. Provisions for the District of Marshpee.

OF THE POWERS AND DUTIES OF TOWNS.

Bounds of towns, to remain as now established. 1785, 75, § 1.

SECTION 1. The boundary lines of every town shall remain as now established.

Perambulations and renewal of boundaries, every five years. 1785, 75, § 1.

SECT. 2. There shall be a perambulation of the boundary lines between towns, and the lines shall be run and the marks renewed, once in every five years, by two or more of the selectmen of each town, or such substitutes as they shall in writing appoint for that purpose; and the proceedings in the case, after every such renewal, shall be recorded in the town records of the respective towns.

Notice of perambulation to adjoiningtowns.

Penalty for neglect to give notice. 1785, 75, § 1.

SECT. 3. Previously to any perambulation, the selectmen of the most ancient of the contiguous towns shall give ten days' notice, in writing, to the selectmen of the adjoining town, of the time and place of meeting for such perambulation; and the selectmen, who shall neglect their duty in giving notice, or in attending, either personally or by their substitutes, shall severally forfeit the sum of twenty dollars, to the use of the town whose selectmen shall perform their duty.

Bound-stones, to be erected, except, &c. 1826, 117, § 1.

SECT. 4. The selectmen of the contiguous towns shall cause to be erected, at the joint and equal expense of such towns, permanent monuments to designate their respective boundary lines, at every angle thereof, except where such lines are bounded by the ocean or by some permanent stream of water; and the said monuments shall be of stone, well set in, and at least four feet high, from the surface of the ground; and the initial letter of the respective names of said contiguous towns shall be plainly and legibly cut thereon; provided, however, that it shall not be necessary to erect a new monument in any place, where any permanent stone monument already exists, of two feet in height, above the surface of the ground.

Perambulations of bounds between towns and unincorporated places. 1826, 117, § 4.

SECT. 5. The selectmen of every town, bordering upon any unincorporated place, shall, once in every five years, give notice to the assessors of such unincorporated place, of their intention to perambulate the lines, between their said towns and places respectively; and, upon such notice, the said assessors shall perform all the duties, required of selectmen in the like case, and be subject to all the penal-

ties, to be recovered and appropriated in the same manner, as selectmen, in the like case, are now subject to by the provisions of this chapter.

Perambulations of towns adjoining other states. 1826, 117, § 2.

SECT. 6. The selectmen of the several towns of this state, bordering on any other state, in all cases, where the lines between such other states and this state are settled and established, shall, once in every five years, give notice to the selectmen or other proper municipal officers of such towns in such other states, as adjoin the respective towns of this state, abovementioned, of their intention to perambulate the lines between their adjoining towns; and in all cases where such state lines are now in dispute, such perambulations of the lines, between the towns in this state and the adjoining towns of such other states, shall be made, once in every five years, after such state lines shall be settled and established; and, if such notice and proposal shall be accepted by the officers to whom it is made, a perambulation shall be made of the boundary lines of such towns, in the same manner, as between towns in this state; provided, however, that no boundary, erected by the authority of this state and any such adjoining state, shall be removed by the said selectmen or other municipal officers.

Penalty for neglect of selectmen. 1826, 117, § 3.

SECT. 7. Any selectman, who shall neglect or refuse to cause the monuments to be erected as aforesaid, or to give notice to the selectmen or other proper municipal officers of towns, in the adjoining states, or to perambulate, if the last mentioned selectmen or officers consent thereto, shall forfeit the sum of twenty dollars to the use of their [*his*] county.

Towns, to be bodies corporate as heretofore. 1785, 75, § 8.

SECT. 8. The inhabitants of every town shall continue to be a body corporate, with all the powers heretofore exercised by towns, and subject to all the duties to which they have heretofore been liable.

Districts, to have the powers of towns given by this chapter. 1785, 75, § 9.

SECT. 9. All places now incorporated by the name of districts, except the district of Marshpee, in the county of Barnstable, shall have all the powers and privileges, and be subject to all the duties, to which towns are entitled or subject by the provisions of this chapter.

Towns may sue and be sued, &c. 1783, 39, § 4. 1785, 75, § 8.

SECT. 10. The inhabitants of towns, in their corporate capacity, may sue and be sued in the manner prescribed by law, and may appoint all necessary agents and attorneys in that behalf.

Towns may hold property, make contracts, &c. 2 Pick. 351-2. 3 Mass. 360. 12 Mass. 417.

SECT. 11. Towns shall have power to hold real estate, for the public uses of the inhabitants, and to convey the same, either by a vote of the inhabitants, or by a deed of their committee or agents; to hold personal estate, for the public uses of the inhabitants, and to alienate and dispose of the same by vote or otherwise; to hold real and personal estate, in trust, for the support of schools, and for the promotion of education, within the limits of the town; to make any contracts, which may be necessary and convenient for the exercise of their corporate powers, and to make any orders for the disposal or use of their corporate property, which they may judge necessary or expedient for the interest of the inhabitants.

Towns may grant money as follows, viz:—

SECT. 12. Towns shall have power, at any legal meeting, to grant and vote such sums of money as they shall judge necessary for the following purposes, that is to say:

For schools.

For the support of town schools:

For the poor.

For the support and maintenance of the poor :

For burial grounds and other necessary charges. 1785, 75, § 7.

For burial grounds; and

For all other necessary charges arising within the same town.

Towns may make by-laws, subject to approval by the C. C. pleas. 1785, 75, § 7. 1801, 62. 1834, 81.

SECT. 13. The inhabitants of each town may make all such necessary orders and by-laws, for directing and managing the prudential affairs of the town, as they shall judge most conducive to the peace, welfare and good order thereof; and they may annex, to such orders and by-laws, suitable penalties not exceeding twenty dollars for any one breach thereof; to be recovered by complaint before any justice of the peace of the town or county, where the offence shall have been committed, and to enure to such uses as the town shall direct; provided, the said orders and by-laws shall be approved by the court of common pleas for the county, and shall not be repugnant to the laws of the Commonwealth.

By-laws shall bind all persons coming within the towns. 6 Pick. 187.

SECT. 14. The by-laws duly made by any town shall be binding upon all persons coming within the limits thereof, as well as upon the inhabitants of such town.

By-laws to be published.

SECT. 15. All by-laws made by any town shall be published in one or more newspapers printed in the county where such town is situated.

Towns may accept town ways, &c. laid out by the selectmen, or alter, &c. 1785, 75, § 7.

SECT. 16. Towns may accept any town or private way laid out by their selectmen; and they may alter or discontinue any such way, according to the provisions of the twenty fourth chapter.

TOWN MEETINGS.

Qualifications of voters in town affairs. 1822, 104, § 1, and Amend. of Const. Art. III.

SECT. 17. Every male citizen, of twenty one years of age and upwards, (excepting paupers and persons under guardianship,) who shall have resided within the state one year, and within the town, in which he may claim a right to vote, six months next preceding any meeting for the transaction of town affairs, and who shall have paid, by himself or his parent, master or guardian, any state or county tax, which shall, within two years next preceding such meeting, have been assessed upon him in any town; and also, every citizen who shall be by law exempted from taxation, and who shall, in all other respects, be qualified as aforesaid, shall have a right to vote at such town meetings, upon all questions concerning town affairs; and no other person shall be entitled to vote at such meeting.

11 Pick. 538.

Annual and other meetings. 1785, 75, § 10.

SECT. 18. The annual meeting of each town shall be held in the month of March or April; and other meetings shall be held at such other times as the selectmen shall order.

Warrants shall issue for all meetings. 1785, 75, § 5.

SECT. 19. Every town meeting shall be held in pursuance of a warrant under the hands of the selectmen, directed to the constables or some other persons, appointed by the selectmen for that purpose, who shall forthwith notify such meeting, in the manner which shall have been ordered by the by-laws, or by any vote, of the town.

The same warrant may include two or more meetings, &c. 6 Mass. 17.

SECT. 20. The selectmen may, by the same warrant, call two or more distinct town meetings for distinct purposes.

Contents of the warrant, &c. 1785, 75, § 5.

SECT. 21. The warrant shall express the time and place of the meeting, and the subjects to be there acted upon; and nothing acted upon shall have any legal operation, unless the subject matter thereof shall have been inserted in the warrant for calling the meeting.

Selectmen shall insert in war-

SECT. 22. The selectmen shall insert in the warrant all subjects,

which may, in writing, be requested of them by any ten or more voters of such town.

rants, any subjects requested by ten voters, 1785, 75, § 5.

SECT. 23. If the selectmen of any town shall unreasonably refuse to call a meeting, any justice of the peace of the county, upon the application of ten or more legal voters of the town, may, if he shall think proper, call such meeting, by a warrant under his hand, directed to the constables of the town, if any there be, and otherwise, to any of the persons applying therefor, directing them to summon the inhabitants qualified to vote in town affairs, to assemble at the time and place and for the purpose expressed in the warrant.

If selectmen refuse to call a meeting, one may be called by a justice of the peace. 1785, 75, § 5.

SECT. 24. If by reason of death, resignation, or removal from town, a major part of the selectmen originally chosen in any town shall vacate their office, those who remain in office shall have the same power to call a town meeting, as the whole number first chosen would have had.

If major part of selectmen die, resign, &c. the rest may call meetings. 1785, 75, § 5.

SECT. 25. Any town meeting may be adjourned from time to time, and to such place, within the same town, as the meeting shall determine.

Meetings may be adjourned.

MODERATOR'S POWER AND DUTIES.

SECT. 26. At all the town meetings, except those held for the election of governor, lieutenant governor, senators, representatives in the general court, representatives in congress, electors of president and vice president of the United States, and county commissioners, a moderator shall be first chosen.

At town meetings, except, &c a moderator to be first chosen. 1785, 75, § 6.

SECT. 27. During the election of a moderator, the town clerk, if present, shall preside; and if there shall be no town clerk in office, or he shall be absent, the selectmen shall preside; and the town clerk and selectmen, respectively, shall, in such case, have all the powers, and perform all the duties, of a moderator.

During the election of a moderator, the town clerk shall preside, &c. 9 Mass. 262. 1811, 9, § 2. 1831, 50.

SECT. 28. The moderator shall preside in the meetings, for which he is chosen, and shall regulate the business and proceedings thereof; he shall decide all questions of order, and shall make public declaration of all votes passed; and when any vote so declared by him shall, immediately upon such declaration, be questioned by seven or more of the voters present, he shall make the vote certain, by polling the voters, or dividing the meeting, unless the town shall, by a previous vote, or by their by-laws, have otherwise provided.

The moderator's powers and duties. 1785, 75, § 6.

SECT. 29. No person shall speak in the meeting, before leave first obtained of the moderator, nor while any other person is speaking by his permission; and all persons shall be silent, at the request of the moderator.

No person shall speak without leave of the moderator, &c. 1785, 75, § 6.

SECT. 30. If any person shall conduct himself in a disorderly manner, and, after notice from the moderator, shall persist therein, the moderator may order him to withdraw from the meeting; and, on his refusal, may order the constables, or any other persons, to take him from the meeting and confine him in some convenient place, until the meeting shall be adjourned; and the person, so refusing to withdraw, shall, for such offence, further forfeit a sum not exceeding twenty dollars, to the use of the town.

Penalty for disorderly conduct in meetings. 1785, 75, § 6. 16 Mass. 385.

SECT. 31. Any moderator, or other presiding officer, who shall, at any town meeting, before the poll is closed, and without the con-

Penalty on moderator o.

other presiding officer, for examining ballots, before the poll is closed. 1811, 9, § 3.

sent of the voter, read or examine, or permit to be read or examined, the names written on such voter's ballot, with a view to ascertain the candidate voted for by him, shall forfeit, to the use of the town, a sum not exceeding fifty dollars.

When he may administer oaths of office.

SECT. 32. The moderator of any town meeting may, in open meeting, administer the oaths of office to any town officers chosen thereat.

OF THE ELECTIONS, QUALIFICATIONS AND DUTIES OF TOWN OFFICERS.

Town officers to be chosen, viz:

SECT. 33. At the annual meeting, every town shall choose, from among the inhabitants thereof, the following town officers, who shall serve during the year, and until others shall be chosen and qualified in their stead, that is to say:

Town clerk.

A town clerk, who, if present, shall be forthwith sworn to the faithful discharge of his duty, either by the moderator of the meeting, or by any justice of the peace:

Selectmen.

Three, five, seven, or nine selectmen:

Assessors.

Three or more assessors, and, if the town shall deem it expedient, three or more assistant assessors:

Overseers of the poor.

Three or more overseers of the poor:

Treasurer.

A town treasurer:

School committee.

A school committee of three, five or seven persons:

Surveyors of highways.

One or more surveyors of highways:

Constables and collectors.

Constables, who shall also be collectors of taxes, unless other persons shall be specially chosen collectors:

Tythingmen.

Tythingmen, unless the towns shall vote that it is not expedient to choose the same:

Field drivers.

Field drivers:

Fence viewers.

Fence viewers:

Surveyors of lumber.

Surveyors of lumber:

Wood measurers.

Measurers of wood and bark, unless the town shall authorize the selectmen to appoint them:

Sealers of leather, &c. 1785, 75, § 2.

Sealers of leather: and

All other usual town officers.

What town officers to be sworn.

All the town officers, designated by name in this section, except the overseers of the poor, tythingmen and the school committee, shall be sworn to the faithful discharge of the duties of their respective offices.

Certain officers to be chosen by ballot. 1811, 9, § 2.

SECT. 34. The election of town clerks, selectmen, assessors, school committees and town treasurer, and also of the moderator of the meetings, held for the choice of town officers, shall be by written ballots; and the election of all other town officers shall be in such mode as the meeting shall determine.

Penalty for neglecting to choose selectmen, &c. 1785, 50, § 3.

SECT. 35. Every town, which shall neglect to make choice of selectmen or assessors, shall forfeit a sum not exceeding five hundred nor less than one hundred dollars, as the county commissioners of the county, in which such town is, shall order.

If assessors, &c. refuse to serve, the commissioners may appoint persons in the county.

SECT. 36. Whenever neither the assessors, nor the selectmen, chosen by any town, shall accept the trust, or, having accepted it, shall not perform the duties thereof, the county commissioners may appoint three or more suitable persons within the county, to be asses-

sors of taxes, for such town; and the assessors, so appointed, shall have the like powers, and be subject to the like duties, and receive the like compensation, as assessors chosen by the town. 1785, 50, § 3.

SECT. 37. In case of such neglect to choose selectmen or assessors, the county commissioners may appoint three or more assessors for such town. If towns neglect to choose selectmen, &c., commissioners may appoint.

SECT. 38. The selectmen of each town shall, in the month of March or April, annually, appoint the following town officers, unless the inhabitants themselves, at their annual meeting, shall choose them, namely: Officers, to be appointed by selectmen.

One sealer of weights and measures; and any other number, which the inhabitants shall, at their annual meeting, vote to have appointed: Sealer of weights and measures. 1799, 60, § 4.

As many measurers of fire-wood and bark, (whose fees shall be also established by the selectmen,) as the inhabitants shall at their annual meeting determine: Measurers of wood and bark.

The selectmen of every town, which has town scales, for the weighing of hay, shall appoint one or more persons to have the superintendence of the hay scales belonging to their town. Hay weighers. 1824, 102.

SECT. 39. After the election or appoinment of any town officers, who are required to take an oath of office, the town clerk shall forthwith make out a list, containing the names of all such officers, as shall not have been sworn by the moderator, and a designation of the offices to which they are chosen, and deliver the same, with his warrant, to a constable, requiring him, within three days, to summon each of the officers, so chosen, to appear and take the oath of office, before the town clerk, within seven days after such notice; and the constable shall, within seven days, make return of the warrant to the town clerk. Town clerks, to give notice to persons elected, that they may be sworn. 1785, 75, § 2.

SECT. 40. If any person, so chosen and summoned, and not exempted by law from holding the office, to which he is elected, shall not, within seven days, take the oath of office, before the town clerk, he shall, unless the office to which he is chosen shall be that of constable, or some other for which a different penalty is provided, forfeit the sum of five dollars, to the use of the town; provided, always, that every such person, who shall take the oath of office, before a justice of the peace, and file a certificate thereof, under the hand of such justice, with the town clerk, within the said space of seven days, shall be exempted from said penalty. Penalty for not taking the oath of office. 1785, 75, 2.

SECT. 41. Every person, removing from the town in which he held a town office, shall be deemed thereby to have vacated such office. Town offices vacated by removal from town. 1 Pick. 129. 1785, 75, § 4.

SECT. 42. Whenever there shall be a vacancy in any town office, by reason of the non-acceptance, death, removal, insanity, or other disability of any person chosen to office, the town may fill such vacancy, by a new choice at any other legal meeting. Vacancies may be filled by a new choice. 1785, 75, § 4.

SECT. 43. No person shall be obliged to serve in the same town office two years successively. No person to be obliged to serve two years successively in the same office. 1795, 75, § 3.

TOWN CLERK.

SECT. 44. The town clerk shall record all votes, passed at the meeting, at which he shall have been elected, and at the other meetings, held during his continuance in office. Town clerk shall record all votes. 1785, 75, § 2.

—administer oaths and make record of their administration. 1785, 75, §§ 2, 3.

SECT. 45. The town clerk shall administer the oaths of office to all town officers, who shall appear before him for that purpose, and he shall make a record thereof, and also of all who shall file certificates of their having been so sworn before any justice of the peace.

—shall record all births and deaths in his town. 1785, 69, § 1.

SECT. 46. The town clerk shall keep a record of the births and deaths of all persons within his town, and coming to his knowledge; and he shall specify in such record the day of each birth and death, and the names of the parents of such persons, if known.

Parents and others, to give notice to town clerks of births and deaths. 1795, 69, § 2.

SECT. 47. Parents shall give notice to the clerk of their town of all the births and deaths of their children; and every householder shall give the like notice of every birth and death happening in his house; and the eldest person next of kin shall give such notice of the death of his kindred; and the keeper of any alms house, work house, house of correction, prison or hospital, and the master or other commanding officer of any ship, shall give the like notice of every birth and death, happening among the persons under his charge; and every person, neglecting to give such notice, for the space of six months, after the birth or death shall have happened, shall forfeit to the use of the town a sum not exceeding five dollars.

Town clerk may administer oaths to appraisers, &c. 1783, 32, § 14.

SECT. 48. In case there shall be no justice of the peace in the same town, the town clerk may administer the necessary oaths to any persons, appointed by the judge of probate, to appraise or divide any real estate, to set off dower, or to perform any other service, respecting the property of persons deceased; a certificate of which oaths shall be returned into the probate office, from which the commission or warrant issued.

Town clerk pro tempore, when chosen. 1829, 54, § 1.

SECT. 49. Whenever at any town meeting, there shall be a vacancy in the office of town clerk, or the said clerk shall not be present, the selectmen shall call upon the qualified voters present, to elect a town clerk pro tempore, in like manner as town clerks are by law chosen; and the selectmen shall sort and count the votes, and declare the election of such clerk, who shall be under oath to discharge all the duties of said office at such meeting; and he shall be subject to the like penalties for not discharging them, as town clerks are in the like cases.

In case of death, &c., the selectmen may appoint a clerk. 1829, 54, § 2.

SECT. 50. Whenever any other duties, than those mentioned in the preceding section, shall be required to be performed by the town clerk, and, by reason of death, removal, sickness, or other cause, there shall be a vacancy in such office, or such clerk shall be prevented from performing the duties thereof, the selectmen may appoint, in writing under their hands, a clerk for the performance of such duties, who shall be sworn to the faithful discharge of the same.

The clerk pro tempore, to make a record of his election, &c. 1829, 54, § 3.

SECT. 51. Every clerk, so elected or appointed pro tempore, shall, immediately after entering upon the duties of his office, make a record of such election or appointment upon the town records.

SELECTMEN.

Selectmen, to be assessors and overseers of the poor, in case, &c. 1785, 50, § 2. 1785, 75, § 2.

SECT. 52. The selectmen shall be assessors of taxes and overseers of the poor, in towns where other persons shall not be specially chosen to those offices, respectively, by the inhabitants.

SECT. 53. When the selectmen shall be assessors, they shall take the assessors' oath, as provided in this chapter.

When selectmen are assessors, to be sworn as such. 1785, 50, § 1.

SECT. 54. Every person, elected to the office of selectman of any town, who shall enter upon the performance of the duties of his office before taking the oath of office, shall forfeit to the use of his town, a sum not exceeding one hundred dollars for each offence.

Selectmen to be under oath. Penalty for acting if not under oath. 1835, 105.

ASSESSORS OF TAXES.

SECT. 55. The assessors' oath of office shall be in substance as follows:

Assessor's oath. 1785, 50, § 5.

You, being chosen assessors, or an assessor, for the town of for the year ensuing, do swear, that you will impartially, according to your best skill and judgment, assess and apportion all such taxes, as you may, during that time, be directed to assess, and that you will faithfully discharge all other duties of said office.

SECT. 56. In all towns, where assistant assessors are or may be chosen, they shall, in their respective wards or districts, assist the assessors, in taking a list of the ratable polls, in estimating the value of the real and personal estate, in said wards or districts, and in making out lists of persons, qualified to vote at elections in said towns; and they shall be sworn to the faithful discharge of the duties of that office.

Assistant assessors, to be sworn. 1809, 127.

SECT. 57. If any assessor, after having notice of his election, shall neglect to take the oath of office, he shall forfeit to the use of his town a sum not exceeding fifty dollars, to be recovered by indictment.

Penalty if assessors neglect to take the oath of office. 1785, 50, § 1.

TOWN TREASURER.

SECT. 58. The town treasurer shall receive and take charge of all sums of money belonging to his town; and pay over and account for the same, according to the order of such town, or the officers thereof duly authorized in that behalf; and he shall give bond, in such sum as the selectmen shall require, with sureties to their satisfaction, for the faithful discharge of the duties of his office.

Town treasurer's duty. To give bond. 11 W. 3. 66. (Col. & Prov. L. 341.)

SECT. 59. The treasurers of towns may, in their own names and official capacities, prosecute any suits upon bonds, notes, or other securities, given to them or to their predecessors in office.

Town treasurer may sue on bonds, &c., to his predecessors. 1797, 14.

SECT. 60. The inhabitants of any town may, at any meeting, appoint their treasurer collector of taxes; and he may then appoint, under him, such deputies as may be necessary, who shall give such bonds for the faithful discharge of their duty, as the selectmen shall think proper; and the said collector and his deputies shall have the same powers, as are vested in collectors of taxes.

The treasurer may be collector of taxes. 1815, 130, § 1.

SECT. 61. Any town treasurer, being appointed collector, may issue his warrant to the sheriff of the county, or his deputy, or to any constable of the same town, directing them to distrain the property or take the body of any person, who may be delinquent in the payment of taxes, and to proceed therein, in like manner, as collectors are required to do, in the like cases, by the provisions of the eighth chapter.

His power and duty as collector. 1817, 69.

SECT. 62. The treasurers of towns shall prosecute for trespasses, committed on any public building or inclosure, belonging to their towns; and when any public building is owned partly by the town and partly by the county, such prosecution may be instituted, either by the treasurer of the town or of the county, whichever shall first prosecute therefor.

Town treasurer to prosecute for trespasses on public property. 1785, 28, § 4.

—to prosecute for all forfeitures, except, &c.
11 Will. 3, 66.

SECT. 63. The treasurers of towns, in all cases, where no other provision is specially made, shall prosecute for all fines and forfeitures, which may enure to the use of their towns, or of the poor thereof.

—to render his accounts annually.
11 Will. 3, 66.

SECT. 64. Every town treasurer shall annually render a true account of all his receipts and payments, and other official doings, to the town.

His compensation.
11 Will. 3, 66.

SECT. 65. The compensation of the town treasurer for his services shall be determined by the town.

CONSTABLES.

Penalty for refusing to serve as constable.
1785, 75, § 3.

SECT. 66. Any person, chosen to the office of constable, not being exempted from serving therein, and being able in person to execute the same, who shall refuse to take the oath and to serve in such office, shall forfeit to the use of the town the sum of twenty dollars.

If person elected constable shall not declare his acceptance, &c., a new choice to be made.
1785, 75, § 3.

SECT. 67. Every person, chosen to the office of constable, shall, if present, forthwith declare his acceptance or refusal of the same; and in case he shall not declare his acceptance, the town shall proceed to a new election, until some one shall accept the office and take the oath.

If he refuses to take the oath, town treasurer shall prosecute.
1785, 75, § 3.

SECT. 68. Any person, who shall be present in town meeting, and declare his refusal to serve in the office of constable, or who shall neglect, for the space of seven days, after being summoned to take the oath of office, and shall not pay the fine aforesaid, shall be prosecuted therefor by the treasurer of such town.

Persons exempted from being constables.
1785, 75, § 3.

SECT. 69. No person, who is in commission for any office of this state or of the United States, or who is a minister of the gospel, or a member of the council, senate or house of representatives, or who has been a constable or collector of taxes of any town, within seven years next preceding, shall be obliged to accept the office of constable.

Constables to execute warrants of selectmen.
1785, 75, § 2.

SECT. 70. Constables shall serve all warrants and other processes, lawfully directed to them by the selectmen of their town, for notifying town meetings or for other purposes.

—may serve writs in personal actions where damages do not exceed $70.
1795, 41, § 3.

SECT. 71. Any constable may serve, within his own town, any writ or other process, in any personal action, in which the damages shall not be laid at a greater sum than seventy dollars.

—may serve writs where their towns, &c. are parties.
1817, 13.

SECT. 72. Any constable may serve any such writ or process, as described in the preceding section, and any warrant or other process in criminal cases, in which his town, parish, or religious society or school district is a party or interested.

—may serve writs of replevin on sheriffs.
1780, 26, § 1.

SECT. 73. Constables may also serve writs of replevin, in cases where the sheriff or his deputy shall be a party, and in which the value of the property, to be replevied, shall not exceed the sum of seventy dollars.

—may serve process in unincorporated places, annexed, &c.
1830, 127.

SECT. 74. When any unincorporated place is annexed to any town for the purpose of taxation, the constables of such town shall have and exercise, in such unincorporated place, the same powers as if the same were a part of their town.

—may convey persons and

SECT. 75. Every constable may, in the execution of a warrant

ing the Lord's day. 1791, 58, § 10.

and inform of all offences against the provisions of law respecting the observance of the Lord's day.

THE CITY OF BOSTON.

Special provision respecting the municipal powers and duties of the city of Boston. 1821, 110.

SECT. 86. The city of Boston shall continue to have and exercise all the powers and privileges, and be subject to all the duties and liabilities, mentioned in the act establishing the city of Boston, and in the several acts specially relating to said city.

THE DISTRICT OF MARSHPEE.

Provisions for the district of Marshpee. 1834, 166.

SECT. 87. All that tract of land in the county of Barnstable, known as the plantation of Marshpee, excepting such parts thereof as are now for the purpose of taxation or otherwise, annexed to the towns of Falmouth and Sandwich, shall continue to be a district, with all the powers and privileges, and subject to all the duties and liabilities, mentioned in the act establishing the said district, and any acts specially relating to the same.

CHAPTER 16.

OF WORK HOUSES IN TOWNS.

SECTION
1. Towns may provide work houses—persons who may be committed thereto.
2. Directors, masters, &c., of work houses.
3. Overseers of poor to be directors, in case.
4. Meetings of directors.
5. Towns may join in providing a work house in common.
6. Joint board of directors of such houses.
7. Each town, to choose three of the directors.
8. If any town neglects to choose directors, the others to take the whole charge.
9. Quarterly and other meetings of the directors.
10. Board may choose moderator and clerk.
11. " may make by-laws, &c.
12. " may allow compensation to the master and assistants.
13. Compensation to master, &c., to be paid by the towns interested.
SECTION
14. Remedy against towns neglecting to pay.
15. Towns not to send more than their proportion, in case.
16. Any town refusing to contribute to expenses, shall not use the work house.
17. Each town may furnish materials, &c., for the persons committed by its authority.
18. Masters to keep a register of persons committed, &c.
19. Controversies between the master and the overseers, how determined.
20. How persons duly committed may be discharged.
21. Persons committed, to be employed—discipline.
22. Provision respecting foreigners committed.
23. Profits and earnings, how to be appropriated.
24. Work houses may be discontinued.
25. Construction of this chapter.

Towns may provide work houses. Persons, who may be committed thereto.

SECTION 1. Any town may erect or provide a work house, for the employment and support of the following description of persons, that is to say; all poor and indigent persons that are maintained by,

or receive alms from the town; all persons, who, being able of body to work, and not having estate or means otherwise to maintain themselves, refuse or neglect to work; all persons, who live a dissolute, vagrant life, and exercise no ordinary calling or lawful business; and all such persons, as spend their time and property in public houses, to the neglect of their proper business, or, by otherwise mispending what they earn, to the empoverishment of themselves and their families, are likely to become chargeable to the town or to the Commonwealth. 1788, 30, § 7.

SECT. 2. Every town, which has provided, or shall provide, a work house, may, at their annual meeting, choose three, five, seven, or more directors of such work house, who shall have the inspection and government thereof, with power to appoint a master and all necessary assistants, for the more immediate care and superintendence of the persons received or employed therein. Directors of work house, master, &c. 1788, 30, § 1.

SECT. 3. In all towns, where such directors of the work house shall not be specially chosen, the overseers of the poor shall be the directors thereof. Overseers of poor to be directors, in case.

SECT. 4. The said directors, once in every month, and at other times, as occasion may require, shall hold meetings, for the purpose of determining the most eligible mode of discharging the duties of their office; and, at their monthly meetings, they may make all needful orders and regulations, for the house under their charge; and such orders and regulations shall be binding until the next town meeting, and shall be submitted to such meeting, for the consideration of the inhabitants, and, if approved by them, the said orders shall remain in force until revoked by the town. Meetings of directors. 1788, 30, § 1.

SECT. 5. Any number of towns, that shall so agree, may, at their joint charge and for their common use, erect or provide a work house, for the purposes before mentioned in this chapter, and may purchase land for the use of such house. Towns may join in providing a work house in common. 1788, 30, § 2.

SECT. 6. The ordering, governing, and repairing of any work house, erected or provided at the joint expense of two or more towns, and the appointing of a master and necessary assistants, as well as the power of removing them from their respective offices and trusts for misconduct, incapacity, or other sufficient cause, shall be vested in a joint board of directors, who shall, from year to year, be specially chosen by the several towns, at their annual meeting. Joint board of directors of such houses. 1788, 30, § 2.

SECT. 7. Each of the towns, jointly interested in any work house, shall choose three members of the board of directors, provided for in the preceding section, unless all the towns so interested shall agree to choose a different number; and, in case of the death of any such director, or of his removal from the town for which he was chosen, the vacancy may be supplied by such town at any legal meeting. Each town to choose three of the directors. 1788, 30, § 2.

SECT. 8. If any of the towns, jointly interested in any work house, shall neglect to choose their directors for said board, the directors, chosen by the other towns interested therein, shall have the whole charge of said house. If any town neglect to choose directors, the others to take whole charge. 1788, 30, § 2.

SECT. 9. There shall be stated quarterly meetings of said joint board of directors, on the first Tuesday of the months of January, April, July, and October, to be held at the work house under their charge, for the purpose of inspecting the management and directing Quarterly and other meetings of the directors. 1788, 30, § 3.

the business thereof; and meetings of the board may be called at any other time, by the overseers of the poor of any town interested in such house; they giving notice of the time and occasion thereof to the other members of the board, in such manner as shall have been agreed upon, at any stated meeting thereof.

Board may choose moderator and clerk. 1788, 30, § 3.

SECT. 10. The said joint board of directors, when duly assembled, may choose a moderator; and, at their first general meeting, after their election, they shall appoint a clerk, who shall be sworn to the faithful discharge of his trust, and shall record all votes and orders of the said board.

— may make by-laws, &c. 1788, 30, § 4.

SECT. 11. The said joint board of directors, at any general quarterly meeting, provided one half at least of all the members are present, shall have authority to make all reasonable orders and by-laws, not repugnant to the laws of the Commonwealth, for the ordering and regulating the work house under their charge.

— may allow compensation to the master and assistants. 1788, 30, § 4.

SECT. 12. The said joint board of directors may also, at any such quarterly meeting, agree with the master and assistants, and order a suitable compensation for their services; but all other matters, relating to any such work house, may be acted upon at any other meeting duly notified, provided one third of the whole number of the board are present; the doings of such last mentioned meetings being subject, however, to be altered or revised at any general stated meeting.

Compensation to master, &c., to be paid by the towns interested. 1788, 30, § 5.

SECT. 13. The yearly compensation of the master and assistants in any work house, jointly provided as aforesaid, (in addition to the allowance hereafter provided in this chapter for their services,) and also the expense of keeping the house in repair, shall be paid by the several towns interested, in proportion to their state tax, at the time when the expense may have been incurred, or in such other proportion, as all the towns interested shall agree upon.

Remedy against towns neglecting to pay. 1788, 30, § 5.

SECT. 14. If any town shall refuse or neglect to advance or reimburse its proportion of the sums of money, mentioned in the preceding section, or of any other charges mentioned in this chapter, after the same shall have been adjusted by the joint board of directors, the same may be recovered of such delinquent town, in an action to be brought by any person, whom the said board shall in writing appoint for that purpose.

Towns not to send more than their proportion, in case. 1788, 30, § 6.

SECT. 15. No greater number of persons, belonging to any town, shall be received into a work house, jointly provided as aforesaid, than such town's proportion of such house, when the receiving of them will exclude or be inconvenient to such as belong to the other towns interested.

Any town refusing to contribute to expenses, shall not use the house. 1788, 30, § 8.

SECT. 16. If any town, jointly interested in any work house, shall refuse or neglect to provide its proportion of the necessary expenses of such house, or of the materials, implements, or other means of performing the work there required, according to its agreement, or to the directions of the said joint board of directors, such town shall be deprived of the privilege of sending any person thither, for so long time as it shall neglect or refuse to make such provision.

Each town may furnish materials, &c., for the persons committed by its authority.

SECT. 17. In addition to the proportion of expenses and other things, mentioned in the preceding section, to be furnished jointly by any towns, each of such towns may furnish such other materials, and implements and means of work, as the overseers of the poor of such

CHAPTER 17.

OF KEEPING WATCH AND WARD IN TOWNS.

SECTION
1. Persons who shall be liable to watch, &c.
2. " exempted.
3. Selectmen, to order a watch, unless, &c.
4. Power and duties of watchmen.
5. Watchmen, to walk the rounds.
6. Constable, to carry his badge of office.
7. Expense of watch, otherwise kept, to be defrayed by towns.
8. Towns may determine number, qualifications, &c., of watch.
9. Penalty for refusing to watch.
10. " for neglect in the officer of the watch.
11. When the selectmen, &c. inspect, &c., they may require attendance of watchmen, &c.

Persons who shall be liable to watch, &c.

SECTION 1. Every male person of the age of eighteen years or upwards, being able of body, or having estate sufficient to hire a substitute, and who is not exempted by the provisions of the following section, shall, when duly warned, be liable to watch and ward in his town, either personally or by a sufficient substitute.

Persons exempted. 1796, 82, § 1.

SECT. 2. The justices of the peace, the selectmen of the town, the sheriff of the county, the settled ministers of the gospel in the town, and all persons living more than two miles from the place, where the watch or ward is kept, shall be exempted from the duties required by the preceding section.

Selectmen to order a watch, unless, &c. 1796, 82, § 2.

SECT. 3. When a military watch shall not be appointed to be kept, the selectmen of each town shall have power, from time to time, to order a suitable watch to be kept nightly, within their town, from such hour in the evening as they shall appoint, until sun rising in the morning; and also a guard to be kept in the day time and evening, when they shall think such watch or guard necessary; and they may direct the number of persons, of which the watch or guard shall consist, the places and the hours for keeping the same; and they may give orders in writing, accordingly, directed to any constable of the town, requiring him from time to time to warn such watch or guard, and to see that all persons so warned do attend, and perform their duty in such manner as shall be required; and in the warning thereof, care shall be taken, by the said selectmen, that some able householders, or other sufficient persons, be joined in each watch or guard.

Power and duties of watchmen. 1796, 82, § 2

SECT. 4. The constable or selectmen shall charge the watch to see that all disturbances and disorders in the night be prevented and suppressed; and, for that purpose, the watch shall have authority 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 design, and to demand of them their business abroad at such time, and whither they are going; to enter any houses of ill fame, for the purpose of suppressing any riot or disturbance therein, and to arrest any persons there found, making or aiding and abetting in such riot or disturbance; and all persons, so walking abroad and suspected of any unlawful design, as aforesaid, who shall not give a satisfac-

SECTION
buildings to be pulled down, &c.
5. Firewards, selectmen &c., may command assistance.
6. " selectmen, &c., may give orders to enginemen and others, &c.
7. Owners of buildings pulled down, to be indemnified, except, &c.
8. Embezzling, &c., of property, at a fire, to be deemed larceny.

ENGINEMEN.

9. Selectmen, to appoint enginemen.
10. Number of enginemen to each engine.
11. Axe-men, &c., to be appointed.
12. Annual meeting of enginemen in May —rules may be made and penalties annexed.
13. Meetings of engine companies.
14. Selectmen to appoint enginemen to private engines.
15. If selectmen refuse to appoint enginemen, commissioners may appoint.
16. Enginemen, to live near the engines.
17. " exempted from certain duties.
18. If enginemen are remiss, they may be discharged.
19. Enginemen, who have served one year, to have an allowance equal to their poll tax.
20. Chief engineer, &c., to certify to assessors—assessors shall examine and certify lists—treasurers shall pay—remedy.
21. Penalty for refusing certificate, &c., or making a false one.
22. The three preceding sections, not to apply, unless adopted by towns.
23. Penalty for injuring fire engines.

EXTINGUISHMENT OF FIRES.

Firewards, to be chosen at the annual meeting. 1796, 88, § 1.

SECTION 1. The inhabitants of each town, at their annual meeting, may elect such a number of suitable persons, to be firewards therein, as shall be deemed necessary.

Penalty for not accepting or refusing. 1796, 88, § 1.

SECT. 2. Each person so elected shall have notice thereof forthwith, and shall, within three days after such notice, enter with the town clerk his acceptance or refusal of the said office; and if any person, after such notice, shall neglect to enter his acceptance or refusal as aforesaid, he shall, unless excused by the town, forfeit the sum of ten dollars, and the town may elect another in his place.

Firewards, shall attend at fires. 1796, 88, § 2.

SECT. 3. When a fire shall break out in any town, it shall be the duty of the firewards immediately to repair to the place of such fire, and to carry with them a suitable staff or badge of their office.

Firewards, selectmen, &c., may order buildings to be pulled down, &c. 1796, 88, § 2.

SECT. 4. The firewards, who shall be present at the place in immediate danger from any fire, or any three of them, and, where no firewards are appointed, the selectmen present, or in their absence, two or more of the civil officers present, or, in their absence, two or more of the chief military officers of said town present, shall have power, to direct the pulling down or demolishing of any such house or building, as they shall judge necessary to be pulled down or demolished, in order to prevent the further spreading of the fire.

Firewards, selectmen, &c., may command assistance. 1796, 88, § 2.

SECT. 5. During the continuance of any fire, the said firewards or other officers, respectively, may require assistance for extinguishing the same, and for removing any furniture, goods or merchandize from any building on fire or in danger thereof; and may appoint guards to secure the same; and may also require assistance, for pulling down or demolishing any house or building, when they shall judge it necessary; and may suppress all tumults and disorders at such fire.

Firewards, selectmen, &c.,

SECT. 6. The said firewards, selectmen, or other officers, shall have authority to direct and appoint the stations and operations of the enginemen, with their engines, and of all other persons, for the pur-

pose of extinguishing the fire; and if any person shall refuse or neglect to obey any such orders, he shall forfeit, for each offence, a sum not exceeding ten dollars.

may give orders to enginemen, and others, &c. 1796, 88, § 2.

SECT. 7. In case the pulling down or demolishing of any house or building, by directions of the firewards or other officers aforesaid, shall be the means of stopping the said fire; or if the fire shall stop before it come to the same, then every owner of such house or building shall be entitled to recover a reasonable compensation therefor from the town; but when the building, so pulled down or demolished, shall be that in which the fire first began and broke out, the owner thereof shall receive no compensation therefor.

Owners of buildings, &c. pulled down, to be indemnified, except, &c. 1796, 88, § 3.

SECT. 8. In any such case of fire, if any person shall purloin, embezzle, convey away, or conceal any furniture, goods or chattels, merchandize or effects of the inhabitants, whose houses or buildings shall be on fire or endangered thereby, and shall not, within two days, restore or give notice thereof to the owner, if known, or, if unknown, to one of the firewards or selectmen of the town, the person so offending shall be deemed guilty of larceny and be punished therefor, as is provided in such case in the one hundred and twenty sixth chapter.

Embezzling, &c., of property, at a fire, to be deemed larceny. 1796, 88, § 4.

ENGINEMEN.

SECT. 9. The selectmen of such towns, as are or may be provided with one or more fire engines, shall, if they judge it expedient, appoint a number of suitable persons, as provided in this chapter, for enginemen; who shall continue in said office during the pleasure of the selectmen.

Selectmen, to appoint enginemen. 1785, 42, § 1. 1805 82.

SECT. 10. The public fire engines in the several towns shall be manned by the number of persons and in the manner here following: to each common fire engine, there shall be appointed a number not exceeding thirty men; and to each hydraulion, or suction fire engine, a number not exceeding forty five men; and whenever said suction engines shall be suffered to go out of repair, and be used as common engines only, the said number of forty five men shall be reduced to the number of thirty; but this provision shall not affect the right, now existing in any city or town, to have a greater number of enginemen appointed, than is herein prescribed.

Number of enginemen to each engine. 1834, 50.

SECT. 11. The selectmen may, in their discretion, select from the enginemen, any number for each engine in their respective towns, whose duty it shall be, under the direction of the firewards, to attend fires with axes, fire-hooks, fire-sails and ladders, and to do such further duty, as the said selectmen shall from time to time prescribe; and they shall be entitled to all the exemptions and privileges contained in this chapter.

Axe-men, &c., to be appointed. 1805, 82, § 3.

SECT. 12. The enginemen of each engine shall meet in the month of May annually; and, at such meeting, shall choose a foreman, or director, and a clerk of the said engine, and establish such rules and regulations, respecting their duty as enginemen, as shall be approved by the selectmen, and shall not be repugnant to the laws of the Commonwealth; and they shall annex penalties thereto, not exceeding ten dollars, which may be recovered by the clerk of said enginemen.

Annual meeting of enginemen in May. Rules may be made and penalties annexed. 1785, 42, § 1.

SECT. 13. The respective companies of enginemen, nominated and appointed as aforesaid, shall meet together once a month, and of-

Meetings of engine companies. 1785, 42, § 2.

tener, if necessary, for the purpose of examining the state of the engine, to which they belong, and the appendages of the same, and to see that the said engine is in good repair, and ready for use; and the said enginemen shall, by night and by day, under the direction of the firewards, use their best endeavors to extinguish, without delay, any fire, that may happen in the same town or the vicinity thereof.

Selectmen to appoint enginemen to private engines. 1785, 42, § 3.

SECT. 14. Whenever the proprietors of any engine shall apply to the selectmen of a town, in which the said engine is owned, setting forth that they are desirous that the same should be employed for the benefit of the town, the selectmen may appoint enginemen in the same manner, with the same privileges, and subject to the same regulations, as in the case of engines belonging to the town; and in case the said proprietors shall not agree upon the place, in which such engine shall be kept, such place shall be determined by the selectmen.

If selectmen refuse, commissioners may appoint. 1824, 120, § 1.

SECT. 15. If the selectmen, when applied to as provided in the preceding section, shall refuse or delay, for the space of fourteen days, to appoint enginemen for any such engine, the said proprietors may apply therefor in writing to the county commissioners of their county; giving notice in writing to said selectmen, seven days at least before the sitting of said commissioners, that the aforesaid selectmen may appear and show cause, if any they have, why said enginemen should not be appointed; and if sufficient cause should not be shown by said selectmen, the said commissioners may appoint such a number of enginemen, as is directed in this chapter, for each public engine.

Enginemen, to live near the engines. 1824, 120, § 2.

SECT. 16. The enginemen, appointed as provided in the two preceding sections, shall, if such can be obtained, be persons, who live at or near the place where the engine is kept; and said enginemen shall enjoy all the privileges and exemptions, to which other enginemen are, or may hereafter be, by law entitled.

Enginemen exempted from certain duties. 1785, 42, § 4. 1808, 25. 1809, 108, § 2.

SECT. 17. All enginemen shall be exempted from ordinary military duty, and from serving, as jurors or constables, during the time they may be employed in the service aforesaid.

If enginemen are remiss, they may be discharged. 1785, 42, § 5.

SECT. 18. If any engineman shall, in the opinion of the selectmen, be negligent in the duties required of him, the selectmen shall, upon sufficient evidence thereof, discharge him and appoint another engineman in his stead.

Enginemen who have served one year, to have an allowance equal to their poll tax. 1834, 50, § 2.

SECT. 19. All persons duly appointed enginemen for any fire engine, and all persons, duly appointed members of the fire department established in any town, and who shall have done duty as such, for the space of one year preceding the first day of May, in each year, shall be entitled to receive, from the treasurers of their respective towns, a sum equal to the poll tax to the state, county and towns (exclusive of highway taxes), which may have been paid by such persons, or by their parents, masters, or guardians.

Chief engineer, &c. to certify to assessors.

SECT. 20. The chief engineer, or the officer, who holds by law the first office in any fire department, established as aforesaid, and the foreman or commanding officer of each fire engine, in any town, where no fire department is established by law, on or before the first day of May, in each year, shall make out and certify, to the assessors of their respective towns, a list of all persons in their department

and companies respectively, who, through the year preceding, have performed all the duties therein required by law; and the assessors shall, within ten days thereafter, examine said lists, and certify to the treasurers of their respective towns the amount to be paid to each person named therein; and the said treasurers shall, after deducting all taxes due from the persons so named, pay the same to them, or, if minors, to their parents, masters, or guardians; and, upon refusal of the treasurer to pay, the persons entitled may severally have an action for money had and received, to recover the same from such towns; but no town shall be liable as aforesaid, unless the list above prescribed shall have been duly certified and returned to the assessors of such town, in the manner aforesaid.

Assessors shall examine and certify lists.

Treasurers shall pay.

Remedy. 1834, 50, § 2.

SECT. 21. If any chief engineer or other officer, required to make a certificate to the assessors, as provided in the preceding section, shall wilfully refuse to make such certificate, he shall forfeit, to the use of each person, whose name ought to have been so certified, a sum not exceeding five dollars; and if such engineer or other officer shall make a false certificate in such case, he shall forfeit to the use of the town a sum not exceeding fifty dollars nor less than twenty dollars.

Penalty for refusing certificate, &c. or making a false one. 1834, 50, § 3.

SECT. 22. The provisions of the three preceding sections shall not take effect in any town or city, until the same shall be adopted and approved by the town, at their annual town meeting, or by the city council of such city; and when such approval shall be revoked by the town, at any annual meeting, or by the said city council, the said provisions shall cease to have effect in such town or city, respectively.

The three preceding sections, not to apply unless adopted by towns.

SECT. 23. If any person shall wantonly or maliciously break or injure any fire engine, or the apparatus thereto belonging, he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding two years, and be further ordered to recognize, with sufficient surety or sureties, for his good behavior, during such term of time as the court shall order.

Penalty for injuring fire engines. 1801, 29.

CHAPTER 19.

OF FENCES, AND FENCE VIEWERS; OF POUNDS, AND THE IMPOUNDING OF CATTLE; AND OF FIELD DRIVERS.

SECTION

FENCES.

1. What shall be a legal fence.
2. Adjoining occupants shall maintain partition fences equally.
3. Proceedings when a party neglects, &c.
4. Remedy against adjoining owner, &c., for repairing, &c., his deficient fence.
5. Controversies between parties about repairing, &c., how determined.
6. Double damages, in case, &c.
7. Fence viewers may order compensation for repairing more than a just share.
8. Partition fences, how to be kept.
9. " " how and where made, when lands are bounded by water.

SECTION
10. Where lands have been improved without partition fences, a division may be made.
11. When one party lays open enclosed lands, the other may purchase a right in partition fence.
12. Where unimproved lands are afterwards enclosed, &c., the party benefitted shall pay, &c.
13. Fence viewers, whence taken, when partition fences are on town lines.
14. Where a water fence shall be necessary, how made.
15. All fences to be maintained according to agreements of parties or assignments of fence-viewers, but one party may lay his lands common by giving notice.

SECTION
FENCE VIEWERS.
16. Fence viewers, to be chosen by towns.
17. Penalty for fence viewers' neglect of duty.
18. Fees of fence viewers—how recovered.
POUNDS, AND IMPOUNDING OF CATTLE; FIELD DRIVERS.
19. Pounds, to be provided by each town.
20. Penalty for neglect.
21. Pound keeper to be appointed.
22. Field drivers duty, to take up cattle, &c.—when cattle go at large on the Lord's day, &c.
23. Rams and he goats, when not to go at large.
24. Penalty for injuring pounds.

FENCES.

What shall be a legal fence. 1785, 52, § 2.

SECTION 1. All fences, four feet high and in good repair, consisting of rails, timber, boards, or stone walls, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things which shall be considered equivalent thereto, in the judgment of the fence viewers, within whose jurisdiction the same shall lie, shall be deemed legal and sufficient fences.

Adjoining occupants shall maintain partition fences equally. 1785, 52, § 2.

SECT. 2. The respective occupants of lands, enclosed with fences, shall keep up and maintain partition fences, between their own and the next adjoining enclosures, in equal shares, so long as both parties continue to improve the same.

Proceedings when a party neglects, &c. 1785, 52, § 2.

SECT. 3. In case any party shall neglect or refuse to repair or rebuild any partition fence, which, of right, he ought to maintain, the aggrieved party may complain to two or more fence viewers of such town, who, after due notice to each party, shall proceed to survey the same, and if they shall determine that the fence is insufficient, they shall signify the same, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same, within such time as they shall judge reasonable, not exceeding fifteen days; and if the fence shall not be repaired or rebuilt accordingly, it shall be lawful for the complainant to make or repair the deficient fence.

Remedy against adjoining owner, &c. for repairing, &c. his deficient fence. 1785, 52, § 3. 6 Mass. 95. 5 Pick. 503.

SECT. 4. When any deficient fence, built up or repaired by any complainant, as provided in the preceding section, shall be adjudged sufficient, by two or more of the fence viewers, and the value thereof, together with their fees, ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the occupant or owner of the land, where the fence was deficient, double the sum so ascertained; and in case of neglect or refusal to pay the sum so due, for one month after demand made, the complainant may recover the same, with interest at one per cent. a month, in an action for money laid out and expended.

Controversies between parties about repairing, &c. how determined.

SECT. 5. When any controversy shall arise, about the rights of the respective occupants in partition fences, and their obligation to maintain the same, either party may apply to two or more fence viewers of the town where the lands lie, who, after due notice to each party, may in writing assign to each his share thereof, and direct

the time within which each party shall erect or repair his share of the fence, in the manner before provided ; which assignment, being recorded in the town clerk's office, shall be binding upon the parties, and upon all the succeeding occupants of the lands ; and they shall be obliged always thereafter to maintain their respective parts of said fence.

Double damages, in case, &c. 1785, 52, § 3.

SECT. 6. In case any party shall refuse or neglect to erect and maintain the part of any fence, assigned to him by the fence viewers, the same may be erected and maintained by any aggrieved party, in the manner before provided ; and he shall be entitled to double the value thereof, ascertained in manner aforesaid, and to be recovered in like manner.

Fence viewers may order compensation for repairing more than a just share.

SECT. 7. When, in any controversy, that shall arise between adjoining occupants, as to their respective rights in any partition fence, it shall appear to the fence viewers, that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay, for so much as may be assigned to him to repair or maintain, the value thereof to be ascertained and recovered in the manner provided in this chapter.

Partition fences, how to be kept. 1785, 52, § 3.

SECT. 8. All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides shall otherwise agree.

—how and where made, when lands are bounded by water. 1785, 52, § 4.

SECT. 9. When lands of different persons, which are required to be fenced, are bounded upon or divided from each other, by any river, brook, pond or creek, which, of itself, in the judgment of the fence viewers, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is, if, in such case, the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence, on the one side or the other, or shall disagree respecting the same, then two or more fence viewers of the town or towns, wherein such lands lie, on application to them made, shall forthwith view such river, brook, pond or creek ; and, if they shall determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence on the true boundary line, they shall, after giving notice to the parties to be present, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on the one side and partly on the other side, as to them shall appear just, and shall reduce such their determination to writing ; and if either of the parties shall refuse or neglect to make and maintain his part of the fence, according to the determination of the fence viewers, the same may be made and maintained, as is before provided in this chapter, and the delinquent party shall be subject to the same costs and charges, to be recovered in like manner.

Where lands have been improved without partition fences, a division may be made. 1785, 52, § 5.

SECT. 10. When any lands, belonging to two persons in severalty, shall have been occupied in common, without a partition fence between them, and one of the occupants shall be desirous to occupy his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide the linew here the fence ought to be built, or to build a sufficient fence on his part of the line, when divided, the party

desiring it may have the same divided and assigned, by two or more fence viewers of the same town, in the manner provided in this chapter; and the fence viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making the fence; and if the occupant complained of shall not make his part of the fence, within the time so assigned, the other party may, after having made up his own part of the fence, make up the part of the other, and recover therefor double the expense thereof, together with the fees of the fence viewers, in the manner provided in this chapter.

When one party lays open enclosed lands, the other may purchase a right in partition fence. 1785, 52, § 6.

SECT. 11. When one party shall cease to improve his land, or shall lay open his enclosure, he shall not take away any part of the partition fence belonging to him, and adjoining to the next enclosure, provided the owner or occupant thereof will allow and pay therefor so much as two or more fence viewers shall, in writing, determine to be the reasonable value of such partition fence.

Where unimproved lands are afterwards enclosed, &c., the party benefitted shall pay, &c. 1785, 52, § 6.

SECT. 12. Whenever any land, which has lain unenclosed, shall be afterwards enclosed, or shall be used for depasturing, the occupant or owner thereof shall pay, for one half of each partition fence, standing upon the line between the same land and the land of the enclosures of any other occupant or owner, the value thereof, to be ascertained, in writing, (in case they shall not agree between themselves,) by two or more of the fence viewers of the same town, wherein such partition fence stands; and in case such occupant or owner, after the value has been so ascertained, shall neglect or refuse, for thirty days after demand made, to pay for one half of the partition fence, the proprietor of the fence may maintain, in form aforesaid, an action for such value, and the costs of ascertaining the same.

Fence viewers, whence taken when partition fences are on town lines. 1785, 52, § 6.

SECT. 13. In all cases, where the line, upon which a partition fence is to be made or to be divided, is the boundary line of one or more towns, or partly in one town and partly in another town, a fence viewer shall be taken from each town.

Where a water fence shall be necessary, how made.

SECT. 14. When a water fence, or fence running into the water, is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and, in case either party shall refuse or neglect to make or maintain the share to him belonging, similar proceedings shall be had, as in other cases of the like kind, respecting other fences before mentioned.

All fences to be maintained conformably to agreement of parties or assignment of fence viewers.

SECT. 15. In all cases, where a division of fence, between the owners of improved lands, has been or shall be made, either by fence viewers, or by an agreement in writing between the parties, recorded in the office of the clerk of the town, wherein such lands are situate, the several owners of such lands, and their heirs and assigns, forever, shall erect and support said fences, agreeably to such division; provided, that if any person shall lay his lands common, and determine not to improve any part of the same, adjoining the fence that may have been divided as aforesaid, and shall give six months' notice of his determination to all the adjoining occupants of lands, he shall not be required to keep up or support said fence, during the time that his lands shall so lie common and unimproved.

But one party may lay his lands common by giving notice. 1822, 60.

FENCE VIEWERS.

SECT. 16. The inhabitants of every town shall, at their annual meeting, choose two or more suitable persons to be fence viewers, as provided in the fifteenth chapter.

Fence viewers to be chosen by towns. 1785, 52, § 1.

SECT. 17. Any fence viewer, duly chosen and sworn, who shall, when requested, unreasonably neglect to view any fence, or to perform any other duties, required of him in this chapter, shall forfeit the sum of five dollars to the use of the town, and moreover be liable for all damages to the party injured.

Penalty for fence viewers' neglect of duty. 1785, 52, § 3.

SECT. 18. Each fence viewer shall be paid, by the person employing him, at the rate of one dollar a day, for the time he shall be so employed; and if said person shall neglect to pay the same, within thirty days after the service shall have been performed, each of the fence viewers may recover, in an action of the case, double the amount of such fees; and each of them may be a witness for or against the other.

Fees of fence viewers. 1785, 52, § 8.

How recovered.

POUNDS, AND IMPOUNDING OF CATTLE; FIELD DRIVERS.

SECT. 19. Each town shall, at its own expense, and in such places therein as the inhabitants shall direct, maintain one or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats and neat cattle may be restrained and kept, for the causes mentioned in the one hundred and thirteenth chapter.

Pounds to be provided by each town. 1834, 184, § 1.

SECT. 20. Every town, that shall, for the space of three months, neglect to provide or maintain a sufficient pound, shall forfeit the sum of fifty dollars, to the use of the county in which such town is situated.

Penalty for neglect. 1834, 104, § 1.

SECT. 21. Each town shall annually appoint a suitable person to be the keeper of each pound therein.

Pound keeper to be appointed. 1834, 184, § 4.

SECT. 22. Every field driver, within his town, shall take up, at any time, any swine, sheep, horses, asses, mules, goats or neat cattle, going at large in the public highways, or town ways, or on common and unimproved lands, and not under the care of a keeper; and he shall restrain them in any pound in such town, according to the provisions of the one hundred and thirteenth chapter; and, for any such cattle or beasts, so going at large on the Lord's day, the field driver or any other inhabitant of the town may recover, by an action of debt, for each beast, the same amount of fees, which the field driver is entitled to receive for the like beasts, when distrained and impounded.

Field drivers' duty, to take up cattle, &c.

When cattle go at large on the Lord's day, &c. 1834, 134, § 4.

SECT. 23. If the owner of any ram or he goat shall suffer them to go at large out of his enclosure, between the first day of July and the twenty fifth day of December, annually, he shall forfeit the sum of five dollars for each offence; to be recovered on complaint before any justice of the peace of the county, in which such owner lives; provided, that such complaint shall be prosecuted within thirty days next after such ram or he goat shall be found going at large as aforesaid.

Rams and he goats, when not to go at large. 1824, 98, § 2.

SECT. 24. If any person shall wilfully injure any pound maintained by any town, he shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the common jail not exceeding ninety days, at the discretion of the court.

Penalty for injuring pounds. 1834, 184, § 8.

TITLE VIII.

CHAPTER 20.

OF PARISHES; AND THE SUPPORT OF PUBLIC WORSHIP.

SECTION
1. Parishes, to be bodies corporate.
2. Rights, &c., of all parishes.
3. Churches to have accustomed privileges, &c.
4. Membership of every religious society to be voluntary.
5. Parishes may regulate admissions by by-laws.
6. Members alone may vote.
7. Annual meeting for choice of officers.
8. Parish meetings, how warned.
9. Who to preside, when moderator is chosen—choice of clerk.
10. Officers, how sworn.
11. Moderator's power and duties—penalties for disorderly conduct in meeting.
12. Persons chosen collectors shall, if present, forthwith accept or refuse.
13. What shall be deemed a refusal.
14. Prudential affairs, by whom managed.
15. Vacancies in office, how filled.
16. Meetings, to be called on application of five or more voters,—contents of warrant.
17. If assessors unreasonably refuse, &c., a justice of the peace may call meetings.
18. Objects for which a parish may raise money.
19. Special acts of incorporation, &c., not to be affected by this chapter.
20. Corporations, not to be taxed.
21. Existing rights of property not impaired.
22. Parishes may appoint attorneys, &c.
23. " may appoint their treasurers collectors—who shall have the power of town collectors.
24. " may abate for prompt payment.
25. Unincorporated societies may hold and manage donations.
26. Parishes and societies may organize themselves, &c.
27. The first meeting, to be called by justice's warrant.
28. Contents of the justice's warrant, and proceedings thereon.
29. Powers, &c., of societies so organized, subject to revocation.
30. Taxes of religious societies, to be assessed on property.
31. Proprietors of churches, &c., may assess money for alterations, repairs, &c.
32. Assessment and collection of such money.
33. Notice when pews are sold by treasurer.
34. Affidavit of notice of sales, made evidence.
35. How proprietors' meetings may be called.
36. Proprietors may take down pews, to alter churches, &c.—proceedings in such case.
37. Parishes and societies, to have the like powers, in such cases.
38. No compensation to pew owners, if church is unfit for use.

DONATIONS AND GRANTS FOR PIOUS AND CHARITABLE USES.

39. Deacons, church wardens, &c., made bodies corporate, to take donations, &c.
40. When the ministers, elders, &c., are joined in such donations.
41. Ministers of all churches may take in succession any parsonage land.
42. No conveyance of church lands valid, without consent of churches, &c.
43. Conveyance by minister, to be valid only during his ministry, unless, &c.
44. Churches, except, &c., may appoint committees to settle with the deacons.
45. Income of such bodies corporate limited.
46. Overseers of monthly meetings of the Friends or Quakers, to hold lands, &c., as a corporation—Income limited.

Parishes, to be bodies corporate.

SECTION 1. Every parish or religious society heretofore established is declared to be a body corporate, with all the powers given to cor-

porations by the forty fourth chapter; and with the other powers, privileges, liabilities and duties, expressed in this chapter. 1786, 10, § 3. 1833, 83.

SECT. 2. All parishes or religious societies, whether corporate or unincorporate, shall continue to have and enjoy their existing rights, privileges, and immunites, except so far as the same may be limited or modified by the provisions of this chapter, and the eleventh article of the amendments of the constitution. Rights, &c. of all parishes. 1834, 183, § 1.

SECT. 3. The respective churches, connected and associated in public worship with such parishes and religious societies, shall continue to have, exercise and enjoy all their accustomed privileges and liberties respecting divine worship, church order and discipline, and shall be encouraged in the peaceable and regular enjoyment and practice thereof. Churches to have accustomed privileges, &c. 16 Mass. 488. 10 Pick. 172. 1834, 183, § 1.

SECT. 4. All persons, belonging to any religious society, shall be taken and held to be members, until they shall file, with the clerk of such society, a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made or entered into by such society; and no person shall hereafter be made a member of any parish or religious society, without his consent in writing. Membership of every religious society to be voluntary. 13 Pick. 111. 17 Mass. 347. 5 Pick. 498. 1834, 183, § 2.

SECT. 5. Every parish and religious society may make by-laws, prescribing the manner in which persons may become members thereof; provided such by-laws be not repugnant to the laws of the Commonwealth. Parishes may regulate admissions by by-laws. 1835, 133, § 3.

SECT. 6. No person shall have a right to vote in the affairs of any parish or religous society, unless he is a member thereof. Members alone may vote. 1817, 77; 1834, 183, §§ 3. 7.

SECT. 7. The qualified voters of every parish and incorporated religious society, and of every religious society organized according to the provisions of this chapter, shall meet in the month of March or April annually, at such time and place as shall be appointed by their assessors or standing committee, and shall choose a clerk, and two or more assessors, a treasurer, collector, who shall be sworn, and such other officers as they shall think necessary; all of whom shall continue in office for one year, and until others are chosen and qualified in their stead. Annual meeting for choice of officers. 1786, 10, § 1.

SECT. 8. All meetings shall be warned in such manner, as the parish or society shall by any by-law or vote provide; and when they shall make no such order, the meetings shall be warned in such manner, as their assessors or standing committee shall, in their warrant for such meeting, direct. Parish meetings, how warned. 7 Greenl. 426. 1807, 63.

SECT. 9. At all such meetings, the clerk shall preside in the choice of a moderator; and, if there is no clerk, or if he is absent, the assessors or the standing committee, or any one of them, shall preside in the choice of a moderator; and a clerk may then be chosen, either pro tempore, or to fill the vacancy, as the case may require. Who to preside when moderator is chosen. Choice of clerk. 1817, 184. 1831, 50. 6 Greenl. 448.

SECT. 10. The moderator may administer the oath of office to the clerk; and the clerk may administer the oath to the assessors and collector; or the said oaths may be administered by any justice of the peace; and they shall all be substantially the same, as are required to be taken by the clerk, assessors, and collectors of towns. Officers, how sworn. 5 Mass. 427. 1786, 10, §§ 1. 2.

SECT. 11. The moderator shall have the same power, in govern- Moderator's

powers and duties.

Penalties for disorderly conduct in meeting. 16 Mass. 385. 1786, 10, § 2.

ing the meeting, that is given to the moderator of a town meeting; and all persons, guilty of disorderly behavior at the meeting of any parish or religious society, shall be subjected to the same penalties and punishments, as are provided for the like offences in town meetings; all the pecuniary penalties to enure to the use of the parish or society, and to be recovered in the manner prescribed in the case of offences at town meetings.

Persons chosen collectors shall, if present, forthwith accept or refuse. 1786, 10, § 1.

SECT. 12. The person chosen collector shall, if present, forthwith declare his acceptance or refusal of the office; and in case of non-acceptance, the parish or society shall proceed to a new choice, and so from time to time, until one shall accept and be sworn.

What shall be deemed a refusal. 1786, 10, § 1.

SECT. 13. Any person so chosen, who shall be present and shall not declare his acceptance of the office of collector, or who shall, for the space of seven days, after being summoned by a constable or any other person, whom the clerk or assessors may appoint for that purpose, neglect to take the oath of office, shall be considered as refusing to accept the office.

Prudential affairs, by whom managed. 1786, 10, § 2.

SECT. 14. The prudential affairs of parishes and religious societies shall be managed by their assessors, or by a standing committee, to be specially appointed for that purpose; and the said assessors or committee shall have like authority, for calling meetings of the parish or society, as selectmen have for calling town meetings.

Vacancies in offices, how filled. 1786, 10, § 2.

SECT. 15. All vacancies, that shall occur after the annual meeting, in any of the annual offices, may be filled at any other legal meeting.

Meetings, to be called on application of five or more voters. Contents of warrant. 1786, 10, § 2. 9 Pick. 97.

SECT. 16. When five or more of the qualified voters of any parish or religious society shall signify, in writing, their desire to have any matter inserted in a warrant for calling a meeting, the assessors or committee shall insert the same in the next warrant they shall issue for that purpose; and nothing acted upon shall have any legal operation, unless the subject matter thereof shall have been inserted in the warrant for calling the meeting.

If assessors unreasonably refuse, &c. a justice of the peace may call meetings, 1786, 10, § 2. 3 Pick. 242.

SECT. 17. In case the assessors or committee of any parish or religious society shall unreasonably refuse to call a meeting, or if there are no assessors or committee qualified to call one, any justice of the peace for the county, upon the application of five or more of the qualified voters, may call a meeting, in the same manner as a justice of the peace is authorized to call a town meeting.

Objects, for which a parish may raise money. 1 Mass. 181. 5 Mass. 547. 10 Pick. 500. 1786, 10, § 3. 1821, 67. 1828, 107. 1834, 183, § 4.

SECT. 18. The qualified voters of every parish and religious society, at the annual meeting, or at any other meeting, regularly notified seven days at least before the holding thereof, may grant and vote such sums of money, as they shall judge necessary for the settlement, maintenance, and support of ministers or public teachers of religion; for the building or repairing of houses of public worship; for sacred music; for the purchase and preservation of burial grounds; and for all other necessary parish charges; all which sums shall be assessed on the polls and estates of all the members of the parish or society, in the same manner and proportion as town taxes are by law assessed.

Special acts of incorporation, &c. not to be affected by this chapter. 1834, 183, § 4.

SECT. 19. Nothing contained in this chapter shall enlarge or diminish the powers of taxation, enjoyed by any parish or religious society, by virtue of any special law or act of incorporation.

SECT. 20. No corporation shall be taxed for any parochial purpose.

Corporations, not to be taxed. 1834, 183, § 4.

SECT. 21. None of the provisions of this chapter shall be construed to impair any existing rights of property of any territorial parish.

Existing rights of property, not impaired.

SECT. 22. The inhabitants of every parish and religious society may, by vote, appoint one or more agents or attorneys to appear for and represent them, in any suit at law and upon any other occasion.

Parishes, &c. may appoint attorneys, &c. 1783, 39, § 4. 1786, 10, § 3.

SECT. 23. Every parish and religious society may appoint their treasurer to be the collector of their taxes; and, when so appointed, he shall have the like powers, and shall proceed in the like manner, in enforcing the collection of such taxes, after the expiration of the time, fixed by the parish or society for the payment thereof, as is provided in the eighth chapter, for the collection of taxes by the collectors of towns.

—may appoint their treasurers collectors, who shall have the power of town collectors. 1826, 77.

SECT. 24. Every parish and religious society may authorize their treasurer and collector to make an abatement of such sum, as they shall agree upon at their annual meeting, to all those who make voluntary payment of their taxes, within such periods as shall be fixed on for that purpose by the parish or society.

—may abate for prompt payment. 1826, 77.

SECT. 25. In case any donation, gift or grant, shall be made to any unincorporated religious society, such society shall have the like power to manage, use, and employ the same, according to the terms and conditions, on which the same may be made, as incorporated societies now have, or may hereafter have, by law; to elect suitable trustees, agents or officers therefor; and to prosecute and sue for any right, which may vest in them, in consequence of such donation, gift or grant; and such society shall be a corporation, so far as may be necessary for the purposes expressed in this section.

Unincorporated societies may hold and manage donations. 1834, 183, § 5.

SECT. 26. Any parish, which, from the want of officers, or any other cause, may be unable to assemble in the usual manner, and any religious society, that is not incorporated, provided they contain respectively ten or more qualified voters, may organize themselves as a corporation, in the manner and for the purposes expressed in the following sections.

Parishes and societies may organize themselves, &c 1834, 183, § 6.

SECT. 27. Any justice of the peace for the county in which such parish or religious society may be, upon application in writing by any five or more of the qualified voters thereof, may issue his warrant for calling a meeting of the same.

The first meeting to be called by justice's warrant. 1834, 183, § 6.

SECT. 28. The warrant shall state the objects of the meeting, and shall be directed to some one of the applicants therefor, requiring him to warn the qualified voters of the parish or society to meet at such time and place, as shall be appointed in the warrant; and, upon due return thereof, the same justice, or any other justice of the peace for the county, may preside at such meeting, for the choice and qualification of a clerk, who shall enter at large, upon the records of the parish or society, the proceedings had in the organization thereof; and the parish or society may thereupon proceed to choose a moderator, and to do all such other things, as parishes are by law authorized to do at their annual meetings; provided the subject matter thereof shall be inserted in said warrant.

Contents of the justice's warrant, and proceedings thereon. 1834, 183, § 6

SECT. 29. Every parish and religious society, organized as pro-

Powers, &c. of

societies so organized.

vided in the three preceding sections, shall become a corporation, and shall have all the powers and privileges, and be subject to all the duties, liabilities and requirements, which incorporated religious societies may, by law, have or be subject to, with power to have and hold so much estate, real or personal, as may be necessary for the objects of such organization, and no more; provided, that all the powers, derived from any such organization, may at any time be revoked by the legislature.

Subject to revocation. 1834, 183, § 7.

Taxes of religious societies, to be assessed on property. 1834, 183, § 8.

SECT. 30. The assessors of every parish and religious society, in assessing taxes for the support of public worship, and for other parish charges, shall assess the same upon all the property, (not exempted by law from taxation,) of all the members of such parish or society, including all their real estate within the state, in whatever part thereof it may be situated, and all their personal estate, wherever the same may be; and no citizen shall be liable to pay any tax for the support of public worship, or for other parish charges, to any parish or religious society, other than to that of which he is a member.

Proprietors of churches, &c. may assess money for alterations, repairs, &c. 1817, 189, § 1.

SECT. 31. Whenever the proprietors of any church, meeting house, or other house of public worship, shall deem it expedient to alter, enlarge, repair, rebuild, or remove the same, it shall be lawful for them, at a legal meeting, called for that purpose, to raise such sums of money, as they may judge necessary, to carry any of said purposes into effect, and to purchase any land necessary for the same.

Assessment and collection of such money. 1817, 189, § 1.

SECT. 32. Such moneys may be assessed on the pews in such church or house, and the assessment may be committed to the treasurer, chosen by said proprietors to receive the same; and the treasurer shall forthwith give notice thereof, by posting up an advertisement at the principal outer door of such house, stating the completion of such assessment, and the day of delivery thereof to him; and if said taxes, or any part thereof, remain unpaid for three months, after the posting up of notifications as aforesaid, it shall be the duty of the treasurer to collect the same forthwith, by sales at public auction of the pews, whereon the tax or any part thereof shall remain unpaid, in the manner provided in the following sections.

Notice when pews are sold by the treasurer. 1817, 189, § 2.

SECT. 33. When it shall become the duty of the treasurer, to sell any pew for taxes, he shall post up a notification of the intended sale thereof, at the principal outer door of such church or house, at least three weeks before the time of sale, therein setting forth the number of the pew, if any, the name of the owner or occupant, if known, and the amount of the tax due thereon; and if said tax or any part thereof shall remain unpaid, at the time appointed for such sale, the treasurer shall sell the pew, by public auction, to the highest bidder, and shall execute and deliver, to the purchaser, a sufficient deed of conveyance of the same; and the money, arising from such sale, beyond the taxes and incidental reasonable charges, shall be paid by the treasurer to the former owner of the pew so sold, or to his assigns.

Affidavit of notice of sales, made evidence. 1817, 189, § 3.

SECT. 34. The affidavit of any disinterested person, annexed to any original notification, or to a copy thereof, made before a justice of the peace, and recorded on the proprietor's records, within six months next after such sale, shall be allowed, as one mode of proof of the posting up of the notifications herein before required.

SECT. 35. Any meeting of the proprietors of a church or house of public worship, for any of the purposes aforesaid, may be called by a warrant from a justice of the peace, granted on application to him in writing, made by any five of said proprietors, which warrant shall be directed to one of the applicants; or such meeting may be called by a notification by the clerk of said proprietors, whose duty it shall be to warn a meeting, on a like application to him; and, in either case, such meeting may be warned by posting up a notification thereof, at the principal outer door of the church or house, fourteen days at least before the time appointed for the meeting.

How proprietors' meetings may be called. 1817, 189, § 4.

SECT. 36. Whenever any such proprietors shall deem it necessary, for the purpose of altering, enlarging, repairing, rebuilding, or removing their church or house, to take down any pews therein, it shall be lawful for them so to do; such pews being first appraised by any three or more disinterested persons, chosen by said proprietors for that purpose; and the pews newly erected, shall be sold by the treasurer of the proprietors, by public auction, to the highest bidder, and deeds thereof shall be given, in like manner as when they are sold for the payment of taxes; and the moneys arising from such sale shall be applied, so far as may be necessary, to paying the appraised value of the pews taken down to the owners thereof; and the deficiency, if any, shall be paid by the proprietors of such church or house, within thirty days next after the sale.

Proprietors may take down pews to alter churches, &c. 4 N. Hamp. R. 180.

Proceedings in such case. 1817, 189, § 5.

SECT. 37. Whenever any parish or religious society, being the owner of any church, meeting house, or other house of public worship, shall deem it necessary, for the purpose of altering, enlarging, repairing, rebuilding or removing any such church or house, to take down any pews therein, it shall be lawful for them so to do; and, in such case, the like regulations shall be observed, and the like proceedings had, as are provided in the preceding section.

Parishes and societies to have the like powers in such cases. 1835, 121.

SECT. 38. Nothing contained in the two preceding sections shall entitle any person to compensation for a pew so taken down, in any case, where such church or house shall have become unfit for the purposes of public worship.

No compensation to pew owners, when church is unfit for use. 1835, 121. 7 Pick. 138, 3 ib. 344, 1 ib. 102. 17 Mass. 435.

DONATIONS AND GRANTS FOR PIOUS AND CHARITABLE USES.

SECT. 39. The deacons, churchwardens or other similar officers of all churches or religious societies, if citizens of the United States, shall be deemed bodies corporate, for the purpose of taking and holding, in succession, all grants and donations, whether of real or personal estate, made either to them and their successors, or to their respective churches, or to the poor of their churches.

Deacons, church wardens, &c. made bodies corporate to take donations, &c. 12 Mass. 546. 1785, 51, § 1.

SECT. 40. In all cases, where the ministers, elders, or vestry of any church shall, in the grants or donations mentioned in the preceding section, have been joined with such deacons or church wardens as donees or grantees, such officers and their successors, together with the deacons or church wardens, shall be deemed the corporation, for the purposes of such grants and donations.

When the ministers, elders, &c., are joined in such donations. 1785, 51, § 1.

SECT. 41. The minister of every church or religious society, of whatever denomination, if a citizen of the United States, shall be capable of taking, in succession, any parsonage land granted to the minister and his successors, or to the use of the ministers, or granted

Ministers of all churches may take in succession any parsonage land. 15 Mass. 464.

10 Mass. 93. 6 Greenl 355. 1785, 51, § 1.

by any words of the like import, and may prosecute and defend, in all actions touching the same.

No conveyance of chuch lands valid without consent of churches, &c. 1785, 51, § 1.

SECT. 42. No conveyance of the lands of any church shall be effectual to pass the same, if made by the deacons without the consent of the church, or of a committee of the church, appointed for that purpose, or if made by the church wardens, without the consent of the vestry.

Conveyance by minister, to be valid only during his ministry, unless, &c. 2 Mass. 500. 14 Mass. 333. 1785, 51, § 1.

SECT. 43. No conveyance, made by any minister, of lands held by him in succession, shall be valid any longer than he shall continue to be such minister, unless such conveyance shall be made with the consent of the town, parish, or religious society, of which he is minister, or unless he be a minister of an episcopal church, and shall make the conveyance with the consent of the vestry.

Churches, except &c., may appoint committees to settle with the deacons. 1785, 51, § 1.

SECT. 44. The several churches, other than those of the episcopal denomination, are authorized to choose committees, for the purpose of settling the accounts of the deacons and other church officers, and, if necessary, to commence and prosecute any suits in the name of the church, against the said deacons or other officers, touching the same.

Income of such bodies corporate limited. 1785, 51, § 2.

SECT. 45. The income of any such grant or donation, made to or for the use of any church, shall not exceed the sum of two thousand dollars a year, exclusive of the income of any parsonage lands, granted to or for the use of the ministry.

Overseers of monthly meetings of the Friends or Quakers, to hold lands, &c. as a corporation.

SECT. 46. The overseers of each monthly meeting of the people called Friends or Quakers shall be a body corporate, for the purpose of taking and holding, in succession, all grants and donations of real or personal estate, made to the use of such meeting, or to the use of any preparative meeting belonging thereto; and to aliene or manage such real and personal estate, according to the terms and conditions of the grants and donations; and to prosecute and defend in any action touching the same; provided, that the income of the grants and donations, to any one of such meetings, for the uses aforesaid, shall not exceed the sum of five thousand dollars a year.

Income limited. 1822, 92.

TITLE IX.

Of the public health.

CHAPTER 21. Of the preservation of the public health; quarantine; nuisances; and offensive trades.
CHAPTER 22. Regulations concerning the practice of physic and surgery.

CHAPTER 21.

OF THE PRESERVATION OF THE PUBLIC HEALTH; QUARANTINE; NUISANCES; AND OFFENSIVE TRADES.

SECTION
1. Every town, except, &c., may choose a board of health.
2. Board of health for the city of Boston.
3. Physician to the board of health.
4. Compensation of physician, &c.
5. Board of health, to make regulations as to nuisances, &c.
6. " may make provision as to infected articles.
7. " may make regulations as to interments, &c.
8. Notice of their regulations, to be published.
9. Board of health, to examine into nuisances, &c.
10. When nuisances are found on private property.
11. If the owner, &c., does not obey orders of the board, then, &c.
12. When a party is convicted of a nuisance, &c.
13. Court of common pleas may issue injunctions in cases of nuisance.
14. How board of health may make compulsory examination of premises, when refused, &c.
15. Board may grant permits for the removal of infected articles or sick persons.
16. " may remove infected persons to a separate house, &c.
17. If the infected person cannot be removed, others may be, &c.
18. Persons may be stationed on borders of other states, to examine, &c.
19. Any two justices may issue warrants to remove sick persons.
20. One justice may issue warrant to secure infected articles.
21. Justices may take up houses, stores, &c., for safe keeping of goods, &c.
22. Officers may break open houses, shops, &c., and command aid.
23. Expenses, to be paid by owners of goods, &c.
24. Towns shall make compensation for houses, &c., or services impressed.
25. Removal of prisoners attacked with disease in jail.
26. Return of removal to be made to the court—such removal shall not be an escape.

QUARANTINE.

27. Towns may establish a quarantine.
28. Two or more towns may establish common quarantine ground.
29. Board of health may establish the quarantine of vessels.
30. Quarantine regulations, to extend to all persons and all goods, &c.
31. " regulations, to be binding on all persons after public notice.
32. Vessels, to be ordered to quarantine ground.
33. Penalty, if master, seaman, &c., refuse to make answer on oath, &c.
34. Quarantine expenses to be paid by person or owner.

SMALL POX.

35. Hospitals for the small pox, may be provided by towns.
36. " for the small pox, to be un-

SECTION
der the orders of the board of health.
37. Hospitals for the small pox, not to be established within one hundred rods of houses in an adjoining town, unless, &c.
38. Penalty for inoculating without permission.
39. Physicians and others, in hospitals, to be subject to board of health.
30. Hospital shall be immediately provided, when the small pox breaks out unexpectedly.
41. When selectmen shall give notice by suitable signals.
42. Penalty on physicians and others, for violating regulations.
SECTION
43. Every householder, to give notice of small pox in his family.
44. Penalty on physicians, for not giving notice of small pox, &c.
INOCULATION WITH THE COW POX.
45. Towns may provide for inoculation of inhabitants and defray expenses.
46. All penalties, forfeited to town, and recoverable by treasurer.
OFFENSIVE TRADES.
47. Selectmen, to assign places for offensive trades.
48. If such place becomes a nuisance, the court of common pleas may revoke, &c.
49. Action for damages from nuisances.

Every town, except, &c. may choose a board of health. 1817, 16, §§ 1 to 11.

SECTION 1. Every town, respecting which no provision is made, by any special law, for choosing a board of health, may, at their annual meeting, or at any other meeting legally warned for the purpose, choose a board of health, to consist of not less than three, nor more than nine persons; or they may choose one person to be a health officer; and, in case they shall not choose any board of health or health officer, the selectmen shall be the board of health.

Board of health for Boston. 1821, 110, § 17.

SECT. 2. In the city of Boston, the city council shall exercise all the powers, and perform all the duties of a board of health for the said city.

Physician to the board of health. 1816, 44, § 7.

SECT. 3. Every board of health may appoint a physician to the board, who shall hold his office during their pleasure.

Compensation of physician, &c 1816, 44, § 7.

SECT. 4. The board of health shall establish the salary or other compensation of such physician, and shall regulate all fees and charges of every person, employed by them in the execution of the health laws and of their own regulations.

Board of health, to make regulations as to nuisances, &c. 1797, 16, § 3.

SECT. 5. The board of health shall make such regulations respecting nuisances, sources of filth, and causes of sickness, within their respective towns, and on board of any vessels in their harbors, as they shall judge necessary for the public health and safety; and if any person shall violate any such regulation, he shall forfeit a sum not exceeding one hundred dollars.

—may make provision as to infected articles 1797, 16, § 5.

SECT. 6. The said board shall also make such regulations, as they may judge necessary for the public health and safety, respecting any articles which are capable of containing or conveying any infection or contagion, or of creating any sickness, when such articles shall be brought into or conveyed from their town, or into or from any vessel; and if any person shall violate any such regulations, he shall forfeit a sum not exceeding one hundred dollars.

—may make regulations as to interments, &c. 1816, 44, § 11.

SECT. 7. The said board shall also make all regulations, which they may judge necessary for the interment of the dead, and respecting burying grounds in their towns.

Notice of their regulations, to be published. 1816, 44, §§ 3. 11.

SECT. 8. Notice shall be given, by the board of health, of all regulations made by them, by publishing the same in some newspaper of their town, or, where there is no such newspaper, by posting them

up in some public place of the town; and such notice of said regulations shall be deemed legal notice to all persons.

SECT. 9. The board of health shall examine into all nuisances, sources of filth, and causes of sickness, that may, in their opinion, be injurious to the health of the inhabitants within their town, or in any vessel within the harbor of such town, and the same shall destroy, remove or prevent, as the case may require.

Board, to examine into nuisances, &c. 1797, 16, § 11.

SECT. 10. Whenever any such nuisance, source of filth, or cause of sickness, shall be found on private property, the board of health, or health officer, shall order the owner or occupant thereof, at his own expense, to remove the same within twenty four hours; and if the owner or occupant shall neglect so to do, he shall forfeit a sum not exceeding one hundred dollars.

When nuisances are found on private property. 1797, 16, § 11.

SECT. 11. If the owner or occupant shall not comply with such order of the board of health, the board may cause the said nuisance, source of filth, or cause of sickness, to be removed; and all expenses incurred thereby shall be paid by the said owner or occupant, or by such other person as shall have caused or permitted the same.

If the owner, &c. does not obey orders of the board, then, &c. 1797, 16, § 11.

SECT. 12. When any person shall be convicted, on an indictment for a common nuisance, that may be injurious to the public health, the court may, in their discretion, order it to be removed or destroyed, at the expense of the defendant, under the direction of the board of health of the town, where the nuisance is found; and the form of the warrant to the sheriff, or other officer, may be varied accordingly.

When a party is convicted of a nuisance, &c. 1801, 16, § 3.

SECT. 13. The court of common pleas, or any one of the justices thereof, in term time or vacation, may, in all cases, either before or pending a prosecution for a common nuisance affecting the public health, issue an injunction to stay or prevent the same, until the matter shall be decided by a jury or otherwise; and may issue all such other writs and processes, and make all such orders and decrees, according to the course of proceedings in chancery, as may be necessary or proper to enforce such injunction; and may dissolve the same, when the court or any one of the said justices shall think it proper.

Court of common pleas, &c. may issue injunctions, in cases of nuisance. 1827, 88.

SECT. 14. Whenever the board of health shall think it necessary, for the preservation of the lives or health of the inhabitants, to enter any land, building or vessel within their town, for the purpose of examining into, and destroying, removing or preventing any nuisance, source of filth, or cause of sickness, and shall be refused such entry, any member of the board may make complaint, under oath, to any justice of the peace of his county, stating the facts of the case, so far as he has knowledge thereof, and such justice may thereupon issue a warrant, directed to the sheriff or either of his deputies, or to any constable of such town, commanding them to take sufficient aid, and, being accompanied by any two or more members of said board of health, between the hours of sunrise and sunset, to repair to the place, where such nuisance, source of filth or cause of sickness complained of, may be, and the same to destroy, remove or prevent, under the directions of such members of the board of health.

How board of health may make compulsory examination of premises, when refused, &c. 1816, 44, § 2.

SECT. 15. The board of health may grant permits for the remo-

Board may grant permits

for the removal of infected articles or sick persons. 1816, 44, § 12.

val of any nuisance, infected article or sick person, within the limits of their town, when they shall think it safe and proper so to do.

—may remove infected persons to a separate house, &c. 1797, 16, § 1.

SECT. 16. When any person, coming from abroad, or residing in any town within this state, shall be infected, or shall lately before have been infected, with the plague, small pox, or other sickness dangerous to the public health, the board of health of the town, where such person may be, shall make effectual provision, in the manner which they shall judge best, for the safety of the inhabitants, by removing such sick or infected person to a separate house, if it can be done without danger to his health, and by providing nurses, and other assistance and necessaries, which shall be at the charge of the person himself, his parents or master, if able, otherwise, at the charge of the town, to which he belongs ; and, in case such person is not an inhabitant of any town, then at the charge of the Commonwealth.

If the infected person cannot be removed, others may be, &c.

SECT. 17. If the infected person cannot be removed, without danger to his health, the board of health shall make provision for him, as directed in the preceding section, in the house in which he may be ; and, in such case, they may cause the persons in the neighborhood to be removed, and may take such other measures, as they shall judge necessary, for the safety of the inhabitants.

Persons may be stationed on borders of other states, to examine, &c. 1797, 16, § 3.

SECT. 18. The board of health of any town near to, or bordering upon, either of the neighboring states, may appoint, by writing under their hands, suitable persons to attend at any places, by which travellers may pass from infected places in other states ; and the persons, so appointed, may examine such passengers, as they may suspect of bringing with them any infection, which may be dangerous to the public health, and, if need be, may restrain them from travelling, until licensed thereto by the board of health of the town, to which such person may come ; and any passenger, coming from such infected place, who shall, without license as aforesaid, travel within this state, unless it be to return by the most direct way to the state from whence he came, after he shall be cautioned to depart by the persons appointed as aforesaid, shall forfeit a sum not exceeding one hundred dollars.

Any two justices may issue warrants to remove sick persons. 1797, 16, § 4.

SECT. 19. Any two justices of the peace may, if need be, make out a warrant, directed to the sheriff of the county, or his deputy, or to any constable, requiring them, under the direction of the board of health, to remove any person, infected with contagious sickness, or to impress and take up convenient houses, lodging, nurses, attendants, and other necessaries, for the accommodation, safety and relief of the sick.

One justice may issue warrant to secure infected articles. 1797, 16, § 5.

SECT. 20. Whenever, on the application of the board of health, it shall be made to appear to any justice of the peace, that there is just cause to suspect that any baggage, clothing or goods, of any kind, found within the town are infected with the plague or any other disease, which may be dangerous to the public health, such justice of the peace shall, by warrant, directed to the sheriff or his deputy, or to any constable, require him to impress so many men, as said justice shall judge necessary, to secure such baggage, clothing or other goods, and to post said men as a guard over the house or place, where such baggage, clothing or other goods shall be lodged ; which guard shall take effectual care to prevent any persons removing or coming near

to such baggage, clothing or other goods, until due inquiry be made into the circumstances thereof.

SECT. 21. The said justice may also, by the same warrant, if it shall appear to him necessary, require the said officers, under the direction of said board of health, to impress and take up convenient houses or stores, for the safe keeping of such baggage, clothing or other goods; and the board of health may cause them to be removed to such houses or stores, or to be otherwise detained, until they shall, in the opinion of the said board of health, be freed from infection.

Justices may take up houses and stores, &c. for safe keeping of goods, &c. 1797, 16, § 5.

SECT. 22. The said officers, in the execution of such warrant, shall, if need be, break open any house, shop, or other place mentioned in said warrant, where such baggage, clothing, or other goods shall be; and they may require such aid, as shall be necessary to effect the execution of the warrant; and all persons shall, at the command of either of the said officers, under a penalty not exceeding ten dollars, assist in the execution of the warrant.

Officers may break open houses, shops, &c. and command aid. 1797, 16, § 5.

SECT. 23. The charges of securing such baggage, clothing or other goods, and of transporting and purifying the same, shall be paid by the owners thereof, at such rates and prices, as shall be determined by the board of health.

Expenses to be paid by owners of goods. 1797, 16, § 5.

SECT. 24. Whenever the sheriff or other officer shall impress or take up any houses, stores, lodging, or other necessaries, or shall impress any men, as provided in this chapter, the several parties interested shall be entitled to a just compensation therefor, to be paid by the town, in which such persons or property shall have been so impressed.

Town shall make compensation for houses, &c. or services impressed.

SECT. 25. Whenever any person, confined in any common jail, house of correction, or work house, shall be attacked with any disease which, in the opinion of the physician of the board of health, or of such other physician as they may consult, shall be considered dangerous to the safety and health of the other prisoners, or of the inhabitants of the town, the board of health shall, by their order in writing, direct the removal of such person to some hospital, or other place of safety, there to be provided for and securely kept, so as to prevent his escape, until their further order; and if such person shall recover from the disease, he shall be returned to the said prison or other place of confinement.

Removal of prisoners attacked with diseases in jail. 1816, 44, § 40.

SECT. 26. If the person so removed shall have been committed by order of any court, or under any judicial process, the order for his removal, or a copy thereof, attested by the presiding member of said board of health, shall be returned by him, with the doings thereon, into the office of the clerk of the court, from which the process was issued for committing such prisoner; and no prisoner, removed as aforesaid, shall be considered as having thereby committed an escape.

Return of removal to be made to the court.

Such removal shall not be an escape. 1816, 44, § 10.

QUARANTINE.

SECT. 27. Any town may establish a quarantine ground, in any suitable place, either within or without its own limits; provided, that, if such place shall be without its limits, the assent of the town, within whose limits it may be established, shall be obtained therefor.

Towns may establish a quarantine ground.

SECT. 28. Any two or more towns may, at their joint expense,

Two or more towns may es-

tablish common quarantine ground.

establish a quarantine ground for their common use, in any suitable place, either within or without their own limits; provided, that if such place shall be without their limits, they shall obtain the assent of the town, within whose limits such place may be.

Board of health may establish the quarantine of vessels. 1816, 44, § 6.

SECT. 29. The board of health in each seaport town may, from time to time, establish the quarantine, to be performed by all vessels arriving within the harbor of such town; and may make such quarantine regulations, as they shall judge necessary for the health and safety of the inhabitants.

Quarantine regulations to extend to all persons, &c. 1816, 44, § 6.

SECT. 30. The quarantine regulations, so established, shall extend to all persons, and all goods and effects, arriving in such vessels, and to all persons, who may visit or go on board of the same.

—to be binding on all persons after public notice. 1816, 44, § 6.

SECT. 31. The quarantine regulations aforesaid, after notice thereof shall have been given, in the manner before provided in this chapter, shall be observed by all persons; and any person who shall violate any such quarantine regulation, shall forfeit a sum not less than five dollars, nor more than five hundred dollars.

Vessels, to be ordered to quarantine ground. 1816, 44, § 7.

SECT. 32. The board of health, in each seaport town, may, at all times, cause any vessel arriving in such port, when such vessel or the cargo thereof shall in their opinion be foul or infected, so as to endanger the public health, to be removed to the quarantine ground, and to be thoroughly purified, at the expense of the owners, consignees, or persons in possession of the same; and they may also cause all persons, arriving in or going on board of such infected vessel, or handling such infected cargo, to be removed to any hospital under the care of said board of health, there to remain under their orders.

Penalty, if master, seaman, &c. refuse to make answer on oath, &c. 1797, 16, § 9.

SECT. 33. If any master, seaman or passenger, belonging to any vessel, on board of which any infection may then be, or may have lately been, or suspected to have been, or which may have been [*at*], or which may have come from, any port where any infectious distemper prevails, that may endanger the public health, shall refuse to make answer on oath to such questions, as may be asked him, relating to such infection or distemper, by the board of health of the town, to which such vessel may come, (which oath any member of said board may administer,) such master, seaman or passenger so refusing, shall forfeit a sum not exceeding two hundred dollars; and, in case he be not able to pay said sum, he shall suffer six months' imprisonment.

Quarantine expenses to be paid by person or owner. 1816, 44, § 6.

SECT. 34. All expenses, incurred on account of any person, vessel or goods, under any quarantine regulations, shall be paid by such person, or the owner of such vessel or goods, respectively.

SMALL POX AND OTHER DANGEROUS DISEASES.

Hospitals for the small pox may be provided by towns. 1792, 58, § 2.

SECT. 35. The inhabitants of any town may establish, within the same town, and be constantly provided with, one or more hospitals for the reception of persons, having the small pox or other disease, which may be dangerous to the public health.

—to be under the orders of the board of health. 1792, 58, § 2.

SECT. 36. All such hospitals shall be subject to the orders and regulations of the board of health, or a committee of such town, appointed for that purpose.

—not to be established within

SECT. 37. No such hospital shall be established, within one hun-

dred rods of any inhabited dwelling house, situated in any adjoining town, without the consent of such adjoining town.

100 rods of houses in an adjoining town, unless, &c. 1792, 58, § 2.

SECT. 38. If any person shall inoculate any other person, or inoculate himself, or suffer himself to be inoculated, with the small pox, unless at some hospital licensed and authorized by law, he shall, for each offence, forfeit a sum not exceeding two hundred dollars, to the use of the town in which such offence shall have been committed.

Penalty for inoculating without permission. 1792, 58, § 3.

SECT. 39. When any hospital shall be so established, the physician, the persons inoculated or sick therein, the nurses, attendants, and all persons, who shall approach or come within the limits of the same, and all such furniture and other articles, as shall be used or brought there, shall be subject to such regulations, as may be made by the board of health, or the committee appointed for that purpose.

Physician and others, in hospitals, to be subject to board of health. 1792, 58, § 4.

SECT. 40. When the small pox, or any other disease dangerous to the public health, shall break out in any town, the selectmen or board of health thereof shall immediately provide such hospital or place of reception for the sick and infected, as they shall judge best for their accommodation and the safety of the inhabitants; and such hospitals and places of reception shall be subject to the regulations of the board of health, in the same manner as is hereinbefore provided for established hospitals; and the board of health shall cause such sick and infected persons to be removed to such hospitals or places of reception, unless the condition of the sick person be such as not to admit of removal without danger of life; in which case, the house or place, where the sick shall remain, shall be considered as an hospital, to every purpose before mentioned; and all persons residing in, or in any way concerned with the same, shall be subject to the regulations of the board of health as before provided.

Hospitals shall be immediately provided, when the small pox breaks out unexpectedly. 1792, 58, § 5.

SECT. 41. When the small pox, or any other disease dangerous to the public health, is found to exist in any town, the selectmen and board of health shall use all possible care to prevent the spreading of the infection, and to give public notice of infected places to travellers, by displaying red flags at proper distances, and by all other means, which in their judgment shall be most effectual for the common safety.

When selectmen shall give notice by suitable signals. 1792, 58, § 6.

SECT. 42. If any physician or other person, in any of the hospitals or places of reception before mentioned, or who shall attend, approach or be concerned with the same, shall violate any of the regulations lawfully made in relation thereto, either with respect to himself, or his or any other person's property, the person so offending shall, for each offence, forfeit a sum not less than ten nor more than one hundred dollars.

Penalty on physicians and others, for violating regulations. 1792, 58, § 6.

SECT. 43. When any householder shall know that any person within his family is taken sick of the small pox, or any other disease dangerous to the public health, he shall immediately give notice thereof to the selectmen or board of health of the town in which he dwells; and if he shall refuse or neglect to give such notice, he shall forfeit a sum not exceeding one hundred dollars.

Every householder to give notice of small pox in his family. 1792, 58, § 7.

SECT. 44. When any physician shall know that any person, whom he is called to visit, is infected with the small pox, or any other disease dangerous to the public health, such physician shall immediately give notice thereof to the selectmen, or board of health of the

Penalty on physicians, for not giving notice of small pox, &c. 1827, 129.

town in which the diseased person may be; and every physician, who shall refuse or neglect to give such notice, shall forfeit for each offence a sum not less than fifty nor more than one hundred dollars.

INOCULATION WITH THE COW POX.

Towns may provide for inoculation of inhabitants and defray expenses. 1809, 117, § 2.

SECT. 45. Each town may, at any meeting, make suitable provision for the inoculation of the inhabitants with the cow pox, under the direction of the board of health of each town or of a committee chosen for that purpose; and they shall raise all necessary sums of money, to defray the expenses of such inoculation, in the same manner as other town charges are paid.

All penalties, forfeited to town and recoverable by treasurer.

SECT. 46. All forfeitures, under the preceding sections of this chapter, shall enure to the use of the town where the offence shall have been committed; and they may be recovered by the treasurer, as provided in the fifteenth chapter, on complaint before the police court of such town, or before any justice of the peace of the county, in which the offence shall have been committed.

OFFENSIVE TRADES.

Selectmen, &c. to assign places for offensive trades. 1785, 1.

SECT. 47. The selectmen of every town, and the mayor and aldermen of the city of Boston, respectively, when they shall judge it necessary, shall, from time to time, assign certain places for the exercising of any trade or employment, offensive to the inhabitants, or dangerous to the public health; and they shall forbid the exercise of either of them in places not so assigned; and all such assignments shall be entered in the records of the town or city; and they may be revoked, when the town or city officers shall think proper.

If such place become a nuisance, court of common pleas may revoke, &c. 1785, 1.

SECT. 48. When any place or building so assigned shall become a nuisance, by reason of offensive smells or exhalations proceeding from the same, or shall become otherwise hurtful or dangerous to the neighborhood or to travellers, and the same shall be made to appear, on a trial before the court of common pleas for the county, upon a complaint made by the board of health or by any other person, the said court may revoke such assignment, and prohibit the further use of such place or building, for the exercise of either of the aforesaid trades or employments, and may cause such nuisances to be removed or prevented.

Action for damages from nuisances. 1799, 75, § 2.

SECT. 49. Any person, injured either in his comfort or the enjoyment of his estate, by any such nuisance, may have an action on the case, for the damage sustained thereby; in which action, the defendant may plead the general issue and give any special matter in evidence.

CHAPTER 22.

REGULATIONS CONCERNING THE PRACTICE OF PHYSIC AND SURGERY.

SECTION
1. Massachusetts medical society shall prescribe and annually publish a course of medical instruction.
2. Counsellors of the society shall appoint censors.
3. State divided into four districts.

SECTION
4. Censors shall examine candidates and give letters testimonial.
5. Penalty, if censors unreasonably refuse to examine.
6. Payment of fees prerequisite to license.
7. Practitioners from other states, may be licensed, provided, &c.
8. Licentiates, to file certificates with town clerks, in certain cases.
9. Physicians, &c., may have dead bodies in their possession.
10. Overseers of the poor may deliver up dead bodies to physicians in certain cases.
11. No dead body shall be delivered up, if claimed, &c.
12. Physicians, &c., to give bond on receiving a dead body.

SECTION 1. The Massachusetts Medical Society shall, from time to time, prescribe such a course of medical and surgical instruction, and such qualifications, as they shall judge requisite, for candidates for the practice of physic or surgery, and shall cause the same to be published annually, in one or more newspapers in each medical district, provided for in the third section.

Massachusetts Medical Society shall prescribe and annually publish a course of medical instruction. 1788, 49.

SECT. 2. The counsellors of the said society, at their first meeting, in every year, after the annual meeting of the society, shall appoint not less than twenty censors or examiners, from among the fellows of said society, to wit; five in each of the districts mentioned in the following section; and the five in each of said districts, respectively, shall constitute a separate board of censors.

Counsellors of the society shall appoint censors. 1818, 113.

SECT. 3. For the purpose aforesaid, the state shall be divided into four districts, to be entitled, respectively, the first, second, third and fourth medical districts; and the first medical district shall include the counties of Suffolk, Essex, Middlesex, Norfolk, Bristol, Plymouth, Barnstable, Duke's county, and Nantucket; the second district shall include the county of Worcester; the third district shall include the counties of Franklin, Hampden and Hampshire; and the fourth district shall include the county of Berkshire; the meetings of the censors shall be held in these districts, respectively, in such places, and at such stated periods, as the counsellors of the society may direct; and the said counsellors shall be authorized to subdivide or alter any of the said districts, and to make new districts, and appoint censors therein, whenever the public good may appear to require it.

State divided into four districts. 1818, 113.

SECT. 4. The said censors, at their stated meetings, in each of the said districts, shall examine all who shall offer themselves to be approved as practising physicians or surgeons, who have received such an education, as is or may be from time to time prescribed by the regulations of the said society, and who are duly qualified as candidates for such examination; and every candidate, who shall be approved by the censors, shall be entitled to letters testimonial, under their hands, of their approbation, and of their license to practise physic or surgery, or both; which letters shall also be sealed with the seal of the society, and shall be signed by the president and secretary thereof.

Censors shall examine candidates, and give letters testimonial. 1802, 123, §§ 3. 4.

SECT. 5. If the said censors shall unreasonably refuse to examine any person, who is duly qualified for such examination, they shall severally forfeit a sum not exceeding four hundred dollars, to be recovered by such candidate to his own use.

Penalty if censors unreasonably refuse to examine. 1788, 49, § 3.

SECT. 6. No person shall be entitled to his letters of license, until he shall pay such reasonable fees, as shall be established by the society to be paid for such examination and letters of license.

Payment of fees prerequisite to license. 1788, 49, § 1.

Practitioners from other states may be licensed, provided, &c. 1818, 113.

SECT. 7. When any person, who has been educated to the practice of physic or surgery, in any place out of this state, and who has come into this state to pursue the same, shall present himself to either of the said boards of censors, as a candidate for their approbation or license, if they are satisfied that he has received an education equivalent to that prescribed by the regulations, which have been or may be established by said society, and that he has been duly examined and approved by some competent authority, they may license him to practise physic or surgery, or both, as the case may be, without subjecting him to a new examination.

Licentiates, to file certificates with town clerks, in certain cases. 1817, 131.

SECT. 8. Every person, who has been licensed to practise physic or surgery, since the year one thousand eight hundred and eighteen, or who shall hereafter be so licensed, shall deposite a copy of his license with the clerk of the town, in which such licentiate may reside; and the said clerk shall file in his office such copy, attested by him with his certificate thereon of the time when the same was so deposited; for which he shall receive from the licentiate the sum of fifty cents.

Physicians, &c. may have dead bodies in their possession. 1830, 57, § 4.

SECT. 9. Any physician or surgeon, duly qualified according to the law of this Commonwealth, or any medical student, under the authority of any such physician, may have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction.

Overseers of the poor, &c., may deliver up dead bodies to physicians, in certain cases. 1830, 57, § 3.

SECT. 10. Either of the following boards of officers, to wit, the selectmen, the board of health, the overseers of the poor, or the directors of workhouses, or directors of the house of industry, or mayor and aldermen of the city of Boston, may surrender the dead bodies of such persons, as are required to be buried at the public expense, to any regular physician, duly qualified according to law, to be by him used for the advancement of anatomical science; preference being always given to the medical schools by law established in this state, for their use in the instruction of medical students.

No dead body shall be delivered up, if claimed, &c. 1830, 57, § 3. 1834, 187.

SECT. 11. No such dead body shall in any case be so surrendered, if the deceased person, during his last sickness, requested to be buried, or if, within twenty four hours after his death, any person, claiming to be of kindred or a friend to the deceased, and satisfying the proper board thereof, shall require to have the body buried, or if such deceased person was a stranger or traveller, who suddenly died before making himself known; but the dead body shall in all such cases be buried.

Physicians, &c. to give bond on receiving a dead body. 1830, 57, § 3. 1834, 187, § 3.

SECT. 12. Every physician shall, before receiving such dead body, give to the board of officers, surrendering the same to him, a sufficient bond, that each body, so by him received, shall be used only for the promotion of anatomical science, and that it shall be used for such purpose within this state only, and so as in no event to outrage the public feeling; and that, after having been so used, the remains thereof shall be decently buried.

TITLE X.

CHAPTER 23.

OF PUBLIC INSTRUCTION.

SECTION

OF THE PUBLIC SCHOOLS.

1. What schools shall be provided by towns of 50 families.
2. " " 100 "
3. " " 150 "
4. " " 500 "
5. Additional school in towns of 500 families; except, &c.—in towns of 4000 inhabitants.
6. Towns of less than 500 families, authorized to maintain school, &c.
7. Duty of instructors in colleges, &c.
8. " ministers and town officers.
9. Towns may raise money for schools.
10. School committee to be chosen annually.
11. Duty of committee, where school is kept for benefit of all the inhabitants.
12. School committees, additional members of in towns of more than 4000 inhabitants.
13. " to examine as to qualifications of instructors.
14. Instructors, not to be paid unless the committee certify, &c.
15. Committee, to decide on admission of scholars into school kept for the whole town.
16 " to visit all the district schools.
17. Authority of committee as to school books.
18. Scholars to be supplied by their parents, &c., with the books prescribed.
19. Books may be provided by school committee.
20. " to be furnished to scholars at expense of the town.
21. Expense of books so supplied, to be taxed to parents, &c.
22. If parents, &c., are unable to pay, such tax for books may be wholly or partially omitted.
23. Books not to be bought, which favor any particular sect of christians.

SCHOOL DISTRICTS.

24. School districts, formation of in each town.
25. Prudential committee in each district.
26. " " may be chosen by the districts.
27. Clerk shall be chosen and sworn, who shall keep records, &c.
28. Districts may raise money for the erection of houses and other purposes—may fix the site of school houses.
29. Clerk liable only for want of integrity; district for illegality in assessing taxes.
30. Selectmen, to determine the places for school houses, in case, &c.
31. If prudential committee is not chosen, town committee shall perform his duties.
32. Towns may provide school houses, &c., at common expense.
33. Where personal and real estate may be taxed.
34. Property in manufacturing corporations, where taxed.
35. Non residents' estate, where taxed.
36. All lands of any non-resident, to be taxed in one district.
37. School taxes assessed in same manner as town taxes.
38. Assessors, to issue warrants to collectors.
39. Money raised, to be at the disposal of committees.
40. Collectors, to have same power as in case of town taxes.
41. Treasurers, to have like powers, as in case of town taxes.
42. Assessors, &c., to have same compensation as in case of town taxes.
43. Assessors may abate, as in town taxes.
44. If inhabitants of district refuse to raise money, the town may order it.
45. If districts neglect to establish schools, town committee may do it.
46. Selectmen or prudential committee may issue warrants for district meetings.
47. Manner of warning meetings.
48. The districts may direct the mode of calling meetings.

SECTION

CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

49. Contiguous districts, of adjoining towns, may unite themselves into one.
50. No such union to be formed without consent of the districts and towns.
51. United districts may be again separated.
52. First and other meetings of united districts, how called.
53. Prudential committee to be chosen.
54. Moneys raised, to be in proportion, &c.
55. Moneys to be assessed by assessors of respective towns.
56. School committees of adjoining towns, to officiate alternately, &c.

GENERAL PROVISIONS.

57. School districts, to be corporations for certain purposes.
58. Same subject.
59. Provisions of this chapter not to affect funds, &c., of corporations for supporting schools.
60. Forfeiture, if towns neglect to raise money for schools; and how appropriated.

SECTION

61. School committee, &c., to receive and appropriate sums forfeited.

SCHOOL RETURNS.

62. School committees, to make returns to the secretary.
63. Returns respecting the school districts.
64. Returns respecting all the schools of a town.
65. Secretary, to furnish towns with blank forms of returns.

DISTRIBUTION OF THE SCHOOL FUND.

66. No allowance of school fund to towns neglecting to make returns, or to raise a sum of money equal, &c.
67. Manner of apportioning school fund, among towns.
68. Allowance to the Marshpee Indians.

REGULATIONS IN FURTHERANCE OF THE DISCIPLINE OF COLLEGES.

69. Innholders, &c., not to give credit to under graduates, except, &c.
70. Licenses not to be granted to persons violating, &c.
71. Penalty for giving such credit.

OF THE PUBLIC SCHOOLS.

What schools shall be provided by towns of 50 families. 1826, 143, § 1.

SECTION 1. In every town, containing fifty families or householders, there shall be kept in each year, at the charge of the town, by a teacher or teachers of competent ability and good morals, one school for the instruction of children in orthography, reading, writing, English grammar, geography, arithmetic, and good behavior, for the term of six months, or two or more such schools, for terms of time, that shall together be equivalent to six months.

—of 100 families. 1826, 143, § 1.

SECT. 2. In every town, containing one hundred families or householders, there shall be kept in each year one such school, for the term of twelve months, or two or more such schools, for terms of time, that shall together be equivalent to twelve months.

—of 150 families. 1826, 143, § 1.

SECT. 3. In every town, containing one hundred and fifty families or householders, there shall be kept in each year two such schools, for nine months each, or three or more such schools, for terms of time, that shall together be equivalent to eighteen months.

—of 500 families. 1826, 143, § 1.

SECT. 4. In every town, containing five hundred families or householders, there shall be kept in each year two such schools for twelve months each, or three or more such schools, for terms of time, that shall together be equivalent to twenty four months.

Additional school in towns of 500 families, except, &c. 16 Mass. 141.

SECT. 5. Every town, containing five hundred families or householders, shall, besides the schools prescribed in the preceding section, maintain a school, to be kept by a master of competent ability and good morals, who shall, in addition to the branches of learning before mentioned, give instruction in the history of the United States, book-keeping, surveying, geometry and algebra; and such last men-

tioned school shall be kept for the benefit of all the inhabitants of the town, ten months at least, exclusive of vacations, in each year, and at such convenient place, or alternately at such places in the town, as the said inhabitants at their annual meeting shall determine; and, in every town containing four thousand inhabitants, the said master shall, in addition to all the branches of instruction, before required in this chapter, be competent to instruct in the Latin and Greek languages, and general history, rhetoric and logic.

—in towns of 4000 inhabitants. 1826, 143, § 1.

SECT. 6. Any town, containing less than five hundred families or householders, may establish and maintain such a school, as is first mentioned in the preceding section, for such term of time, in any year, or in each year, as they shall deem expedient.

Towns of less than 500 families authorized to maintain school, &c.

SECT. 7. It shall be the duty of the president, professors, and tutors of the university at Cambridge, and of the several colleges, and of all preceptors and teachers of academies, and all other instructors of youth, to exert their best endeavors, to impress on the minds of children and youth, committed to their care and instruction, the principles of piety, justice, and a sacred regard to truth, love to their country, humanity and universal benevolence, sobriety, industry, and frugality, chastity, moderation, and temperance, and those other virtues, which are the ornament of human society, and the basis upon which a republican constitution is founded; and it shall be the duty of such instructors to endeavor to lead their pupils, as their ages and capacities will admit, into a clear understanding of the tendency of the above mentioned virtues to preserve and perfect a republican constitution, and secure the blessings of liberty, as well as to promote their future happiness, and also to point out to them the evil tendency of the opposite vices.

Duty of instructors in colleges, &c. Constitution, ch. 5, § 2. 1826, 143, § 3.

SECT. 8. It shall be the duty of the resident ministers of the gospel, the selectmen, and the school committees, in the several towns, to exert their influence, and use their best endeavors, that the youth of their towns shall regularly attend the schools established for their instruction.

Duty of ministers and town officers. 1826, 143, § 3.

SECT. 9. The several towns are authorized and directed, at their annual meetings, or at any regular meeting called for the purpose, to raise such sums of money, for the support of the schools aforesaid, as they shall judge necessary; which sums shall be assessed and collected in like manner as other town taxes.

Towns may raise money for schools. 1826, 143, § 4.

SECT. 10. The inhabitants of every town shall, at their annual meeting, choose, by written ballots, a school committee, consisting of three, five, or seven persons, who shall have the general charge and superintendence of all the public schools in such town.

School committees, to be chosen annually. 1826, 143, § 5.

SECT. 11. In any town, containing five hundred families, and in which a school shall be kept for the benefit of all the inhabitants, as before provided in this chapter, the school committee, chosen under the preceding section, shall perform all the like duties, in relation to such school, the house where it shall be kept, and the supply of all things necessary therefor, which the prudential committee of a school district may perform in such district.

Duty of committee, where school is kept for benefit of all the inhabitants. 1833, 133.

SECT. 12. Any town, containing more than four thousand inhabitants, may choose an additional number, not exceeding six, on such committee.

Additional members, in certain towns. 1826, 143, § 5.

School committee, to examine into the qualifications of instructors. 1826, 143, § 5.

SECT. 13. The school committee shall require full and satisfactory evidence of the good moral character of all instructors, who may be employed in the public schools in their town, and shall ascertain, by personal examination, their literary qualifications and capacity for the government of schools.

Instructors not to be paid unless the committee certify, &c.

SECT. 14. Every instructor of a town or district school shall obtain, of the school committee of such town, a certificate in duplicate, of his qualifications, before he opens such school, one of which shall be filed with the town treasurer, before any payment is made to such instructor on account of his services.

Committee to decide on admission of scholars into school kept for the whole town. 1826, 143, § 5.

SECT. 15. The school committee shall determine the number and qualifications of the scholars, to be admitted into the school, kept for the use of the whole town, as aforesaid, and visit such school, at least quarter yearly, for the purpose of making a careful examination thereof, and of ascertaining that the scholars are properly supplied with books; and they shall, at such examination, inquire into the regulation and discipline of the school, and the habits and proficiency of the scholars therein.

Committee, to visit all the district schools. 1826, 143, § 5.

SECT. 16. The school committee, or some one or more of them, shall, for the purposes aforesaid, visit each of the district schools in their town, on some day during the first or second week after the opening of such schools, respectively, and also on some day during the two weeks preceding the closing of the same; and shall also, for the same purposes, visit all the schools kept by the town, once a month, without giving previous notice thereof to the instructors.

Authority of committee as to school books. 1826, 143, § 7.

SECT. 17. The school committee of each town shall direct what books shall be used in the several schools kept by the town; and may direct what books shall be used in the respective classes.

Parents, &c., to supply the books prescribed. 1826, 143, § 7.

SECT. 18. The scholars at the town schools shall be supplied by their parents, masters or guardians, with the books prescribed for their classes.

Books may be provided by the school committee. 13 Pick. 229. 1826, 143, § 7.

SECT. 19. The school committee of each town may procure, at the expense of the town, or otherwise, a sufficient supply of such class books, for all the schools aforesaid, and shall give notice of the place, where such books may be obtained; and the books shall be supplied to the scholars, at such prices, as merely to reimburse the expense of the same.

Books to be furnished, &c., at expense of the town. 1826, 143, § 7.

SECT. 20. In case any scholar shall not be furnished by his parent, master, or guardian, with the requisite books, he shall be supplied therewith by the school committee, at the expense of the town.

Expense of books so supplied, to be taxed to parents, &c. 1826, 143, § 7.

SECT. 21. The school committee shall give notice, in writing, to the assessors of the town, of the names of the scholars so supplied by them with books, and of the books so furnished, the prices thereof, and the names of the parents, masters or guardians, who ought to have supplied the same; and said assessors shall add the price of the books so supplied, to the next annual tax of such parents, masters or guardians; and the amount so added shall be levied, collected, and paid into the town treasury, in the same manner as the town taxes.

If parents are unable to pay,

SECT. 22. In case the assessors shall be of opinion, that any

such parent, master or guardian is unable to pay the whole expense of the books so supplied on his account, they shall omit to add the price of such books, or shall add only a part thereof, to the annual tax of such parent, master or guardian, according to their opinion of his ability to pay.

such tax may be wholly or partially omitted. 1826, 143, § 7.

SECT. 23. The school committee shall never direct to be purchased or used, in any of the town schools, any school books, which are calculated to favor the tenets of any particular sect of christians.

Books not to be bought which favor any particular sect of christians. 1826, 143, § 7.

SCHOOL DISTRICTS.

SECT. 24. The inhabitants of every town may, at any town meeting, to be called for that purpose, divide their town into school districts, and determine the limits of such districts; or they may, if they think it expedient, carry into effect the provisions of this chapter, without forming such districts.

School districts, formation of in each town. 12 Pick. 206. 7 ib. 106. 5 ib. 323. 1826, 143, § 2.

SECT. 25. Every town, which is or may be divided into school districts, shall, at their annual meeting, in addition to the school committee for the town, choose one person, resident in each school district, to be a committee for that district, and to be called the prudential committee; who shall keep the school house of such district in good order, at the expense of the district; and, in case there be no school house, provide a suitable place for the school of the district, at the expense thereof; provide fuel, and all things necessary for the comfort of the scholars therein; select and contract with a school master for the district; and give such information and assistance to the school committee of the town, as may be necessary to aid them in the discharge of the duties required of them.

Prudential committee in each district. 11 Pick. 260. 1826, 143, § 6.

SECT. 26. In any town, which shall so determine, the said prudential committee may be chosen by the inhabitants of the several school districts, to which they respectively belong, in such manner as the district may direct.

— may be chosen by the districts. 1826, 143, § 6.

SECT. 27. The inhabitants of each school district, qualified to vote in town affairs, shall choose a clerk, who shall be sworn to the faithful discharge of the duties of his office, by the moderator, in open meeting, or by any justice of the peace, and who shall make a fair record of all votes, passed at any meeting of the district, and certify the same when required, and who shall hold his office until another shall be chosen and sworn in his stead.

Clerk shall be chosen and sworn, who shall keep records, &c. 1826, 143, § 10.

SECT. 28. The said inhabitants may, at any meeting called for that purpose, raise money for erecting or repairing school houses in their respective districts; for purchasing or hiring any buildings to be used as school houses, and land for the use and accommodation thereof; for purchasing fuel, furniture, and other necessary articles for the use of schools; they may also determine, in what part of their respective districts such school houses shall stand, and may choose any committee to carry into effect the provisions aforesaid; and they may also, by the prudential committee of the district, select, contract with, and employ, an instructor for each school in the district.

Districts may raise money for the erection of houses and other purposes. May fix the site of school houses. 1829, 116.

SECT. 29. The clerk of a school district shall be answerable only for want of integrity on his own part; and, if he shall certify truly, to the assessors of the town, the votes of the district, for rais-

Clerk liable only for want of integrity: district for illegali-

ty, in assessing taxes.
10 Pick. 543.
11 Pick. 456.

ing by a tax any sum of money, the district shall be liable, in case of any illegality in the proceedings, which may have been had, in relation to raising such money.

Selectmen to determine the places for school houses, in case, &c.
1826, 143, § 15.
1829, 116.

SECT. 30. If any school district cannot determine where to place their school house, the selectmen of the town, to which the district belongs, upon application made to them, by the committee appointed to build or procure the school house, or by five or more of the legal voters of the district, shall determine where such school house shall be placed.

Duties of prudential committee to be performed by town committee, in case, &c.

SECT. 31. In all cases, where a prudential committee shall not be chosen for any school district, the school committee of the town shall perform all the duties of the prudential committee thereof.

Towns may provide school houses, &c., at the common expense.
1826, 143, § 10.
1829, 116.

SECT. 32. The inhabitants of every town may, if they shall think it expedient, carry into effect the provisions of the twenty eighth section, at the common expense of the town, so far as relates to providing school houses for the several school districts of the town; and the town in such case may, at any legal meeting, raise money and adopt all other proper measures for this purpose.

Where personal and real estate shall be taxed.
5 Mass. 380.
1826, 143, § 11.

SECT. 33. In raising and assessing money in the several school districts, every inhabitant of the district shall be taxed, in the district in which he lives, for all his personal estate, and for all the real estate which he holds in the town, being under his own actual improvement; and all other of his real estate, in the same town, shall be taxed in the district in which it lies.

Property in manufacturing corporations, where taxed.
1834, 176.

SECT. 34. In the assessment of all taxes, pursuant to the preceding section, all real estate and machinery, belonging to manufacturing corporations, shall be taxed in the school districts where the same are situated; and in assessing the shares in such corporation, for the like purposes, the value of said machinery and real estate shall be first deducted from the value of such shares.

Non-residents' estate, where taxed.
1826, 143, § 11.

SECT. 35. Whenever the real estate of a non-resident owner shall be taxed to such owner, it may be taxed in such district as the assessors of the town shall determine; and the said assessors, before they assess a tax for any district, shall determine in which district the lands of any such non-resident shall be taxed, and certify in writing their determination to the clerk of the town, who shall record the same; and such land, while owned by any person, resident without the limits of the town, shall be taxed in such district accordingly, until the town shall be districted anew.

Lands of any non-resident to be taxed in one district.
1826, 143, § 11.

SECT. 36. All the lands, within any town, owned by the same person, not living therein, shall be taxed in the same district.

School taxes assessed in same manner as town taxes.
3 Mass. 230.
1826, 143, § 11.

SECT. 37. The assessors of the town shall assess, in the same manner as town taxes are assessed, on the polls and estates of the inhabitants of each school district, and on all lands liable to be taxed therein, as aforesaid, all moneys voted to be raised by the inhabitants of such districts, for the purposes aforesaid; and such assessment shall be made within thirty days after the clerk of the district shall certify to said assessors the sum voted by the district to be raised.

Assessors to issue warrants to collectors.
1826, 143, § 11.
5 Pick. 496.

SECT. 38. The said assessors shall make a warrant, substantially in the form heretofore used, except that a seal shall not be required thereto, directed to one of the collectors of the town, to which such district belongs, requiring him to collect the tax so assessed, and

to pay the same to the treasurer of the town, within a time to be limited in the warrant; and a certificate of the assessment shall be made by the assessors, and delivered to the said treasurer. 12 Pick. 214.

SECT. 39. The money so collected and paid shall be at the disposal of the committee appointed by the district, to be by them applied to the building or repairing of school houses, or to the purchase of buildings, to be used as school houses, or to the purchase of land, for the sites of school houses, as before provided, and according to the votes or directions of the inhabitants of the district. Money raised, to be at the disposal of committees. 1826, 143, § 11.

SECT. 40. Every collector, in collecting such tax, shall have the same powers, and proceed in the same manner, as is by law provided in collecting town taxes. Collectors to have same power as in case of town taxes. 1826, 143, § 11.

SECT. 41. The treasurer of any town, to whom a certificate of the assessment of a district tax shall be transmitted as aforesaid, shall have the like authority, to enforce the collection and payment of the money, so assessed and certified, as in the case of moneys raised by the town, for the use of the town. Treasurer to have like powers, as in case of town taxes. 1826, 143, § 12.

SECT. 42. The assessors, treasurer and collector shall have the same compensation, respectively, for assessing, collecting and paying out all moneys, assessed for the use of a school district, as is allowed by the town, for the like services in respect to town taxes. Assessors, &c. to have same compensation as those of towns. 1826, 143, § 12.

SECT. 43. The assessors of the several towns shall have the same power to abate the tax, or any part thereof, assessed on any inhabitant of a school district, as they have to abate any town taxes. Assessors may abate, as in town taxes. 1826, 143.

SECT. 44. Whenever a meeting of the inhabitants of any school district shall be called, for the purpose of raising money, and a majority of the voters present shall be opposed to the raising of the money, any five inhabitants of such school district, who pay taxes, may make application in writing to the selectmen of the town, in which the school district is situated, requesting them to insert, in their warrant for the next town meeting, an article requiring the opinion of the town relative to the expediency of raising such moneys as were proposed in the warrant for said district meeting; and if the majority of the voters, present in such town meeting, shall think the raising of any of the sums of money, proposed in said warrant, to be necessary and expedient, they may vote such sum as they shall think necessary for the said purposes, and the same shall be assessed on the polls and estates of the inhabitants of such district, and be collected and paid over, in the manner before provided. If inhabitants of district refuse to raise money, town may order it. 1826, 143, § 16. 1834, 153, § 6.

SECT. 45. If any school district shall neglect or refuse to establish a school and employ a teacher for the same, the school committee of the town may establish such school, and employ a teacher therefor, as the prudential committee might have done. If districts neglect to establish schools, town committee may do it.

SECT. 46. The selectmen of the several towns, divided into school districts as aforesaid, and the prudential committee of every such district, upon application made to them, respectively, in writing, by three or more residents in any district, who pay taxes, shall issue their warrant, directed to one of the persons making such application, requiring him to warn the inhabitants of such district, qualified to vote in town affairs, to meet at such time and place in the same district, as shall be expressed in the warrant. Selectmen or prudential committee may issue warrants for district meetings. 1826, 143, § 14. 1834, 170.

SECT. 47. The warning aforesaid shall be given seven days at Manner of

warning meetings. 4 Greenl. 46. 14 Mass. 315. 1826, 143, § 14.

least before the time appointed for the meeting, and shall be either by personal notice to every inhabitant of the district, qualified to vote in town affairs, or by leaving, at his last and usual place of abode, a written notification, expressing therein the time, place, and purpose of the meeting, unless the district shall prescribe another mode of warning their meetings.

The districts may direct mode of calling meetings. 10 Pick. 543. 1826, 143, § 14. 1834, 170.

SECT. 48. Every school district may, at any regular meeting, having an article in the warrant for that purpose, prescribe the mode of warning all future meetings of the district; and they may also direct by whom and in what manner such meetings shall be called.

CONTIGUOUS SCHOOL DISTRICTS IN ADJOINING TOWNS.

Contiguous districts of adjoining towns, may unite themselves into one. 1834, 153, § 1.

SECT. 49. Where two or more contiguous school districts, in adjoining towns, are too small to maintain schools advantageously in each, such districts may, if they see fit, unite and form one district, with all the powers and privileges, and subject to all the liabilities, which now are, or hereafter may be, allowed or prescribed in regard to school districts.

No such union to be formed without consent of the districts and towns. 1834, 153, § 1.

SECT. 50. No districts shall be so united, unless the inhabitants of each shall, at legal meetings called for the purpose, agree thereto; nor, unless the respective towns shall, at legal town meetings called for the purpose, assent to the same; and when any such vote shall be passed by any school district, the clerk thereof shall forthwith send a certified copy of said vote to the clerk of his town.

United districts may be again separated. 1834, 153, § 1.

SECT. 51. Whenever the voters in such united district shall, at any legal meeting called for the purpose, deem it expedient to separate, and again form two or more districts, they may so do, first obtaining the consent of the respective towns.

Meetings of united districts, how called.

SECT. 52. The first meeting of such united district shall be called in such manner as may be agreed upon by the respective districts, at the time of forming the union; and the united district may, from time to time thereafter, prescribe the mode of calling and warning the meetings, in like manner as other school districts may do.

Prudential committee to be chosen. 1834, 153, § 2.

SECT. 53. Such district, at the first meeting, and annually thereafter, shall choose a prudential committee, who shall receive and expend the money, raised and appropriated in each town, for said united district, and shall possess all the powers, and discharge all the duties, allowed or prescribed to the prudential committees of other districts.

Moneys raised to be in proportion, &c. 1834, 153, § 3.

SECT. 54. The inhabitants of every such united district shall, at the time of voting to raise such moneys, determine the amount to be paid by the inhabitants in each town, which shall be in proportion to their respective polls and estates; and the clerk of the district shall certify such vote to the assessors of each of the said towns.

—to be assessed by assessors of respective towns. 1834, 153, § 3.

SECT. 55. All moneys, duly voted to be raised by any such united district, shall be assessed, by the assessors of the respective towns, upon the polls and estates of the inhabitants of the district, and collected in the same manner, that taxes are assessed and collected in other school districts.

School committees of adjoining towns to officiate alternately, &c 1834, 153, § 4.

SECT. 56. The respective school committees of the towns, from which such united district is formed, shall discharge the duties of school committees for the district, in alternate years, commencing with the most ancient town.

GENERAL PROVISIONS.

SECT. 57. Every school district shall be a body corporate, so far as to prosecute and defend in all actions, relating to the property or affairs of the district.

School districts to be corporations for certain purposes. 13 Mass. 193.

SECT. 58. They shall also have power, as a corporation, to take and hold, in fee simple or otherwise, any estate, real or personal, which has been, or may be given to, or purchased by them, for the supporting of a school or schools in the district.

Same subject. 1826, 143, § 17.

SECT. 59. Nothing contained in this chapter shall affect the right of any corporation, which is or may be established in any town, to manage any estate or funds, given or obtained for the purpose of supporting schools therein, or, in any wise, to affect any such estate or funds; but such corporate powers and such estate and funds shall remain, as if these provisions had not been enacted.

Provisions of this chapter not to affect funds, &c. of corporations for supporting schools. 1826, 143, § 18.

SECT. 60. If any towns shall refuse or neglect to raise money for the support of schools, as required by this chapter, such town shall forfeit a sum, equal to twice the highest sum, which had ever before been voted for the support of schools therein; and, if any town shall refuse or neglect to choose a school committee to superintend said schools, or to choose, for the purposes before mentioned in this chapter, prudential committees in their several districts, when it is the duty of the town to choose such prudential committee, such town shall forfeit a sum not less than one hundred nor more than two hundred dollars, which shall be paid into the treasury of the county; and one fourth thereof shall be for the use of the county, and three fourths thereof shall be paid by the county treasurer to the school committee of such town, if any, and if not, to the selectmen of the town, for the support of schools therein.

Forfeiture if towns neglect to raise money for schools; and how appropriated. 1826, 143, § 19.

SECT. 61. Every such school committee, or board of selectmen, shall forthwith receive, from the treasurer of the county, any money so payable to them, and shall apportion and appropriate the same, to the support of the schools of such town, in the same manner it should have been appropriated, if it had been regularly raised by the town for that purpose.

School committee, &c. to receive and appropriate sums forfeited. 1826, 143, § 19.

SCHOOL RETURNS.

SECT. 62. The school committees of the several towns and of the city of Boston shall, on or before the first day of November, in each year, make official returns, to the secretary of the Commonwealth, of all the public schools in such towns and city, respectively, whether such schools are kept for school districts, or for the common benefit of all the inhabitants; which said school returns shall be made, as is provided in the two following sections.

—to make returns to secretary. 1835, 138, § 1. 1826, 143, § 8.

SECT. 63. The said school returns shall, so far as respects the school districts of each town, contain true answers to the following inquiries concerning said school districts, and shall be made in the following form:

Returns respecting the school districts.

Districts.	Children attending common schools. From 4 to 16 yrs. of age.			Children not attending common schools any portion of the year, from 4 to 16 years of age.		Time of keeping school.		Instructors.		Wages in money exclusive of board.			Price of board, per week.		School house—its size and condition.
	Male.	Female.	Average attendance.	Male.	Female.	Winter.	Summer.	Male.	Female.	Per Annum.	Per Month Winter.	Per Month. Summer.	Male.	Female.	

Returns respecting all the schools of a town.

SECT. 64. The said school returns shall, in addition to the answers required by the preceding section, concerning the school districts in each town, contain also true answers to the following general inquiries respecting all the schools kept in such town; and shall be in the following form:

Inquiries with respect to all the schools in the town.

1.—What amount of money is raised by taxes in the town, for supporting the common schools; and what by voluntary contributions?

2.—What part of the money raised by taxes is paid for furniture, wood, and incidental expenses, and what part for instruction only?

3.—Are there any private schools or academies; what portion of the year have they been kept; and what is the average number, in the year, attending them?

4.—What is the estimated amount paid for tuition in such schools, and academies?

5.—Are the school committees regularly chosen each year; do they organize themselves as a committee, and do they visit and examine the schools as required by law; how are the examinations conducted?

6.—Do parents interest themselves in the character of the schools, and attend the examinations?

7.—What are the books in general use; specifying spelling books, grammars, arithmetics, geographies, reading and other books?

8.—Who selects books?

9.—What is the furniture of the school house, and the apparatus, including maps?

10—Is it desirable to increase the number of studies?

11.—Are there any local funds?

Secretary, to furnish towns with blanks. 1826, 143, § 9.

SECT. 65. The secretary of the Commonwealth, shall annually furnish every town with blank forms of returns, corresponding to the forms contained in the two preceding sections.

DISTRIBUTION OF THE SCHOOL FUND.

SECT. 66. No apportionment of the school fund, as provided in the following sections, shall be made to any town, which shall have failed to make school returns, for the year next preceding the time of such apportionment, or which shall have failed, at the annual meeting preceding the time when the annual appropriation shall be made, to raise by taxation, for paying the wages of instructors solely, a sum equal at least to one dollar for each person belonging to said town on the first day of May preceding, between the ages of four and sixteen years.

No allowance of school fund to towns neglecting to make returns, or to raise a sum of money equal, &c. 1835, 138, § 1.

SECT. 67. The income of the Massachusetts school fund, except the sum of one hundred dollars mentioned in the following section, shall be apportioned by the secretary and treasurer, and paid over by the treasurer, on the fifteenth of January in each year, to the mayor and aldermen of the city of Boston, and to the selectmen of the several towns, for the use of common schools therein, which shall have made the returns, and raised the sums of money, required by the preceding section, and which shall have returned to the secretary the certificate required by this section, according to the number of persons in such city and towns, between the ages of four and sixteen years, to be enumerated and ascertained in the following manner, to wit: the school committee of each town shall, annually, in the months of May or June, ascertain from actual examination, or otherwise, the number of persons belonging to such town on the first day of May in each year, between the ages of four and sixteen years, and shall make a certificate thereof, and also of the sum raised by the town at the annual meeting in the same year, for paying the wages of instructors solely, and shall transmit the same to the secretary of the Commonwealth, on or before the first day of November following, which certificate shall be in the following form, to wit:

Manner of apportioning school fund among towns. 1835, 138, § 2.

We, the school committee of , do certify, from the best information we have been able to obtain, that on the first day of May, in the year , there were belonging to said town the number of persons, between the ages of four and sixteen years; and we further certify, that said town, at their last annual meeting, raised the sum of dollars, to pay the wages of instructors solely, in the common schools for the current year.

} School Committee.

——— ss.

On this day of , personally appeared the above-named school committee of the town of , and made oath that the above certificate by them subscribed is true.

Before me,

Justice of the peace.

SECT. 68. There shall be allowed and paid, out of the income of said Massachusetts school fund, the sum of one hundred dollars, on the first day of January annually, to the commissioner of the Marshpee Indians, to be applied, under his direction to the support of common schools among the said Indians.

Allowance to the Marshpee Indians. 1835, 138, § 3.

REGULATIONS IN FURTHERANCE OF THE DISCIPLINE OF COLLEGES.

Innholders, &c. not to give credit to undergradutes, except, &c. 1 Pick. 177. 1819, 37, § 1.

SECT. 69. No innholder, tavern keeper, retailer, confectioner, or keeper of any shop, or boarding house, for the sale of drink or food, or any livery stable keeper, for horse or carriage hire, shall give credit to any undergraduate of either of the colleges within this state, without the consent of the president, or of such officer as may be thereto authorized by the governments of such colleges, respectively, nor in violation of any rules and regulations of said colleges.

Licenses, not to be granted to persons violating, &c. 1819, 37, § 2.

SECT. 70. No person shall be approved, by the selectmen of any town, to be licensed for either of the employments aforementioned, nor shall any such license be granted to any person, if it shall appear that he has, within the year then last past, given credit to any undergraduate of said colleges, contrary to the provisions of this chapter.

Penalty for giving such credit.

SECT. 71. If any person shall give credit to any undergraduate of a college, contrary to the provisions of this chapter, he shall forfeit a sum equal to the amount so unlawfully trusted or credited, whether the same shall have been paid or not.

TITLE XI.

Of highways, bridges and ferries; and of town ways.

CHAPTER 24. Of laying out highways, town ways and private ways; and the discontinuance thereof.
CHAPTER 25. Of the repair of ways and bridges.
CHAPTER 26. Of the regulation of ferries.
CHAPTER 27. Of common sewers and drains, in highways and other places.

CHAPTER 24.

OF LAYING OUT HIGHWAYS, TOWN WAYS AND PRIVATE WAYS; AND THE DISCONTINUANCE THEREOF.

SECTION

HIGHWAYS.

1. Highways, to be laid out by the commissioners.
2. Notice to be given to the towns, through which, &c.
3. Commissioners, to view the place, if requested.
4. Hearing of the parties, and adjudication.
5. Commissioners may make alterations between termini prayed for.
6. Adjudication and notice before highways are laid out, except, &c.
7. Upon petition for laying out, &c. highway, commissioners may order existing highway to be repaired.
8. Same subject.
9. Existing highway may be located anew.

SECTION
10. Time prescribed for making highways and for removing trees, &c.
11. Damages to private property, to be estimated by commissioners.
12. Damages to be apportioned between tenants for life and reversioners.
13. Any party aggrieved may have a jury or committee.
14. Within what time, a jury must be applied for.
15. Several petitions may be submitted to the same jury.
16. Petitions shall not abate by death of parties.
17. Executors, &c. neglecting to appear, survivors may proceed.
18. Warrant for a jury, to be directed to sheriff, &c.
19. Jury, how and whence summoned.
20. Jurors, to pay a fine for non-attendance.
21. Talesmen may be returned.
22. Jurors, to be sworn.
23. Commissioners may appoint a person to preside at the trial by the jury.
24. Duties of presiding officer.
25. Same subject.
26. Commissioners, to take notice on behalf of their counties.
27. Commissioners may appoint an agent for the county, to attend the jury.
28. Notice of the time of trial to be given.
29. Officers' fees.
30. Duty of jurors.
31. Jury to set off the benefit against the injury caused by laying out, &c.
32. Title of lands determined only so far as respects the damages.
33. Jury may extend the time for removing trees, &c.
34. Verdict or report to be returned within three months—Court may set aside the verdict, &c.
35. Complainant entitled to a verdict, and such a one as will sustain a judgment.
36. Clerks of courts, to certify the verdict, &c. to the commissioners.
37. A recorded verdict, or report, to be conclusive.
38. Costs, how to be paid when damages are not increased by jury, &c.
39. All question of costs to be finally settled by C. C. P.
40. Highways, not to be worked or shut up, until, &c.
41. Recognizance for payment of costs, in case, &c.
42. What expenses to be paid by the county.
43. What expenses to be paid by petitioners.
44. If towns neglect to make highways, the same shall be made by county, and charged to towns.
45. If towns do not pay their proportions of expense, warrants to issue against them.
46. Commissioners may order half the expenses to be paid by county.
47. Commissioners to certify to county treasurer when a highway is completed.
48. Several parties, to go to the same jury in certain cases.
49. Notice, to all persons interested, to become parties to a petition by any one.
50. Verdict, to apportion the damages among the parties.
51. Verdict, to be conclusive on all who have notice, &c.
52. Costs of the parties, how taxed.
53. If any party neglect to appear, he shall be barred.

SPECIAL PROVISIONS FOR THE COUNTY OF SUFFOLK.

54. The mayor and aldermen of Boston to have powers of county commissioners.
55. C. C. P. may order a trial by jury to any party aggrieved by doings of the mayor, &c.
56. Several parties to go to the same jury in certain cases.
57. Powers and duties of C. C. P. respecting ways in Chelsea.
58. C. C. P. may appoint commissioners to view, &c.

HIGHWAYS OVER BURYING GROUNDS; LIMITS OF HIGHWAYS, AND INCUMBRANCES THEREON.

59. Highways shall not be laid out over any burying grounds, unless, &c.
60. Same subject.
61. Fences, &c. when to be deemed the boundaries of highways.
62. Same subject.
63. When a building adjudged a nuisance is taken down and sold, &c.

HIGHWAYS IN UNINCORPORATED PLACES.

64. Highways how to be laid out, &c. in unincorporated places.
65. Assessors in such places to have the powers, &c. of selectmen.

TOWN WAYS AND PRIVATE WAYS.

66. Selectmen may lay out town ways and private ways.
67. Notice to be given by selectmen, before laying out, &c.

SECTION
68. Damages, how awarded and paid.
69. Filing of description with the clerk, and acceptance by the town, prerequisites to a town or private way.
70. Towns may discontinue town, &c. ways.
71. If selectmen unreasonably refuse, &c. party may appeal to commissioners.
72. Appeal given, if towns refuse to accept ways.
73. Same, if towns refuse to discontinue.
74. When towns are debarred from laying out, &c.
75. Recognizance to be given for costs.
76. Parties may have a jury to ascertain damages—Same rule as to costs, as in case of highways.
77. When town shall not contest legality of town ways.
78. Towns may raise money for making highways and town ways.

HIGHWAYS.

Highways, to be laid out by the commissioners. 7 Mass. 158. 1786, 67, § 4. 1797, 30, § 1.

SECTION 1. When a new highway, from town to town, or from place to place, within the same town, shall be wanting, or when any highway can, with greater public convenience, be altered or discontinued, application therefor shall be made, by petition in writing, to the county commissioners of the county, in which such new highway or such alteration or discontinuance shall be wanted.

Notice to be given to the towns through which, &c. 1827, 77, § 7.

SECT. 2. The commissioners, to whom such petition shall be presented, shall cause a copy thereof to be served upon the clerk of every town, within which such new highway, alteration or discontinuance is prayed for, thirty days at least before the time appointed for any view or hearing. They shall also cause copies of such petition, or abstracts containing the substance thereof, to be posted in two public places in each of said towns, and shall give notice to all persons interested, by causing a like copy to be published, three weeks successively, in such newspaper as they shall order; such posting, and the last publication of such copy, to be fourteen days at least, before any view, hearing, or adjudication on such petition.

Commissioners to view the place, if requested. 1827, 77, § 7.

SECT. 3. The commissioners shall view the premises, when requested by any party interested, and also in all cases, where a view shall be deemed by them expedient; and before any view shall be had, they shall give notice, in the manner provided in the preceding section, to all persons interested, of the time and place for commencing the same.

Hearing of the parties, and adjudication. 1827, 77, § 7.

SECT. 4. The commissioners shall hear the parties, either at the time of the view, or at any regular or special meeting, or any adjournment thereof, as they shall determine; and as soon as may be after the hearing, they shall consider and adjudicate upon the common convenience and necessity of laying out, or of altering or discontinuing such highway, as prayed for by the petitioners.

Commissioners may make alterations between the termini, prayed for.

SECT. 5. The commissioners, in their adjudication, may, between the termini of the highway prayed for, make such changes in the highway described in the petition, with regard to the direction, alteration or discontinuance thereof, as in their opinion the public convenience may require.

Adjudication and notice, before highway is laid out, &c., except, &c. 1827, 77, § 7. 1828, 103, § 3.

SECT. 6. When the commissioners shall have adjudicated upon the common convenience and necessity of laying out, or altering or discontinuing any highway, they shall, as soon as may be, proceed to lay out, alter or discontinue the same accordingly; first giving such notice thereof, as is required before proceeding to view, excepting,

that instead of publishing a copy of the whole petition, it shall be sufficient to publish an abstract thereof; provided, that if at the time of the view of such highway, no person interested shall object, the commissioners may forthwith proceed to lay out, alter or discontinue such highway, without giving any further notice, as prescribed in this section.

Upon petition for laying out, &c., highway, commissioners may order existing highway to be repaired. 1835, 152, § 7.

SECT. 7. Whenever, upon any petition for laying out or altering a highway, the commissioners, after having viewed the same, and heard all persons interested, shall be of opinion that the existing highway, between the termini mentioned in the petition, can be so far amended, as to supersede the necessity of laying out a new highway, or altering the location of existing ways, they may, after due notice to the towns interested, direct specific repairs to be made in such existing ways, in such manner, as the public convenience shall require; and they shall apportion the expense thereof upon the county and towns, respectively, as in the case of laying out highways.

Same subject. 1835, 152, § 7.

SECT. 8. The towns, in which specific repairs shall be ordered to be made, as provided in the preceding section, shall be liable to make the same and be entitled to a trial by jury, in like manner, as is provided in the case of laying out highways.

Existing highway may be located anew. 1835, 152. § 8.

SECT. 9. When application shall be made to the commissioners of any county, by any town in such county, to locate anew any road within such town, whether the same were laid out by the authority of such town, or otherwise, the commissioners may, either for the purpose of establishing the boundary lines of such road, or of making alterations in the course or width thereof, locate such road anew, after giving the like notice, and proceeding in the like manner, as in the case of laying out highways; and the town, making such application, shall pay all the expenses arising in the case.

Time prescribed for making highways, and for removing trees, &c. 3 Mass. 406. 1796, 58, § 6. 1802, 135, § 4. 1827, 77, § 7.

SECT. 10. When any highway shall be laid out or altered by the commissioners, they shall, in their return thereof, determine and specify the manner, in which such new highway or such alteration shall be made, and also the time within which the same shall be completed: they shall also allow the owner of the land a reasonable time to take off his timber, wood or trees; which time shall be expressed in their return; and, if he shall not remove the same, within the time allowed for that purpose, he shall be deemed to have relinquished his right thereto, for the benefit of the town.

Damages to private property, to be estimated, by commissioners. 1786, 67, § 4. 1812, 121, § 1. 1827, 77, § 11.

SECT. 11. If damage shall be sustained by any persons in their property, by the laying out, altering or discontinuing of any highway, the commissioners shall estimate the amount of damage, sustained by such persons, and, in their return, shall state the share of each separately; and the said damages shall be paid from the county treasury, as hereafter provided in this chapter.

— to be apportioned between tenants for life and reversioners. 6 Mass. 251.

SECT. 12. Whenever it shall be proved, that any person, who claims such damages, is only entitled to an estate for life, or for years, in the premises, and that the remainder or reversion in fee belongs to another person, the commissioners shall make and return such an apportionment of the damages between them, according to their respective interests, as shall be just and reasonable.

Any party aggrieved may have a jury or

SECT. 13. Any party, who shall be aggrieved by the doings of the commissioners, either in laying out, altering or discontinuing any

committee. 1786, 67, § 4. 1812, 121. 1834, 173, § 1.

highway, or in the estimation of his damages occasioned thereby, may have a jury to determine the matter of his complaint, on application therefor by petition in writing to the said commissioners; unless he shall agree with the parties adversely interested, to have the same determined by a committee, to be appointed under the direction of the commissioners; provided, that the jury or the committee so appointed shall not revise the judgment of the commissioners, as to the common convenience and necessity of laying out, or of altering, the way in question; but they may make any alterations, that may be prayed for between the termini, as established by the commissioners, so far as the jury or the committee shall think such alterations to be necessary or proper.

11 Pick. 275.

Within what time a jury must be applied for. 1786, 67, § 4. 1812, 121. 1834, 173, § 1.

SECT. 14. Such application for a jury may be received and acted upon by the commissioners, at the same meeting, at which such laying out, alteration or discontinuance shall take place, or at the next regular meeting thereafter; and no such application shall be afterwards received, except for a jury to assess damages; for which purpose, a further time, not exceeding six months, may be allowed.

Several petitions may be submitted to the same jury. 1802, 135, § 3. 1818, 121, § 2.

SECT. 15. If two or more persons shall apply at the same time for joint or several damages, they may join in the same petition to the commissioners; and if several applications shall be pending at the same time, before the commissioners, for a jury to determine any matter relating to the laying out, alteration or discontinuance of a highway, or the assessment of damages, the said commissioners shall cause all such applications to be considered and determined by the same jury; and the costs shall be taxed either jointly or severally, as the court, to which the verdict may be returned, shall determine to be equitable.

Petitions shall not abate by death of parties. 1833, 88, § 1.

SECT. 16. No petition to the commissioners for a jury shall abate or be defeated by the death of the petitioner; but the executor or administrator, or the heirs or devisees, (if they shall be the persons interested,) may appear and prosecute such petition, or present a new petition, in the same manner, and with the same effect, as the original party might have done if living.

Executors, &c. neglecting to appear, survivors may proceed. 1833, 88, § 2.

SECT. 17. If, upon the death of one or more of several petitioners for a jury, the executors or administrators, heirs or devisees of such petitioners, after due notice that such petition is pending, shall neglect to appear, or to prosecute, the surviving petitioners may proceed in the same manner, as if they only had made application for such jury.

Warrant for a jury, to be directed to sheriff, &c. 11 Pick. 269. 1827, 77, § 12.

SECT. 18. The warrant for a jury shall be directed to the sheriff of the county or his deputy, who is disinterested, or to a coroner, as the commissioners shall order, requiring him to summon a jury of twelve men, to hear and determine the matter of complaint, set forth in the petition for such jury, and to decide all such matters, as shall legally come before them on such hearing.

Jury, how and whence summoned. 1802, 135, § 1. 1827, 77, § 12. 1814, 173.

SECT. 19. The officer, who receives the warrant shall in writing require of the selectmen of the three nearest towns not interested in the question, (if there be so many in the county,) to return a number of jurors, not less than two, nor more than six, from any one town, unless in case of necessity; and the jurors shall be drawn, summoned and returned, as in other cases, excepting that the jurors

need not be summoned more than twenty four hours before the time appointed for their attendance.

SECT. 20. If any person so summoned as a juror shall fail to attend, without sufficient cause, he shall pay a fine not exceeding ten dollars, at the discretion of the court, to which the verdict shall be returned, to be paid into the county treasury.

Jurors to pay a fine for non-attendance. 1814, 173.

SECT. 21. If, by reason of challenges or otherwise, there shall not be a full jury of the persons summoned, the officer, who summoned the jury, or in his absence, the officer attending the jury, shall return some suitable person to supply the deficiency.

Talesmen may be returned. 1802, 135, § 1. 1814, 173.

SECT. 22. The jurors shall be sworn to make a just and true appraisement of the damages sustained by the complainant, and well and truly to try all such other matters, as shall be lawfully submitted to them, under the said complaint, and to give a true verdict therein, according to law and the evidence given them; provided that when no estimate of damages is required to be made, the part of the oath relating to damages shall be omitted.

Jurors to be sworn. 1795, 74.

SECT. 23. The commissioners, when they issue their warrant for a jury, may, at the request of either party, appoint some suitable person to preside at the trial by the jury, in which case, the jury may be attended by any deputy sheriff; but if there shall be no such person appointed, the sheriff of the county shall preside at such trial; or, when the sheriff shall be interested, or unable from sickness or other cause to attend, a coroner of the county shall preside.

Commissioners may appoint a person to preside at the trial by the jury. 1830, 112, §§ 1, 2.

SECT. 24. The person, who shall preside at the trial, shall keep order therein and shall administer the oath to the jurors, and to all the witnesses examined.

Duties of presiding officer. 1830, 112.

SECT. 25. The person, who shall preside at any such trial by a jury, shall decide all questions of law arising on the trial, which would be proper for the decision of a judge; and shall direct the jury upon any question of law, when requested by any party; and shall certify to the court, with the verdict, the substance of any decision or direction by him given, when any party shall request it.

Same subject. 11 Pick. 274.

SECT. 26. Whenever a petition for a jury shall be presented to the commissioners, they shall, on behalf of the county, take notice of the same; and may, in behalf of the county, agree with the petitioners to substitute a committee, to determine the matter in controversy, in the place of a jury, as before provided in this chapter.

Commissioners, to take notice on behalf of their counties. 1827, 177, § 12.

SECT. 27. The commissioners shall appoint some suitable person to attend upon the jury, or the committee, as an agent for the county, when they shall think it necessary; and such agent shall be allowed therefor, at the same rate, that is allowed to the commissioners, and be paid in the same manner.

Commissioners may appoint an agent for county, to attend the jury. 1827, 77, § 12.

SECT. 28. The officer, by whom any such jury shall be summoned, shall give seasonable notice, of the time and place of their meeting, to the person appointed to preside at the trial, and also to the person appointed as agent for the county, if such appointments shall have been made; and when a committee shall be substituted for a jury, such notice to the agent for the county shall be given by the person first named on the committee.

Notice of the time of trial, to be given. 1827, 77, § 12.

SECT. 29. The officer shall receive, for summoning the jurors, four cents a mile for all necessary travel, and one dollar and fifty cents

Officers' fees. 1802, 135, § 5.

for each day, that he shall attend upon them; and he shall certify to the court his own travel and attendance, and also that of each juror.

Duty of jurors. 1786, 67, § 5.

SECT. 30. The jury shall view the premises, when they shall think proper, or shall be requested by any party; they shall also hear and examine all such legal evidence, as may be laid before them, with the observations of the parties or their counsel thereon; and all the jurors shall sign the verdict which may be agreed upon, and the same shall be inclosed in a sealed wrapper, with an indorsement thereon, expressing what it contains, and shall be delivered so indorsed to the officer having charge of the jury.

Jury to set off the benefit against the injury caused by laying out, &c. 5 Mass. 437. 9 ib. 389. 1824, 153.

SECT. 31. In estimating the damages sustained by any person in his property, by the laying out, altering or discontinuing of any highway, the jury shall take into consideration all the damage done to the complainant, whether by taking his property, or by injuring it in any manner; and they shall also allow, by way of set-off, the benefit, if any, to the property of the complainant, by reason of such laying out, alteration or discontinuance.

Title of lands determined only so far as respects the damages. 1802, 135, § 2.

SECT. 32. If the interest or right of any complainant, in or to the real estate, alleged to be damaged by the laying out, altering or discontinuing of a highway, shall be drawn in question, on any such hearing, the jury may hear and determine such question of interest or right, so far only as respects the damages of such complainant.

Jury may extend the time for removing trees, &c. 1802, 135, § 4.

SECT. 33. The jury, that shall assess the damages occasioned by the laying out or altering of any highway, may extend the time, allowed by the commissioners for the owner of the land to take off the timber, wood or trees; and if the owner shall neglect to take off the same, within such extended time, he shall be deemed to have relinquished his claim thereto, for the benefit of the town, as before provided.

Verdict or report to be returned within three months. Court may set aside verdict, &c. 5 Mass. 435. 1827, 77, § 12.

SECT. 34. When a jury shall be ordered upon any highway, as before provided, such jury shall be summoned and give their verdict, within three months next after the date of such order; and the verdict so given shall be returned to the next term of the court of common pleas, to be held for the same county, and the court shall receive the said verdict, and adjudicate thereon, and may set the same aside for good cause; and in case the matter shall have been determined by a committee, as before provided, the report of such committee shall be made within three months after their appointment, and shall be returned to the next term of the court of common pleas, which shall be held after making the same; and the like proceedings shall be had thereon, as upon a verdict returned as aforesaid.

Complainant entitled to a verdict; and such a one as will sustain a judgment. 10 Pick. 235.

SECT. 35. If the jury shall not agree upon a verdict, or if the proceedings in the case shall be set aside upon a writ of certiorari, the complainant shall be entitled to a new jury, from time to time, until a verdict shall be rendered in the case; provided, that he may, at any stage of the proceedings, upon such terms as the court shall order, waive his right to a trial by jury, and may accept the damages assessed by the commissioners.

Clerks of courts to certify the verdict, &c., to commissioners. 1827, 77, § 12.

SECT. 36. The clerk of the said court shall certify such verdict, or report, as the case may be, with the adjudication of the court thereon, to the commissioners, at their next meeting, after such adjudication shall be had; and if the said verdict or report shall have

'cation therefor, shall order
ı a new committee; and
'd, as are herein before

'he report of the com-
s as before provided,
conclusive upon the

A recorded verdict, or report, to be conclusive.
1786, 67, § 5,
1818, 121, § 2.

ll not alter the high-
commissioners, the
'h jury or commit-
ır the payment of
ll such costs, as
-easury.

Costs, how to be paid, when damages are not increased by jury, &c.
1818, 121, § 2.
1786, 67, § 4.
1827, 77, § 11.

l to the taxation
'ury or commit-
ımon pleas, to
and the court
e, and of the

All questions of costs, to be finally settled by C. C. P.

jury, or a
determine
f any high-
l or work-
after the
jury, or
ıe court
d; and
's they
hway,
ı the

Highways, not to be worked or shut up, until, &c.
1827, 77, § 12.

ıing
the
he
ıe
f

Recognizance for payment of costs, in case, &c.
1827, 77, § 11.

at expenses
'o be paid
'e county
77, § 11.

penses
paid
ıers.
11.

refuse or neglect to pay such expenses, or to pay the costs incurred by reason of the application for a jury or committee, when required by the commissioners to pay the same, such expenses, or such costs, shall be ordered by the commissioners to be paid from the county treasury; and thereupon the commissioners, after giving due notice to the persons, who shall have so recognized, shall issue a warrant against them, or some of them, (unless sufficient cause shall be shown to the contrary) for the amount ordered to be paid by them, with the further costs of the notice and warrant, and the money shall be collected, as in other cases, and paid into the county treasury.

If towns neglect to make highways, then the same shall be made by the county, and charged to towns. 5 Greenl. 254. 1827, 77, § 7.

SECT. 44. After any highway shall have been established by the commissioners, if any town, whose duty it shall be to make such highway, or any part thereof, shall not make and complete the same, within the time and in the manner prescribed by the commissioners, and to their acceptance, the said commissioners, as soon as may be thereafter, shall cause such highway to be completed as aforesaid; and at their next meeting, they shall direct the expenses and charges of completing such highway, to be paid out of the county treasury, and shall order notice thereof to be given to each town that shall be delinquent, stating the proportions which they are respectively required to pay.

If towns do not pay their proportions of expense, warrants to issue against them. 1827, 77, § 7.

SECT. 45. If any such delinquent towns shall not pay their proportion of the said expenses and charges, before the next regular meeting of the commissioners, with interest thereon, at the rate of ten per cent. a year, from the time the same shall have been paid from the county treasury, the said commissioners, unless sufficient cause shall be shown to the contrary, shall issue warrants against such delinquent towns, respectively, for the sums they were ordered to pay, with the said interest, and the further costs of such notice and warrant; and the same shall be collected, as in other like cases, and paid into the county treasury.

Commissioners may order half the expenses to be paid by county. 1827, 77, § 8.

SECT. 46. Whenever the commissioners shall lay out and establish any highway, or shall make an alteration therein, which they shall judge to be of general use and importance to the public, they may order that a sum not exceeding one half of the expense of making such highway, as it shall be estimated by the commissioners, shall be paid out of the county treasury; and they shall specify in their order the proportion of such expense, to be paid to each town, (if more than one) which is liable to make such highway; but not more than one half of the estimated expense of making such highway, within the limits of any town, shall be paid to such town.

Commissioners, to certify to county treasurer, when a highway is completed. 1827, 77, § 8. 13 Pick. 225.

SECT. 47. When notice shall be given to the commissioners, that the part of such highway lying within the limits of any town has been completed, according to their directions for making the same, the said commissioners shall view and carefully examine the same throughout; and if they shall find such highway well made, they shall certify the same to the county treasurer, who shall thereupon pay to such town the sum so allowed.

Several parties to go to the same jury, in certain cases.

SECT. 48. Whenever there shall be several parties, having several estates or interests, at the same time, in any land or any buildings standing thereon, and the said land or buildings shall be taken or otherwise damaged, in whole or in part, by the laying out, altering or

discontinuing of any highway or town way, and any one of such parties shall, by petition, as provided in this chapter, apply for a jury to ascertain his damages in the premises, all the other parties, so interested, may become parties to the proceedings under said petition, and the damages of all of them may be determined by the same jury, in the manner provided in the five following sections.

Notice to all persons interested, to become parties to a petition by any one.

SECT. 49. Upon such application of any party, interested in the manner mentioned in the preceding section, the commissioners shall order the petitioner to give notice thereof to all the other parties interested, by serving each of them, fourteen days at least before the next regular meeting of said commissioners, with an attested copy of said petition and the order thereon, that the said other parties may, if they see cause, appear at the said next meeting, and become parties to the proceedings under the said petition; and at the said next meeting, a jury shall be ordered, as before provided in this chapter, who shall, under the direction of the person presiding at the trial, proceed to hear all the persons, who shall have become parties to the proceedings aforesaid.

Verdict, to apportion the damages among the parties.

SECT. 50. If on such hearing, the jury shall find any of the said parties to be entitled to damages, they shall proceed to assess the same in the following manner, to wit: they shall first find, and shall set forth in their verdict, the total amount of the damages, sustained by the owners of such land and buildings, estimating the same as an entire estate, and as if the same were the sole property of one owner, in fee simple; and they shall then apportion the said total amount of damages among the several parties whom they shall find to be entitled, in proportion to their several interests, and to the damages sustained by them, respectively, and they shall set forth such apportionment in their verdict; and if they shall find any one or more of said parties not to have sustained any damage, they shall also set forth in their verdict, that they award no damages to such party.

The verdict, to be conclusive on all who have notice, &c.

SECT. 51. The verdict aforesaid, if accepted, shall be conclusive upon all the parties interested, who shall either have had notice, as aforesaid, or who shall, by consent, have become parties to the said proceedings.

Costs of the parties, how taxed.

SECT. 52. Each party recovering damages shall also recover his several costs; and each party not recovering damages shall be liable for costs to the town or other corporation, of which he shall have claimed damages, in like manner as if the proceedings were had under his several petition; provided always, that if any such party shall, fourteen days before the trial under such petition, give notice in writing to the town or other corporation, that may be liable to damages, that he relinquishes all claim for damages, and shall also, at any time before the trial, file in the case a relinquishment of such claim, he shall not be liable for any costs in the case.

If any party neglect to appear, he shall be barred.

SECT. 53. If any person, after having had notice as aforesaid, shall neglect to appear and become a party to the said proceedings in court, he shall be forever barred from making any application for damages.

SPECIAL PROVISIONS FOR THE COUNTY OF SUFFOLK.

Mayor and aldermen of Bos-

SECT. 54. In the county of Suffolk, the mayor and aldermen of

ton, to have powers, &c. of commissioners. 1821, 109, § 11.

the city of Boston shall, within the said city, have the like powers and perform the like duties, as are exercised and performed by the commissioners of other counties, in respect to the laying out, altering and discontinuing of ways, and assessing damages therefor, except as is provided in the following section.

C. C. Pleas may order a trial by jury to any party aggrieved by doings of the mayor, &c. 1821, 109, § 8.

SECT. 55. When any party shall be aggrieved by the doings of the said mayor and aldermen, in the cases mentioned in the preceding section, he may apply for a jury, by petition to the court of common pleas, within and for the county of Suffolk, at any term of said court that shall be there held, within one year after the laying out, altering, or discontinuing of any way in said city, and not afterwards; and thereupon the said court shall, after due notice to the said city, order a trial by jury to be had in the case, at the bar of said court, in the same manner, in which other civil causes are there tried by the jurors there returned and empanelled; and if either party request it, the jury, to whom the cause may be committed, shall view the place in question.

Several parties to go to the same jury in certain cases.

SECT. 56. In the said county of Suffolk, whenever there shall be several parties, having several estates or interests, at the same time, in any land or any buildings thereon, within the city of Boston, and the said land or buildings shall be taken or otherwise damaged, in whole or in part, by the laying out, altering, or discontinuing of any highway or town way, and any one of such parties shall make application, by petition to the court of common pleas, for a jury to ascertain his damages, as provided in the like cases in this chapter, the said court shall order the petitioner to give the like notice, as is required in the like cases before the commissioners of other counties, to all the other parties interested, to appear at the next term of the said court, and become parties to the proceedings under the said petition; and at the said next term, or at any succeeding term, as the court may direct, the said parties shall all be heard by the same jury, at the bar of the court, in such manner as the court shall direct; and thereupon the like proceedings shall be had in the estimation of damages, the returning of the verdict, and the adjudication of the court thereon, as are in this chapter required to be had on verdicts in the like cases, returned to the court of common pleas in other counties.

Powers and duty of C. C. Pleas respecting ways in Chelsea. 1835, 118.

SECT. 57. The court of common pleas, within and for the county of Suffolk, shall exercise, in the town of Chelsea, all the powers, conferred by law on county commissioners, so far as the exercise of said powers shall be applicable to the said town, and consistent with the provisions of the following section.

C. C. Pleas may appoint commissioners to view, &c. 1835, 118.

SECT. 58. When any petition shall be presented to the said court of common pleas, concerning the laying out, altering or discontinuing of any way, in the town of Chelsea, the said court may appoint three disinterested commissioners to act thereon, who shall have authority, subject to the final determination of the said court, to perform all the duties, required by law of county commissioners, so far as respects the viewing, laying out, altering, constructing, accepting or discontinuing of ways, and assessing damages sustained by any person in the premises; and whenever any party shall, according to the provisions of this chapter, be entitled to a jury, in respect to any way in said town, the said court shall have authority, to order

a jury to be summoned and empanelled in the case; and a trial thereof shall be had at the bar of said court; and the verdict of such jury may be received and recorded, or set aside, as in the like cases provided for in this chapter.

HIGHWAYS OVER BURYING GROUNDS; LIMITS OF HIGHWAYS; AND ENCROACHMENTS THEREON.

SECT. 59. No highway or town way shall be laid out or constructed in, upon, or through, any enclosure used or appropriated for the burial of the dead, unless authority to that effect shall be specially granted by law, or the consent of the inhabitants of the town, where such inclosure is situated, shall be first obtained, under the penalty in this behalf provided in the one hundred and thirtieth chapter.

Highways shall not be laid out over any burying grounds, unless, &c. 1834, 187, § 1.

SECT. 60. No highway or town way shall be laid out or constructed in, upon, or through, such part of any enclosure, belonging to private proprietors, as may be used or appropriated to the burial of the dead, unless the consent of such proprietors shall be first obtained therefor.

Same subject.

SECT. 61. Where buildings or fences have been erected, and continued for more than twenty years, fronting upon, or against any training field, burying place, common landing place, highway, private way, street, lane or alley, and from length of time, or otherwise, the boundaries thereof are not known, or cannot be made certain by the records or by any monuments, such fences or buildings shall be deemed and taken to be the true boundaries thereof; but when such boundaries can be made certain, no length of time, less than forty years, shall justify the continuance of a fence or building, on any town or private way, or on any highway, training field, burying place, landing place, or other land appropriated for the general use or convenience of the inhabitants of the Commonwealth, or of any county, town, or parish; but the same may, upon the presentment of a grand jury, be removed as a nuisance.

Fences, &c. when to be deemed the boundaries of highways, &c. 1786, 67, § 7.

SECT. 62. The limitations of time, prescribed in the preceding section, shall take effect from and after the thirty first day of December in the year one thousand eight hundred and thirty nine.

Same subject.

SECT. 63. When any building, fence, or other incumbrance, erected or continued on any town or private way, or on any highway, training field, burying place, landing place, or other land, appropriated for the general use or convenience of the inhabitants of the Commonwealth, or of any county, town, or parish, shall be adjudged a nuisance, and ordered to be abated, and the materials of such building, fences or other incumbrance, upon a sale thereof by auction, shall be insufficient to pay the costs and charges of prosecution and removal; the court, from which the process for removal shall issue, may order the deficient sum to be raised and levied from the goods and chattels of the party, who shall be convicted of erecting or continuing such nuisance.

When a building adjudged a nuisance is taken down and sold, &c. 1786, 81, § 6.

HIGHWAYS IN UNINCORPORATED PLACES.

SECT. 64. The inhabitants of unincorporated places, who are or shall be required to assess taxes upon themselves, towards the

Highways, how to be laid out, &c., in unincor-

porated places. 1796, 58, § 1.

support of government, or for defraying the charges of any county, shall be vested with the like powers, be under the like obligations, and liable to the like penalties, so far as relates to the laying out, making, altering, discontinuing or repairing of ways, and compensating any individual who may suffer damage thereby, as towns may have or be subject to; and the like proceedings shall be had, by or against such places, as may be had by or against towns, in every case respecting ways.

Assessors in such places to have the powers, &c. of selectmen. 1796, 58, § 1.

SECT. 65. The assessors of such unincorporated places shall be held to perform all the duties, and shall have all the powers, of the selectmen of towns, in relation to ways.

TOWN WAYS AND PRIVATE WAYS.

Selectmen may lay out town ways and private ways. 1786, 67, § 1.

SECT. 66. The selectmen of the several towns may lay out, alter or widen town ways, for the use of their respective towns, and private ways, for the use of one or more of the inhabitants thereof.

Notice to be given by selectmen, before laying out, &c. 1835, 122.

SECT. 67. No such town way or private way shall be laid out or altered unless, seven days at least previously thereto, a written notice of the intention of the selectmen of the town to lay out or alter the same, shall be left by them, or by their order, at the usual place of abode of the owners of the land, over which such way is proposed to be laid out or altered, or unless such notice be delivered to such owner in person, or to his tenant or authorized agent; provided, that if the owner shall have no such place of abode in the town, and no tenant or authorized agent therein known to the selectmen, or if, being a resident in the town, he shall not be known as such to the selectmen, then such notice shall be posted up in some public place in the town, seven days at least before laying out such way.

Damages, how awarded and paid. 2 Greenl. 179. 1786, 67, § 1.

SECT. 68. If any damage shall be sustained by any persons in their property, by the laying out, altering or discontinuing of any town way or private way, they shall receive such compensation as the selectmen shall determine; which shall be paid by the town, if it is a town way, but if a private way, then by the persons for whose use it shall be so laid out, altered or discontinued; unless the selectmen shall deem it reasonable, in such case, that any part of it shall be paid by the town, and the residue by the said persons; and in case any person shall be aggrieved by such determination of the selectmen, he may, upon application to the commissioners, have his damages ascertained by a jury, or, if he shall so elect, by a committee, to be appointed by the said commissioners, in like manner as is provided, in this chapter, in respect to the recovery of damages for laying out highways.

Filing of description with the clerk and acceptance by the town, prerequisites to a town or private way. 2 Mass. 529. 2 Greenl. 60. 3 ib. 438. 9 Pick. 146. 5 Pick. 492. 1785, 75, § 7. 1786, 67, § 1.

SECT. 69. No town way, or private way, which may have been laid out or altered by the selectmen, shall be established, until such laying out, or alteration, with the boundaries and admeasurements of the said way, shall have been reported to the town, and accepted and allowed, at some public meeting of the inhabitants, regularly warned and notified therefor, nor unless such laying out, or alteration, with the boundaries and admeasurements aforesaid, shall have been filed in the office of the town clerk, seven days at least before such meeting.

SECT. 70. Any town, at any meeting, regularly called for that purpose, may discontinue any town way or private way.

Towns may discontinue town, &c. ways. See § 74.

SECT. 71. If the selectmen of any town shall unreasonably refuse or neglect to lay out or alter any such town way or private way, when requested in writing by one or more of the inhabitants thereof, the commissioners, at any meeting within one year, on the application of any person aggrieved, by petition in writing, may cause the said town way or private way to be laid out or altered; and they shall ascertain the place and course of the way, and estimate the damages sustained by any person, by reason thereof, and the same, with all costs of the proceedings, shall be paid by the town, if it be a town way; and if it be a private way, the damages and costs, or such part thereof as the commissioners shall judge reasonable, shall be paid by the persons, for whose use it is laid out or altered, and the residue, if any, shall be paid by the town.

If selectmen unreasonably refuse, &c., party may appeal to commissioners. 6 Mass. 8. 1786, 67, § 2.

SECT. 72. If any town shall unreasonably refuse or delay to approve and allow any town way or private way laid out or altered by the selectmen thereof, and to put the same on record, any person aggrieved by such refusal or delay, may within one year thereafter apply by petition in writing to the commissioners; and the said commissioners may, unless sufficient cause shall be shown against such application, approve and allow of the way, as laid out or altered by the selectmen, and direct the said laying out or alteration and acceptance to be recorded by the clerk of such town, which shall have the like effect, as if accepted by the town and recorded.

Appeal given, if towns refuse to accept ways. 1786, 67, § 3. 8 Greenl. 271. 2 Mass. 118. 3 ib. 188.

SECT. 73. The commissioners may also, upon the application in writing of any person, aggrieved by the refusal of any town to discontinue a town way or private way, and after due notice, and hearing all parties interested, order such way to be discontinued.

Same, if towns refuse to discontinue, &c. 1786, 67, § 2.

SECT. 74. When any town way shall have been laid out or altered by the commissioners, it shall not, within two years thereafter, be discontinued or altered by the town; and when any such way shall have been discontinued by the commissioners, the town shall not, within two years thereafter, lay out the same again.

When towns are debarred from laying out, &c. 2 Pick. 44.

SECT. 75. Whenever an application shall be made to the commissioners, in consequence of the refusal or neglect of any selectmen to lay out or alter a private or town way, or in consequence of the refusal or neglect of the town to accept and allow any such way, when laid out or altered by the selectmen; or when such an application shall be made for the discontinuance of any private or town way; the commissioners shall cause a like recognizance to be given to the county, as is directed in this chapter with regard to applications for highways, and the like proceedings may be had on such recognizance: the commissioners shall also cause the like notice to be given, before they proceed to view, or to hear the parties, as in the case of highways.

Recognizance to be given for costs. 1827, 77, § 13.

SECT. 76. Any person, aggrieved by the laying out, or by the alteration or discontinuance of any town way or private way, or by the assessment of the damages in such case, shall be entitled to have the matter of his complaint determined by a jury, which may be applied for, at any time within one year after such laying out, alteration, or discontinuance, and shall be accordingly ordered by the com-

Parties may have a jury to ascertain damages.

Same rule as to costs, as in case of highways. 1785, 75, § 7.

missioners; and the jury shall have the same powers, and the proceedings, in all respects, shall be conducted in the same manner, as before provided, in the like case, with respect to highways: if such jury shall increase the damages, or shall alter the way, the damages and all charges shall be paid by the town; otherwise the charges, which arise on such application, shall be paid by the applicant, or person recognizing as aforesaid.

When towns shall not contest legality of town ways.

SECT. 77. No town shall, in any case, be permitted to contest the legality of any way, laid out by such town, and accepted and recorded, as provided in this chapter.

Towns may raise money for making highways and town ways. 1818, 121.

SECT. 78. Every town may, at any legal meeting regularly notified for that purpose, vote to raise any sum of money, to be laid out for the making of highways and town ways, within such towns, as they may deem necessary; and may, if they see fit, direct the same to be assessed in money on the polls and estates, real and personal, of the inhabitants, residents, and non-residents of their town, and to be collected as other town charges are by law assessed and collected.

CHAPTER 25.

OF THE REPAIR OF WAYS AND BRIDGES.

SECTION

REPAIRS OF HIGHWAYS.

1. Highways, &c., to be kept in repair by towns.
2. Surveyors of highways to be chosen.
3. " authorized to remove all obstructions.
4. Surveyor, not to remove any fence, &c., put up to prevent the spreading of diseases.
5. Surveyors shall not turn water courses so as to incommode, &c.
6. Towns to pay all damages occasioned by repairs of ways.
7. Selectmen, to assign surveyors' limits.
8. Towns shall raise money to repair ways.
9. Any town may raise highway taxes in money.
10. Half of the tax, to be expended before 1st of July.
11. Surveyor, to give notice to inhabitants.
12. Delinquents, to be returned to assessors, and their tax to be collected in money.
13. Surveyor's power when the sum voted is deficient, or not paid in.
14. If towns neglect to raise money, surveyors, with consent of selectmen, may repair at town's expense.
15. Surveyors may be authorized to contract for repairing ways.
16. " may be authorized to collect taxes in money, in case, &c.
17. " to pay over any surplus money in their hands.
18. Penalty for not paying over moneys in their hands.
19. " on surveyor, if he does not account.
20. Non-residents, how assessed for highways.
21. If loss of life happen, through defect, &c., the executors, &c., may recover $1000.
22. What damages recoverable for injury to person or property.
23. Party liable, may tender sufficient, &c.
24. Penalty on towns, for neglect, &c.
25. Fines imposed, to be appropriated for repairs.
26. If town, &c., has, within six years, made repairs, they shall not deny location.
27. Gates, rails, &c., may be removed, except, &c.

GUIDE POSTS AND [on] PUBLIC ROADS.

28. Towns to erect and maintain guide posts.

SECTION
29. Penalty, if selectmen do not annually report to town, where posts are and ought to be erected.
35. Penalty on towns for not determining places for guide posts.
31. Description of guide posts, and where to be erected.
32. Penalty, if towns or selectmen neglect to erect guide posts.
33. " for defacing guide posts.

PRIVATE WAYS AND BRIDGES.

34. Four or more proprietors may call a meeting.
35. General powers and duties of, &c.
36. Penalty, if any proprietor neglects to comply with votes.
37. " for refusing to serve as surveyor.
38. Forfeitures, how to be applied.

SECTION
39. Proprietors may contract for repairs.
40. " may raise money for such contracts.
41. Surveyors may collect taxes.
42. Penalty for neglect of surveyors.
43. Gates, fences, &c., on town or private ways, may be removed, unless, &c.

COUNTY AND OTHER BRIDGES.

44. Commissioners may regulate travelling over county bridges, by by-laws, in case, &c.
45. Towns may regulate travelling over town bridges, in case, &c.
46. No penalty incurred, unless by-laws are posted up, &c.
47. Proprietors of incorporated bridges may regulate travelling over the same, provided, &c.

REPAIRS OF HIGHWAYS.

SECTION 1. All highways, town ways, causeways and bridges, within the bounds of any town, shall be kept in repair, at the expense of such town, where other sufficient provision is not made therefor, so that the same may be safe and convenient for travellers, with their horses, teams and carriages, at all seasons of the year.

Highways, &c. to be kept in repair by towns. 1786, 81, § 1.

SECT. 2. There shall be chosen, in each town, at the annual meeting, one or more suitable persons, to be surveyors of highways, as provided in the fifteenth chapter; but no person shall be obliged to serve as a surveyor of highways, oftener than once in three years.

Surveyors of highways. 1786, 81, § 1.

SECT. 3. Every surveyor of highways shall have full power, (except as provided in the following section,) to cut down or lop off all trees and bushes, and to dig up and remove all stones, stumps, fences, gates, bars, enclosures, or other things, that shall in any manner obstruct or incumber any highway or town way, or hinder, incommode or endanger persons travelling thereon; and when any such way is incumbered with snow, he shall also forthwith cause the same to be removed or so trodden down, as to make the way safe and convenient.

Surveyor authorized to remove all obstructions. 1786, 81, § 1. 1796, 58, § 8. 13 Pick. 343.

SECT. 4. No surveyor or other person shall remove or take down any fences, gates, or bars, placed on any highway or town way, for the purpose of preventing the spreading of any disease, which may be dangerous to the public health.

Surveyor, not to remove any fence, &c., put up to prevent the spreading of diseases. 1786, 81, § 11.

SECT. 5. No surveyor of highways shall, without the approbation of the selectmen first being had in writing, cause any water course, occasioned by the wash of a highway or town way, to be so conveyed by the side of such way, as to incommode any person's house, store, shop, or other building, or to obstruct any person in the prosecution of his business; and any person, aggrieved by the conveying of such water course, in manner aforesaid, may complain to the selectmen, who, on receiving such complaint, shall view the water course complained of, and after due examination of the same, may direct the

Surveyors shall not turn water courses, so as to incommode, &c. 1786, 81, § 1.

surveyor to alter the said water course, in such manner as they shall determine.

Towns to pay all damages occasioned by repairs of ways. 1 Pick. 418.

SECT. 6. When any owner of land, adjoining a highway or town way, in any town or city, shall sustain any damage in his property by reason of any raising, lowering, or other act, done for the purpose of repairing such way, the said owner shall have compensation therefor, to be determined by the selectmen of the town, or the mayor and aldermen of the city; and if the owner shall be aggrieved by such determination of the selectmen or mayor and aldermen, he may have his damages ascertained by a jury, in like manner as they are to be ascertained in the case of laying out highways; and they shall allow, by way of set-off, the benefit, if any, which the complainant may receive by reason of such alteration or repair.

Selectmen to assign surveyors' limits. 4 Pick. 149. 1786, 81, § 2. 1796, 58, § 4.

SECT. 7. The selectmen or assessors of every town, having more than one surveyor of highways, shall, annually, in writing, before the first day of May, assign to each surveyor the limits and divisions of the highways and town ways, to be kept in repair by him.

Towns shall raise money to repair ways. 1786, 81, § 3.

SECT. 8. Every town shall raise such sum of money, to be expended in labor and materials, on the highways and town ways, as they shall determine to be necessary; and the assessors shall assess the same on the polls and estates, real and personal, of the inhabitants, residents and non-residents of their town, as other town charges are by law assessed; and shall deliver to each surveyor a list of the persons within his limits, and the sums at which they are severally assessed.

Any town may raise highway taxes in money. 1818, 121, § 1.

SECT. 9. Any town may vote to raise any sum of money, which such town may judge necessary, for making and repairing the highways and town ways, within the same; and may further order, that the same shall be assessed upon the polls and estates of the inhabitants, residents, and non-residents of their town, as other town charges are assessed, and the same shall be collected, as other town taxes are collected.

Half the tax, to be expended before 1st of July. 1796, 58, § 4.

SECT. 10. One half, at least, of the sums of money, granted by any town, for repairing highways and town ways, shall be laid out and expended for that purpose, before the first day of July next after the same shall have been granted.

Surveyor, to give notice to inhabitants. 1786, 81, § 6.

SECT. 11. The surveyor shall, [except in the case provided for in the preceding section,] give reasonable notice, as directed by the town, to each person in his list, of the sum he is assessed to the highways and town ways; and shall also give to the inhabitants, within the limits of his district, who may be assessed as aforesaid, seven days' notice of the times and places he shall appoint, (extraordinary casualties excepted,) for providing materials and working on the highways and town ways; and each inhabitant shall have an opportunity to work thereon, in person or by his substitute, or with his oxen, horses, cart and plough, at the prices which the town shall affix to such labor, to the full amount of the sum, at which he is assessed; but if any person so assessed shall pay to the surveyor, in money, the sum assessed to him, the surveyor shall, according to his best judgment, carefully expend the sum so paid in repairing the said ways.

SECT. 12. The surveyor, at the expiration of his term, shall render to the assessors a list of such persons, (if any,) as shall have neglected or refused to work out or otherwise pay their highway tax, when required by him, as provided in the preceding section; and such deficient sums shall be placed by the assessors in a distinct column, in the next assessment of a town tax upon such delinquents, and collected like other town taxes, and paid into the town treasury.

Delinquents to be returned to assessors, and their tax to be collected in money. 1786, 81, § 3.

SECT. 13. Whenever there shall be a deficiency, either of labor or money, in the amount appropriated for the repair of highways and town ways, within the limits of any surveyor, or when the said amount shall not have been furnished or paid to the surveyor, so that he is unable to make such repairs, he may employ any persons to make such repairs; and the persons so employed shall be paid therefor by the town; provided that the sum so expended, by any such surveyor, shall not exceed ten dollars.

Surveyor's power when the sum voted is deficient or not paid in. 1786, 81, § 4.

SECT. 14. If any town shall neglect to vote a sufficient sum of money, for the purpose of repairing the highways and town ways, or shall not otherwise effectually provide therefor, each of its surveyors, first having obtained the consent of the selectmen for that purpose, in writing, may employ any persons to repair the said highways and townways, in their respective districts, so that the same shall be safe and convenient for travellers, at all seasons of the year, and the persons so employed shall be paid therefor by said town.

If towns neglect to raise money, surveyors, with consent of selectmen, may repair at town's expense. 13 Pick. 343. 1786, 81, § 8.

SECT. 15. Every town may authorize their surveyors or any other person, to enter into contracts for making or repairing the highways or town ways within the same.

Surveyors may be authorized to contract for repairing ways. 1796, 58, § 5.

SECT. 16. Every town may also empower their surveyors to collect all such taxes, as shall not be paid in labor or otherwise, within the time limited by law, or at such periods as may be agreed upon by the town; and for that purpose, the assessors shall deliver to them warrants of distress, which shall be in substance like the warrants prescribed by law for collecting other town taxes; or they may deliver a warrant for collecting the deficiency in any highway tax to the collector, who shall then proceed to collect the same, in like manner as other taxes are by law to be collected, and shall pay over the same to the respective surveyors, who shall be held to account with the selectmen for the expenditure thereof.

Surveyors may be authorized to collect taxes, in money, in case, &c. 1796, 58, § 5.

SECT. 17. If any money shall remain unexpended in the hands of the surveyors, after the expiration of their office, they shall pay the same to the town treasurer.

Surveyors to pay over any surplus money in their hands. 1796, 58, § 5.

SECT. 18. If any surveyor shall neglect to pay over such sums to the said treasurer, upon demand, the treasurer may recover the same in an action for money had and received, with twenty per cent. in addition thereto, to the use of the town.

Penalty for not paying over moneys in his hands. 1796, 58, § 5.

SECT. 19. Every surveyor, who shall receive his tax bill, shall exhibit the same to the selectmen, on the first Monday of July annually, and also at the expiration of the term for which he shall be appointed; and at those times, respectively, shall render an account of all moneys that have been expended by him on the highways and town ways; and if he shall, in any such case, be guilty of any neglect, he shall for each offence forfeit a sum not exceeding fifty dollars, to be recovered by the said treasurer, to the use of the town.

Penalty on surveyor, if he does not account. 1796, 58, § 5.

Non-residents, how assessed for highways. 1796, 58, § 7.

SECT. 20. The lands of non-resident proprietors shall be taxed for the making and repairing of highways, in the same manner as for other town taxes; and upon default of payment, the same proceedings shall be had, as are provided for the collection of other town taxes of such persons.

If loss of life happen through defect, &c. the executor, &c. may recover $1000. 1786, 81, § 7.

SECT. 21. If the life of any person shall be lost, by reason of any defect or want of repair of any highway, town way, causeway or bridge, or for want of suitable rails on such way or bridge, the county, town or person, that is by law obliged to repair the same, shall be liable to a fine of one thousand dollars, to be recovered by indictment to the use of the executor or administrator of the deceased person for the benefit of his heirs, devisees or creditors; provided, that the said county, town or person, shall have had previous reasonable notice of such defect or want of repair of such way or bridge.

What damages recoverable for injury to person or property. 1 Mass. 153. 13 Pick. 94. 102. 6 Pick. 59. 7 Greenl. 442.

SECT. 22. If any person shall receive any injury in his person or property, by reason of any defect or want of repair, which has existed for the space of twenty four hours, in any highway, town way, causeway or bridge, he may recover, in an action on the case, of the county, town, or person, respectively, that is by law obliged to repair the same, the amount of damage sustained thereby; and if the said county, town, or person, respectively, had reasonable notice of any defect or want of repair, in such highway, town way, causeway or bridge, the person so injured may recover double the damages so sustained.

Party liable may tender sufficient, &c.

SECT. 23. If, before the entry of any action provided for in the preceding section, the defendant tender to the plaintiff the amount which he would be entitled to recover, together with all legal costs, and the plaintiff do not accept the same, and do not recover upon the trial more than the sum so tendered, the defendant shall recover his costs.

Penalty on towns for neglect, &c. 1786, 81. 13 Pick. 343.

SECT. 24. If any town shall neglect to repair any of the ways or bridges, which it is by law obliged to keep in repair, or shall neglect to make the same safe and convenient, when incumbered with snow, such town shall be liable to pay such a fine as the court, in its discretion, may order.

Fines imposed, to be appropriated for repairs. 1811 177.

SECT. 25. All fines, imposed on any town, for deficiencies in the ways and bridges within the same, shall be appropriated to the repairing of such ways and bridges; and the court, imposing any such fine, shall appoint one or more persons, to superintend the collection and application of the same to the purpose aforesaid; and every person so appointed shall make a return of his doings therein to the said court.

If town, &c. has, within six years, made repairs, they shall not deny location. 3 Pick. 408. 2 ib. 51. 5 Greenl. 368.

SECT. 26. If, on the trial of any indictment or action, brought to recover damages for an injury, received by reason of any deficiency or want of repair, in a highway, town way, causeway or bridge, it shall appear that the county, town or person, against whom such suit is brought, has, at any time, within six years before such injury, made repairs on such way or bridge, it shall not be competent to such county, town or person to deny the location thereof.

Gates, rails, &c. may be removed, except, &c. 1786, 81, § 5.

SECT. 27. It shall be lawful for any person to take down and remove any gates, rails, bars or fence, upon or across any highway, unless the same shall have been there placed for the purpose of pre-

venting the spreading of any disease, dangerous to the public health, or unless the same shall have been erected or continued by the license of the county commissioners for the same county, or of the selectmen of the town; and any person, so aggrieved by such taking down and removal, may apply to the said commissioners, or said selectmen, respectively, who, if it shall appear that such gates, rails, bars or fence were erected by license as aforesaid, may order the same to be replaced. 10 Mass. 71.

GUIDE POSTS [*on*] PUBLIC ROADS.

SECT. 28. Every town shall erect and maintain guide posts, on the highways and other ways within the town, at such places as shall be necessary or convenient for the direction of travellers, in the manner provided in this chapter. Towns to erect and maintain guide posts. 1794. 63, § 1.

SECT. 29. The selectmen of each town shall submit to the inhabitants, at every annual meeting, a report of all the places, in which guide posts are erected and maintained within the town, and of all places, at which, in the opinion of the selectmen, they ought to be erected and maintained; and if the selectmen of any town shall neglect or refuse to make report as aforesaid, they shall severally forfeit the sum of ten dollars. Penalty, if selectmen do not annually report to town, where posts are and ought to be erected.

SECT. 30. Upon the report of the selectmen, made according to the provisions of the preceding section, the town shall determine the several places, at which guide posts shall be erected and maintained, and a record thereof shall be made in the town records; and if any town shall neglect or refuse to determine said places, and to cause a record thereof to be made as aforesaid, such town shall forfeit the sum of five dollars, for every month during which they shall neglect or refuse so to do; and in such case, upon any trial for not erecting or maintaining guide posts, reported to be necessary or convenient by the selectmen, such town shall be estopped from alleging that such guide posts were not necessary or convenient. Penalty on towns for not determining places for guide posts.

SECT. 31. At each of the places determined by the town, as provided in the preceding section, there shall be erected a substantial post of not less than eight feet in height, near the upper end of which shall be placed a board or boards, and upon each board shall be plainly and legibly painted or otherwise marked, the name of the next town or place, and such other town or place of note, as the selectmen shall think proper, to which each of such roads may lead, together with the distance or number of miles to the same; and also the figure of a hand, with the forefinger thereof pointing towards the towns or places, to which the said roads lead; provided nevertheless, that the inhabitants of any town may, at their annual meeting, agree upon some suitable substitute for said guide posts. Description of guide posts, and where to be erected. 1794, 63, § 3.

SECT. 32. Every town, which shall neglect or refuse to erect and maintain guide posts, or some suitable substitutes therefor, in the manner provided in this chapter, shall forfeit annually the sum of five dollars, for every guide post which they shall so neglect or refuse to maintain. Penalty, if towns or selectmen neglect to erect guide posts. 1794, 63, § 4.

SECT. 33. If any person shall injure or deface any guide post or board, or other thing substituted therefor as aforesaid, he shall be punished therefor, as provided in the one hundred and twenty sixth chapter. Penalty for defacing guide posts. 1794, 17, § 5.

PRIVATE WAYS AND BRIDGES.

Four or more proprietors may call a meeting. 1787, 17, § 1.

SECT. 34. Whenever any four or more persons shall be the proprietors and rightful occupants of any private way or bridge, and any three of them shall make application, in writing, to a justice of the peace, to call a proprietors' meeting, the said justice may issue his warrant therefor, setting forth the time, place and purpose of the meeting; and said warrant shall be posted up in some public place of the town, where such way or bridge is situate, seven days at least before the time appointed for such meeting.

General powers and duties of proprietors. 1787, 17, § 1.

SECT. 35. The proprietors and occupants so assembled shall choose a clerk and surveyor, who shall be sworn; and they may determine, by a majority of those present, the manner of calling future meetings; and the said meeting may determine what repairs of the said way or bridge are necessary, and also the proportion of money and of labor and materials, to be furnished by each proprietor and occupant, for such repairs; and the surveyor shall have the like powers, with respect to such ways or bridges, as are exercised by surveyors of highways.

Penalty, if any proprietor neglects to comply with votes. 1787, 17, § 1.

SECT. 36. In case of the neglect or refusal of any proprietor or occupant to comply with such vote, when required by the said surveyor, he shall be subject to the like penalties, as are provided for the like neglect or refusal in the case of highways; and the same shall be recoverable in the like manner.

Penalty for refusing to serve as surveyor. 1787, 17, § 2.

SECT. 37. If any surveyor, so chosen by the said proprietors, shall refuse or neglect to accept that trust, and take the oath aforesaid, he shall forfeit the sum of five dollars, to be recovered in the like manner, as is provided in the fifteenth chapter, for the like neglect or refusal of surveyors of highways.

Forfeitures, how to be applied. 1787, 17, § 2.

SECT. 38. All fines and forfeitures, recovered under the provisions of the two preceding sections, shall be applied to the use of the said proprietors for repairing the said ways or bridges.

Proprietors may contract for repairs. 1801, 80.

SECT. 39. The said proprietors and occupants may, at any legal meeting for that purpose, authorize their surveyor, or any other person, to contract by the year or for a longer or shorter time, for the making and keeping in repair any private ways or bridges.

— may raise money for such contracts, &c 1801, 80.

SECT. 40. At any such meeting, they may vote to raise such sum of money, as they may deem necessary for carrying such contracts into effect; and may choose assessors, who shall assess each proprietor and occupant, for his proportion of such sum, according to his interest in such way or bridge, and who shall deliver the lists of such assessments to the said surveyor, with proper warrants of distress, in substance, as is prescribed by law for collecting town taxes.

Surveyors may collect taxes. 1801, 80.

SECT. 41. Every such surveyor may levy and collect all taxes for the purposes aforesaid, in the same manner as surveyors of highways are empowered to collect highway taxes.

Penalty for neglect of surveyors. 1801, 80.

SECT. 42. If any such surveyor shall neglect or refuse to pay over, according to the direction of his warrant, the moneys so collected, he shall be liable to the same penalties, as are provided in case of the like neglect or refusal of surveyors of highways to pay over moneys to the town treasurer in the like case.

SECT. 43. If any gates, rails, bars or fence shall be upon or across any town way or private way, the same may be removed by the order of any justice of the peace of the county where such way is, unless the same shall have been there placed, for the purpose of preventing the spreading of any disease dangerous to the public health, or unless the same were erected or continued by license of the town or of the person, for whose use such private way was laid out; and any person, aggrieved by such removal, may apply to the commissioners for the same county; and if upon examination, it shall appear that the same were erected or continued by license as aforesaid, the said commissioners shall order them to be replaced.

Gates, fences, &c., on town or private ways, may be removed, unless, &c. 1786, 81, § 5.

COUNTY AND OTHER BRIDGES.

SECT. 44. The commissioners of each county may establish by-laws, to prevent all persons from riding or driving horses, at a rate faster than a walk, over any bridge maintained by such county, which shall have cost not less than one thousand dollars; and annex penalties not exceeding one dollar, for any one breach thereof, to be recovered in an action in the name of the county treasurer.

Commissioners may regulate travelling over county bridges by by-laws, in case, &c. 1829, 88, § 1.

SECT. 45. Any town may, at any annual meeting, establish by-laws to prevent all persons from riding or driving horses, at a rate faster than a walk, over any bridge within the limits of such town, which shall have cost not less than five hundred dollars; and annex penalties not exceeding one dollar for any breach thereof, to be recovered in the name of the town treasurer; but such by-laws shall first be approved by the commissioners for the county in which such town lies.

Towns may regulate travelling over town bridges, in case, &c. 1829, 88, § 1.

SECT. 46. No person shall be liable to any of the penalties in the two preceding sections, unless the said commissioners and such town, respectively, shall cause to be posted up and kept at each end of the said bridges respectively, in some conspicuous place, a board painted with a white ground, containing in black letters the substance of their said by-laws.

No penalty incurred, unless by-laws are posted up, &c. 1829, 88, § 2.

SECT. 47. The proprietors of any incorporated bridge may make such by-laws as they may deem necessary, to prevent any person from riding, or driving horses over such bridge, at a rate faster than a walk; and annex penalties to said by-laws not exceeding two dollars for each offence, to be recovered to the use of the corporation; provided however, that no person shall be liable to such penalty, unless the proprietors of such bridge shall cause to be posted up, and kept at each end of the bridge, in some conspicuous place, a board, painted with a white ground, containing in black letters the substance of said by-laws.

Proprietors of incorporated bridges may regulate travelling over the same, provided &c. 1821, 101

CHAPTER 26.

OF THE REGULATION OF FERRIES.

SECTION
1. Ferrymen, to be licensed by commissioners.
2. Tolls, to be established by the commissioners—Ferrymen to give bond.

SECTION
3. Good boats, &c. to be kept at ferries.
4. Penalty for neglect of ferrymen.
5. Remedy for persons sustaining damage through negligence of ferrymen.
6. Penalty for keeping a ferry without authority.
7. Towns compellable to maintain ferry in case, &c.
8. Two towns shall bear expense jointly, in case, &c.
9. Penalty on towns for neglect.

Ferrymen to be licensed by commissioners. 1796, 42, § 1.

SECTION 1. No person shall keep a ferry and receive pay, unless he shall first obtain a license therefor from the county commissioners, and such license may be granted for such time, as the commissioners shall think proper, who may revoke it when necessary.

Tolls to be established by the commissioners.

SECT. 2. The said commissioners may grant licenses to suitable persons; and they shall also establish the fares or tolls, at each ferry, for passengers, horses, carriages, and other things there transported; always having regard to the length and situation of each ferry, and the number of persons passing the same; and in all cases taking bond, with sufficient sureties, of each ferryman, for the faithful performance of his duty; provided, that this and the preceding section shall not apply to such ferries as are already established by law.

Ferrymen to give bond. 1796, 42, § 1.

Good boats, &c. to be kept at ferries. 1796, 42, § 2.

SECT. 3. Every ferryman shall keep a safe and good boat or boats in good repair, adapted to the waters where they are to be used, and shall give ready attendance on passengers, on all occasions, according to the regulations established for his ferry.

Penalty for neglect of ferrymen. 1796, 42, § 2.

SECT. 4. The keeper of each ferry shall, for every neglect in keeping such a boat, or in giving such attendance, forfeit a sum not exceeding twenty dollars, and be further liable in an action on the case, for all such damages as any person shall sustain by such neglect.

Remedy for persons sustaining damage through negligence of ferrymen.

SECT. 5. Any person who shall sustain an injury by the negligence or default of any ferryman, may have a remedy, by an action upon the bond required in this chapter; and in such action, the like proceedings may be had, as in the case of actions brought on the bonds of sheriffs, according to the provisions of the fourteenth chapter.

Penalty for keeping a ferry without authority. 1796, 42, § 3.

SECT. 6. If any person, without lawful authority, shall keep a ferry and demand or receive pay or toll therefor, he shall forfeit a sum not exceeding five dollars, for every day that he shall keep such ferry; and he shall be further liable, in an action on the case, to pay such damages, as shall be thereby occasioned to any person authorized to keep any established ferry.

Towns compellable to maintain ferry in case, &c. 1796, 42, § 4.

SECT. 7. Whenever the commissioners of any county shall judge it necessary to establish a ferry, and no person shall appear to keep the same for the stated profits thereof, the town, where such ferry may be, shall provide one or more suitable persons to keep and attend the same, at such place, and in such times of the year, as the said commissioners shall order, which persons shall be licensed as aforesaid; and the expense of maintaining such ferry, beyond the amount received for tolls, shall be paid by such town.

Two towns shall bear expense jointly in case, &c. 1796, 42, § 5.

SECT. 8. If any such ferry, as mentioned in the preceding section, shall be established between two towns, they shall maintain the same, either jointly or alternately, as the said commissioners shall order.

Penalty on towns for neglect. 1796, 42, § 6.

SECT. 9. Any town, neglecting to maintain such ferry, as provided in the two preceding sections, shall forfeit, for each month's neglect, a sum not exceeding one hundred dollars.

CHAPTER 27.

OF COMMON SEWERS AND DRAINS, IN HIGHWAYS AND OTHER PLACES.

SECTION
1. Highways, streets, &c. not to be dug up to lay drains, &c. without consent of the selectmen.
2. Drains, &c. how to be constructed.
3. Persons benefited, to share the expense of making drains, repairing, &c.
4. Same subject.
5. Persons benefited, and refusing to pay their proportions, shall pay double the amount.
6. Notice to be given before opening any drain.
7. Provisions of this chapter, not to affect agreements of parties.

SECTION 1. If any person shall dig or break up the ground in any highway, street or lane, in any town, for the laying, altering or repairing of any drain, or common sewer, without the consent of the selectmen, in writing, he shall forfeit the sum of five dollars for each offence, to the use of the town, to be recovered by the treasurer thereof.

Highways, streets, &c. not to be dug up to lay drains, &c. without consent of selectmen. 1796, 47, § 1.

SECT. 2. All drains and common sewers, which shall hereafter be made or repaired in any street or highway, shall be substantially made or repaired with brick or stone, or with such other materials, and in such manner, as the selectmen of the town shall permit or direct.

Drains, &c. how to be constructed. 1796, 47, § 2.

SECT. 3. When any person shall, by the consent and under the direction of the selectmen, at his own charge, make and lay any common sewer or main drain, for the benefit of himself and others, who may think fit to join therein, every person, who afterwards shall enter his particular drain into the same, or by any more remote means shall receive any benefit thereby, for the draining of his cellar or land, shall pay to the owners of such common sewer or main drain, a proportional part of the charge of making and repairing the same, to be ascertained by the selectmen of the town, and certified under their hands; saving always to the party aggrieved by any such determination, a right of appeal to the county commissioners.

Persons benefited, to share the expense of making drains, repairing, &c. 1796, 47, § 2.

SECT. 4. When any common sewer or main drain shall be stopped or gone to decay, so that it shall be necessary to open the same, in order to repair it, or to remove such stoppage, all the persons, who shall be benefited by such repair or removal of obstructions, as well those, who do not, as those who do, cause such repairs to be made or obstruction to be removed, shall pay to the person incurring the expense, their proportional parts thereof, to be ascertained and certified by the selectmen as aforesaid; saving to the party aggrieved an appeal as provided in the preceding section.

Same subject.

SECT. 5. Every person, so required to pay his proportional part of the expense of making or repairing any drain or common sewer, shall have notice of the sum, and of the person to whom the same is to be paid; and if he shall not pay the same, within seven days after such notice, to the person authorized by the selectmen to receive it, he shall be held to pay double the amount certified by the selectmen

Persons benefited, and refusing to pay their proportions, shall pay double the amount. 796, 47, § 3.

as aforesaid, with all expenses arising upon such neglect; and the person so authorized by the selectmen may recover the said double amount and expenses, in an action in his own name for money laid out and expended.

Notice to be given before opening any drain. 1796, 47, § 3.

SECT. 6. Any person, who shall have occasion to open a common sewer or main drain, in order to clear and repair the same, shall, seven days at least before he begins to open the same, give notice to all parties interested, by advertising in such manner as the selectmen may direct, that such parties may, if they think proper, object thereto, and state their objections in person, or in writing, to the selectmen; and if the selectmen shall judge the objections reasonable, the parties making the same shall not be held to pay any part of such expenses; but if they do not make their objections as aforesaid to the selectmen, within three days after such notice, or if the objections shall not be adjudged reasonable, the selectmen shall, in writing, under their hands, give liberty to the persons applying, to open such common sewer or main drain, and to clear and repair the same; and all persons interested therein shall pay their proportions as before provided.

Provisions of this chapter, not to affect agreements of parties.

SECT. 7. Nothing contained in this chapter shall in any manner affect any covenants or agreements among the proprietors of such drains or common sewers.

TITLE XII.

Of the regulation of trade in certain cases.

CHAPTER 28. Of the inspection of provisions and other merchandize; and regulations respecting the sale thereof.
CHAPTER 29. Of sales by auctioneers.
CHAPTER 30. Of weights and measures.
CHAPTER 31. Of the weighing of lighters and other vessels employed in transporting stone, gravel and sand.
CHAPTER 32. Of shipping, ship owners and charterers; and of pilotage.
CHAPTER 33. Of bills of exchange and promissory notes.
CHAPTER 34. Of limited partnerships.
CHAPTER 35. General provisions respecting trade.

CHAPTER 28.

OF THE INSPECTION OF PROVISIONS AND OTHER MERCHANDIZE; AND REGULATIONS RESPECTING THE SALE THEREOF.

SECTION
APPOINTMENT OF INSPECTORS GENERAL, &c.
1. Present inspectors general to continue in office, unless, &c.
2. Inspectors general to be appointed by the governor for five years.
3. To be sworn.
4. Deputy inspectors.

SECTION

BEEF AND PORK.

5. Inspector general of beef and pork, to give bond.
6. " general may appoint deputies, who shall give bond and be sworn.
7. Shall attend, on request, within twenty four hours.
8. Inspector general's returns, when to be made, and their contents.
9. No beef to be exported, except, &c.
10. Quality of beef to be packed.
11. Sorts and denominations of beef.
12. Beef, how salted.
13. Inspectors, &c., shall cut, weigh, &c.
14. Quality of tierces, &c., and their contents.
15. Imported beef and pork, how branded.
16. Rounds of beef may be exported as heretofore.
17. Beef, how branded.
18. Pork to be inspected, &c., before exportation.
19. Sorts and denomination of pork.
20. How salted.
21. Extra clear pork—Clear pork.
22. Quality and contents of barrels, &c.
23. When hind legs are taken out, shoulders may be put in.
24. Inspectors' fees.
25. Same subject.
26. Fees for certificates.
27. Penalty for neglect or fraud in inspecting.
28. " on deputy for inspecting out of his town, &c.
29. " for branding without authority.
30. If tierces, &c., not inspected, &c., be laden on board of any vessel, they may be seized, &c.
31. Penalty for intermixing.
32. " on exporter, &c., for exporting or shipping beef or pork, not inspected, &c.
33. " for selling, &c., any beef, &c., deficient in weight.
34. Manner of preparing beef cattle for weighing.
35. Beef, when to be weighed.
36. Weighers of beef, when and how appointed.
37. " to give certificate.
38. Fees for weighing.
39. Penalty on purchaser, &c., for purchasing contrary to law.
40. Manner of weighing beef and pork.

BEER, ALE AND CIDER.

41. Size of barrels, &c. for beer, ale and cider.

SECTION

42. Forfeitures.
43. Capacity of barrels, &c.

BUTTER AND HOG'S LARD.

44. Inspector general of butter, &c. to give bond.
45. Deputies to be appointed; to give bond and be sworn.
46. All butter, &c. for exportation to be inspected.
47. Inspector to make returns—Contents thereof.
48. Manner of inspecting.
49. Brands of casks, &c.
50. Quality of casks.
51. Size of kegs.
52. Casks, &c. to be filled with brine before packing—How branded, &c.
53. Imported butter, &c. not subject to inspection.
54. Fees.
55. Penalty for delaying to inspect.
56. " " counterfeiting brands.
57. " " putting other butter into branded kegs.
58. " " exporting, &c. butter, &c. not inspected.
59. When butter, &c. may be seized and libelled.

CHOCOLATE.

60. Chocolate, how to be stamped.
61. Ingredients—Boxes, how branded.
62. Chocolate, made contrary to law, may be seized, &c.

FIRE ARMS.

63. Provers of fire arms to be appointed and sworn.
64. How fire arms shall be proved.
65. How stamped.
66. Fees.
67. Penalty for buying, selling, &c. arms not proved.
68. " " forging stamps.

FISH.

69. Inspector general to give bonds.
70. Deputies, to be appointed; to give bond and be sworn.
71. Inspectors to inspect alewives, &c.
72. " to make returns.
73. Fish, how prepared and packed—Sorts and denominations of fish.
74. Penalty for shifting contents of casks.
75. Casks, how branded.
76. Small fish, how packed.
77. Fish of other states, &c. not subject to re-inspection.
78. Quality and capacity of casks.
79. Casks to be examined.

SECTION
80. Fees.
81. Inspector's proportion of deputies' fees.
82. Alewives, &c. how prepared for packing.
83. Sorts of alewives, &c.
84. Quality and capacity of boxes.
85. Brands.
86. Fees.
87. Penalty for exporting fish contrary to law—for substituting fish of inferior quality—fish, imported, need not be re-inspected.
88. Fish, when forfeited.
89. Penalty for lading uninspected fish on board of vessels.
90. " " selling tainted fish for food.
91. " " branding without inspecting, &c.

GUNPOWDER.

92. Quality and size of casks, &c. for gunpowder.
93. All casks to be marked.
94. Penalty for falsely marking, &c.

HAY.

95. Weighers of hay to be appointed.
96. Their duty.
97. May be removed.
98. Penalty for setting up hay scales without authority.

HOOPS AND STAVES.

99. Cullers of hoops and staves to be appointed.
100. Fees.
101. Quality and size of staves.
102. " " " hogshead hoops.
103. Penalty for fraud in culling.

HOPS.

104. Inspector general to give bond.
105. " " to appoint deputies.
106. Inspector's return.
107. No hops to be exported without inspection, except, &c.
108. Quality and how packed.
109. How inspected, sorted and branded—Fees.
110. Inspector's proportion of deputy's fees.
111. Penalty for delay of inspectors.
112. " " fraud.
113. " " shifting contents of bags.
114. " " altering or counterfeiting marks.
115. " " intermixing hops, after inspection.
116. " " exporting uninspected hops.
117. Hops, when forfeited.
118. " shipped coastwise, &c.
119. Penalties, how and to whose use recovered.

LEATHER, BOOTS, &c.

120. Inspector general to give bonds.
121. Deputies to be appointed, who shall give bond.
122. Inspector's return.
123. Sole leather not to be sold until inspected, weighed and sealed, except, &c.
124. Penalty for buying or selling sole leather, not inspected.
125. Duty of inspectors.
126. Same subject.
127. Sole leather to be weighed and stamped.
128. Penalty for counterfeiting inspector's marks.
129. Fees.
130. Penalty when weight varies five per cent.
131. Manufacturers of boots, shoes, &c. may stamp their articles; such stamp a warranty.
132. Penalty for fraudulently stamping.

LIME AND LIME CASKS.

133. Towns may choose inspectors of lime—To be sworn.
134. Casks, how branded.
135. Fees.
136. Quality of lime and casks.
137. Penalty for breach of law in selling, &c.—Forfeitures.
138. Forfeitures.
139. Penalty for shifting contents of casks.
140. Penalties, how recovered.

LUMBER—TIMBER.

141. Towns to choose surveyors of lumber.
142. Their duty.
143. Quality and denomination of pine boards and planks.
144. " of pine joists.
145. " of spruce boards, &c.
146. " of ash, maple, &c.
147. " of timber, except, &c.
148. " of mahogany and cedar.
149. Hewn and sawed timber, how surveyed and sold.
150. Contents of boards, &c. to be plainly marked.
151. Boards, &c. to be sold according to marks.
152. Fees.
153. Penalty for fraud and for delay of surveyor.
154. Boards, &c. not to be sold or purchased unless surveyed, except, &c.
155. Penalty.

SECTION

SHINGLES—CLAPBOARDS.

156. Towns to choose surveyors of shingles and clapboards.
157. Quality, size and denomination of shingles.
158. How branded—Fees—Forfeitures.
159. Quality and size of clapboards.

MEAL, INDIAN AND RYE.

160. All meal, except, &c. to be sold by weight.
161. Penalty.
162. Provisions concerning corn, wheat and other grain.

NAILS.

163. Wrought nails, how packed and branded.
164. Cut nails and brads, how packed and branded.
165. Forfeiture and penalty.
166. Penalty for counterfeiting brand, shifting contents of casks, &c.
167 " for attempting to transport out of the state, nails not branded, &c.
168. How recovered.

OILS.

169. What oils shall be deemed pure spermaceti oil.
170. Penalty for adulteration.
171. " " selling adulterated oil as pure oil.
172. Same subject.
173. Test.

PAPER.

174. Paper, how packed and marked.
175. Penalty for selling paper contrary to law.
176. Forfeiture.

POT AND PEARL ASHES.

177. Inspector general to give bond.
178. Deputies to be appointed, to give bond, and to be sworn.
179. Inspector to make returns.
180. Casks, how branded.
181. Ashes, how inspected—Sorts and denominations.
182. Fees.
183. Inspector's proportion of deputies' fees.
184. Penalty for unreasonable delay.
185. Quality and size of casks.
186. Casks to be weighed.
187. Inspectors may search vessels—Forfeiture.
188. Penalty on masters, &c. for receiving ashes not branded.
189. " for obstructing search.
190. " for branding falsely.
191. " for shifting contents of casks.

SALT AND GRAIN.

192. Inspectors general of salt to give bond.
193. Deputies to be appointed.
194. Fees.
195. Inspector's proportion of deputies' fees.
196. Manner of inspection.
197. Duty of manufacturer.
198. Penalty on inspector for unreasonable delay.
199. Salt, Indian corn, wheat, &c. to be sold by weight, except, &c.

WOOD, BARK AND CHARCOAL.

200. Dimensions of cord wood.
201. Penalty for selling wood, &c. not measured.
202. Fees.
203. Wood, brought in by water, how measured—Special provisions for Boston.
204. Carters to have tickets.
205. Dimensions of charcoal baskets.
206. Illegal baskets to be seized.
207. Dimensions of charcoal boxes.
208. Penalty for using other measures.
209. Forfeitures, how recovered.

APPOINTMENT OF INSPECTORS GENERAL, &C.

SECTION 1. There shall be inspectors general of beef and pork, butter and hog's lard, fish, hops, leather, pot and pearl ashes, and salt; and the inspectors general, now appointed, shall hold their offices, according to the tenor of their respective commissions, unless sooner removed by the governor and council.

Present inspectors general to continue in office, unless, &c.

SECT. 2. The said inspectors general shall be appointed by the governor, with the advice and consent of the council, and shall hold their offices for the term of five years from the time of their respective appointments, unless sooner removed from office by the governor and council.

Inspectors general to be appointed by the governor for five years. 1835, 85.

SECT. 3. Each inspector general shall, before entering upon the duties of his office, be sworn to the faithful discharge thereof.

To be sworn.

Deputy inspectors.

SECT. 4. Each inspector general may appoint deputy inspectors, removable at his pleasure, who shall, once in every six months, make such returns to him, as he shall require to carry into effect the provisions of this chapter.

BEEF AND PORK.

Inspector general of beef and pork, to give bond. 1799, 69, § 2.

SECT. 5. The inspector general of beef and pork shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of four thousand dollars.

— may appoint deputies, who shall give bond and be sworn. 1801, 18, § 4.

SECT. 6. The said inspector general may appoint deputy inspectors, in each town, where he shall deem it necessary, for whose official conduct he shall be responsible; and they shall give bonds, with sufficient sureties, to him and his successors in office, in a penal sum not exceeding one thousand dollars each; and shall be sworn either before the said inspector general or before a justice of the peace, to the faithful discharge of their duty.

— shall attend, on request, within 24 hours. 1801, 18, § 1.

SECT. 7. The inspector general or some one of his deputies shall attend, as soon as may be, within twenty four hours after request made, at any suitable place within the county, where he resides, for the purpose of inspecting any quantity exceeding thirty barrels of beef and pork, or either; and shall see the same weighed, packed and salted.

Inspector general's returns, when to be made, and their contents. 1799, 69, § 3. 1815, 38, § 3.

SECT. 8. The inspector general, in the month of May, annually, shall make a return to the secretary's office of the whole number of tierces, barrels and half barrels of beef and pork, so inspected by him and his deputies, during the year preceding the first day of said May, designating, in his return, the different sorts of beef, and the places at which it was inspected.

No beef to be exported, except, &c. 1799, 69, § 1. 1801, 18.

SECT. 9. No person shall ship on board of any vessel, for any purpose whatever, or export from this Commonwealth, any beef salted in this state, except in tierces, barrels, or half barrels, of the quality and dimensions herein after provided, and the contents whereof shall have been inspected and packed, nor unless the casks containing the same shall be branded, agreeably to the directions hereinafter contained.

Quality of beef to be packed. 1799, 69, § 4.

SECT. 10. No beef shall be packed in tierces, barrels or half barrels, for exportation, unless it be of fat cattle not under three years old; and all such beef shall be cut into pieces, as nearly square as may be, and of not more than eight pounds nor less than four pounds in weight.

Sorts and denominations of beef.

SECT. 11. All beef, which the inspector general or his deputies shall, on examination, find to have been killed at a proper age, and to be fat, and otherwise good and merchantable, shall be divided into five different sorts, for packing into tierces, barrels or half barrels, to be denominated and branded, respectively, *mess*, *navy mess*, *number one*, *prime*, and *cargo*. Mess beef shall consist of the choice pieces of oxen or steers, well fatted and weighing six hundred pounds and upwards; the shin, shoulder, clod, and not less than eight pounds of the neck, shall be taken from each fore quarter, and the legs and leg rand from the hind quarters; and each tierce, barrel and half barrel, containing beef of this description shall be branded on one of the heads with the words *mess beef*. Navy mess beef shall consist of

Mess beef.

Navy mess.

the choice pieces of oxen, steers, cows and heifers, weighing four hundred pounds or more, and to average five hundred and fifty pounds; the shin, shoulder, clod and neck, shall be taken from the fore quarters, and the legs and leg rand from the hind quarters; the beef to be cut into pieces of as nearly eight pounds each as possible, and branded *navy mess*. Number one beef shall consist of choice pieces of oxen, steers, cows and heifers, not under four hundred pounds weight, and to average five hundred and twenty pounds weight, without any shanks, and with not more than six pounds of the neck of each fore quarter. On one head of each tierce, barrel or half barrel containing beef of this description, shall be branded *No.* 1. Prime beef shall consist of fat cattle, of all descriptions not before mentioned (bulls excepted), with not more than half a neck and two shanks, and without any hocks; each tierce, barrel and half barrel of beef of this description shall be branded *prime*. Cargo beef shall consist of those pieces of beef which are excluded from mess, navy mess, No. 1, and prime abovementioned, (not including hearts nor cheek pieces,) and shall be packed and inspected by the inspector general, or his deputies, in the same manner as No. 1, or prime, and shall be branded *cargo*; first taking from said pieces, excluded as aforesaid, namely, from the end of the neck, not less than four pounds, nor more than six pounds, and from the shank and shin of each quarter, not less than four pounds, nor more than eight pounds; which pieces thus taken off shall not be exported from this state.

Number one.

Prime.

Cargo.

1799, 69.
1822, 62.

SECT. 12. Every barrel of beef shall be well salted with seventy five pounds of clean St. Ubes, Isle of May, Lisbon, or Turk's Island salt, or eighty pounds of coarse Liverpool salt, or other salt of equal quality, exclusive of a pickle made of fresh water, as strong as salt will make it; to each barrel of beef of the two first sorts, shall be added six ounces of salt petre; to each barrel of number one and prime, shall be added four ounces of salt petre; and to each tierce, and half barrel, salt and salt petre, in the like proportions, according to the quantity and sorts of beef packed therein.

Beef, how salted.
1799, 69, § 4.

SECT. 13. Whenever the inspector general or his deputies shall have inspected and assorted any beef, according to the provisions of this chapter, they shall, with their coopers, laborers, or others, whom they may employ, and for whom they shall be responsible, cut, weigh, pack, salt and cooper the same.

Inspectors, &c. shall cut, weigh, &c.
1802, 20, § 1.

SECT. 14. Every tierce, barrel and half barrel, in which beef shall be packed for exportation, shall be made of good seasoned white oak or white ash staves and heading, of rift timber, free from any defect; each tierce shall contain three hundred pounds weight, each barrel two hundred pounds weight, and each half barrel one hundred pounds weight of beef; the barrels shall measure seventeen inches between the chimes, shall be twenty eight inches long, and be covered three fourths of the length with good oak, ash or walnut hoops, leaving one fourth in the centre; the heads shall be made of a proper thickness, the hoops well set and driven together; the half barrels shall contain not less than fifteen gallons, and shall be hooped in the same manner as the barrels.

Quality of tierces, &c., and their contents.
1799, 69, § 5.

SECT. 15. All salted beef and pork, imported or brought into this state, and sold for exportation, shall be branded with the name

Imported beef and pork, how

branded. 1820, 34, § 1. 1831, 29. § 6.

of the state where the same was packed, and shall not be subject to inspection; and if any such beef or pork shall be repacked and inspected in this state, it shall, in addition to the several brands required by this chapter, be branded with the word *repacked*.

Rounds of beef may be exported as heretofore. 1799, 69, § 14.

SECT. 16. Nothing in this chapter shall prevent the exportation of rounds of beef in kegs or tubs, as now practised, the name of the owner, and of the town in which he resides, being first branded on one head of each keg or tub.

Beef, how branded. 1799, 69, § 6. 1815, 9, § 2. 1801, 18, § 6.

SECT. 17. Every tierce, barrel and half barrel, in which beef shall be packed for exportation, shall be branded in legible letters and figures, as follows, to wit: with the first letter of the christian name and the whole of the surname of the inspector who shall have inspected the same; the name of the town where it was inspected, the abbreviation MASS. (for Massachusetts,) the name of the person for whom the beef is packed, and the month and year of the inspection; and when the name of the month consists of more than one syllable, it may be abbreviated.

Pork to be inspected, &c. before exportation. 1801, 78, § 6.

SECT. 18. No person shall ship or export from this state, to any place without the same, any pork, salted within this state, unless the same shall have been inspected and packed in barrels or half barrels, branded according to the provisions of this chapter.

Sorts and denominations of pork.

SECT. 19. All pork, packed in barrels, or half barrels, for exportation, shall be sorted by the inspector general, or his deputies, and shall be denominated and branded, respectively, as follows, to wit: *bone middlings*, *mess*, *navy mess*, *number one*, *prime*, and *cargo pork*; and in all cases, the following parts shall be taken out as refuse, namely; nose pieces, ears, brains, tails, feet, lard, and faces when separated from the cheek. Bone middlings shall consist of middle pieces taken from the hogs well fatted, weighing two hundred and thirty pounds or upwards. Mess pork shall consist of the pork of well fatted hogs, weighing not less than two hundred pounds each, and excluding heads, necks, legs and shoulders. Navy mess pork shall consist of all parts of the carcass well fatted, weighing from one hundred and sixty pounds, to two hundred and thirty pounds, except the head, fore and hind legs, and the shoulder joint. Number one shall consist of all parts of hogs, well fatted, averaging two hundred and twenty pounds or upwards, and weighing each not less than one hundred and eighty pounds, and shall have no more heads, legs, shoulders, or other coarse parts; than belong to one carcass. Prime pork shall consist of all parts of one hog and a half, well fatted, which shall weigh two hundred pounds; and prime pork in half barrels shall consist of pig pork, all parts of one carcass or not, and shall not contain the heads or legs of more than one carcass. Cargo pork shall consist of all other kinds of pork of an unmerchantable, but wholesome quality. All casks filled with pork heads or feet, shall be branded *pork heads* or *feet*, as the case may be.

Bone middlings. Mess pork. Navy mess. Number one. Prime. Cargo.

Pork heads or feet. 1801, 78, § 2.

How salted. 1820, 34, § 3.

SECT. 20. Every barrel of pork shall be well salted, with seventy pounds of clean coarse salt, exclusive of a strong pickle; and to every barrel of pork, packed and inspected in this state, shall be added three ounces of salt petre of good quality, and to every half barrel two ounces.

Extra clear pork.

SECT. 21. The inspector general or his deputies may, at the re-

quest of the owner or agent, inspect and pack the following descriptions of pork, namely; first, a quality to be denominated and branded *extra clear pork*, which shall be from well fatted hogs, weighing not less than three hundred pounds each, excluding heads, necks, shoulders, legs, the chine bone and spare ribs, the lean and blades from the backs of shoulders; secondly, a quality to be denominated and branded *clear pork*, which shall be from well fatted hogs weighing not less than two hundred and fifty pounds each, excluding heads, necks, shoulders, legs, the chine bone and spare ribs, the lean and blades from the backs of shoulders; and in all other respects, the two qualities of pork, mentioned in this section, shall be packed and branded, conformably to the provisions of this chapter for other denominations of pork.

Clear pork. 1831, 29, §§ 3 & 4.

SECT. 22. Every barrel and half barrel, in which pork shall be packed for exportation, shall be made of good seasoned white oak or white ash staves, and heading of rift timber, free from any defect; the barrels shall measure seventeen and one quarter inches between the chimes; they shall be covered three fourths of the length with good oak, ash, or walnut hoops, leaving one fourth in the centre; they shall contain not less than thirty one nor more than thirty one and a half gallons, and there shall be packed in each barrel two hundred, and in each half barrel one hundred, pounds weight of pork.

Quality and contents of barrels, &c. 1801, 78, § 3.

SECT. 23. When the hind legs shall be taken out, three shoulders may be put into each barrel of number one pork, and four shoulders into each barrel of prime pork, and no more; and cargo pork may consist of an equal proportion of heads, necks, legs and shoulders, of a wholsome quality.

When hind legs are taken out, shoulders may be put in. 1820, 84, § 2.

SECT. 24. The inspector general and his deputies shall be paid the following and no other fees, for inspecting and branding all casks of beef and pork, to wit; for every tierce and every barrel, twelve cents and a half; and for every half barrel, eight cents, exclusive of cooperage; which charges of inspection shall be paid by the shipper; and the inspector general may receive from any deputy three cents for each tierce and barrel, and two cents for each half barrel, which such deputy may inspect and brand.

Inspectors fees. 1799, 69, § 8. 1801, 18.

SECT. 25. In addition to the fees for inspection and branding, there shall be paid by the employer to the inspector general or his deputies, for their services, and for the laborers and coopers, employed by them in packing beef or pork, as before provided in this chapter, the following compensation, to wit; for all tierces and barrels, when the number does not exceed fifty, twenty five cents each; for all half barrels, when the number does not exceed fifty, sixteen cents each; and in packing houses, where larger quantities than as above mentioned are packed, they shall receive twenty cents for each tierce or barrel, and fourteen cents for each half barrel.

Same subject. 1803, 139, § 4.

SECT. 26. The inspector general and his deputies shall respectively be entitled to the following fees, for all certificates signed by them, to wit; for every certificate of any quantity of beef or pork, not exceeding one hundred tierces, barrels or half barrels, twenty five cents; for every certificate of any quantity, greater than one hundred barrels and not exceeding two hundred tierces, barrels or half barrels,

Fees for certificates. 1801, 18, § 7.

fifty cents; and for every certificate of more than two hundred tierces, barrels or half barrels, one dollar.

Penalty for neglect or fraud in inspecting. 1799, 69, § 2.

SECT. 27. If the inspector general or any deputy inspector shall neglect or refuse to inspect or brand, or shall be guilty of any neglect or fraud in inspecting, packing or branding any cask of beef or pork, contrary to the provisions of this chapter, or shall mark with his brands any cask containing beef or pork, which has not been actually inspected, he shall forfeit the sum of ten dollars for each offence.

Penalty on deputy for inspecting out of his town, &c. 1799. 69, § 1.

SECT. 28. If any deputy inspector shall inspect or brand any cask of beef or pork, out of the town or county for which he is appointed, he shall, for each offence, forfeit a sum not exceeding fifty dollars.

Penalty for branding without authority. 1799, 69, § 7.

SECT. 29. If any person, other than the inspector general or a deputy inspector, shall brand any cask of beef or pork, he shall forfeit a sum not exceeding twenty dollars for each cask so unlawfully branded.

If tierces, &c. not inspected, &c. be laden on board any vessel, they may be seized, &c. 1799, 69, § 16. 1801, 18, § 3.

SECT. 30. If any tierces, barrels or half barrels of beef or pork, not inspected, packed or branded, according to the provisions of this chapter, shall be laden on board of any vessel, for exportation from this state, the inspector general or any deputy inspector may seize and libel the same, and shall thereupon proceed therewith, in all respects, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods; and if upon the trial it shall appear that such beef or pork was lawfully seized, the same shall be decreed to be forfeited, and shall be sold and disposed of as provided in the same chapter.

Penalty for intermixing. 1799, 69, § 10.

SECT. 31. If any person shall intermix, take out or shift any beef or pork, from any cask inspected or branded as aforesaid, or put in any other beef or pork for sale or exportation, contrary to the provisions of this chapter, he shall, for each offence, forfeit a sum not exceeding twenty dollars.

Penalty on exporter, &c. for exporting or shipping beef or pork, not inspected, &c. 1799, 69, § 16.

SECT. 32. If any person shall ship for exportation, or shall export from this state, any salted beef or pork not inspected and branded, every such shipper or exporter, and the master of every vessel, having on board such beef or pork, shall respectively forfeit the sums following; the shipper or exporter, six dollars, and the master of such vessel, two dollars for every cask so shipped or exported.

Penalty for selling, &c. any beef, &c. deficient in weight. 1787, 19, § 2.

SECT. 33. If any person shall offer for sale, or shall sell any cask of salted beef or pork, not containing the quantity, and not packed in the manner provided by law, he shall forfeit, for each cask so offered or sold, a sum not exceeding ten dollars, to be recovered to the use of the town, wherein the offence shall be committed.

Manner of preparing beef cattle for weighing. 1833, 200.

SECT. 34. All beef cattle, except bulls, sold in market by weight, shall, when slaughtered, be prepared for weighing, in the following manner; the legs shall be taken off at the knee and gambrel joint, the skin shall be taken from all other parts of the animal, the head shall be taken off at the second joint of the neck, the entrails taken out, and all the fat of the same be taken off and weighed as rough tallow; and every other part of the animal, including the hide and rough tallow, (the udder of cows excepted,) shall be weighed.

Beef, when to

SECT. 35. All beef shall be weighed upon the first week day

succeeding that on which it may be slaughtered; and every person, who shall slaughter beef, so sold in market by weight, and prepare it for being weighed, in any other manner than as herein prescribed, shall forfeit a sum not exceeding thirty dollars for each offence; provided, that nothing herein contained shall prevent the buying and selling of beef cattle on the foot, or the slaughtering or weighing of cattle in any mode or at any time, which shall be agreed upon between the buyer and seller.

be weighed. 1833, 200.

SECT. 36. The selectmen of every town, where beef cattle are sold for the purpose of market, or barrelling, shall appoint one or more person or persons, who shall be conveniently situated in such town, and not dealers in cattle, to be weighers of beef; who shall be sworn to the faithful discharge of the duties of their office, and shall receive such fees as are hereinafter prescribed.

Weighers of beef, when and how appointed. 1815, 99, § 1.

SECT. 37. All beef, sold as aforesaid, shall be weighed by the said sworn weighers; and certificates of the weight of all the beef, hide and tallow of each of the cattle, in the form following, shall be signed by the said weighers and be delivered to the sellers thereof, to wit:

Weighers to give certificate. 1815, 99, § 2.

FORM OF CERTIFICATE.

This certifies that I have duly weighed the cattle, bought by of from of this day of 18

Beef, - - - - - -					
Hide, - - - - - -					
Tallow, - - - - - -					
Total, - - - - - -					

Sworn weigher.

SECT. 38. The fees for weighing shall be as follows; for weighing any number of cattle, not exceeding five, twenty cents each; for all above five and not exceeding ten, fifteen cents each; for all above ten and not exceeding twenty, ten cents each; for all above twenty, five cents each, after the first twenty; and twelve and a half cents for each certificate, which shall contain the several weights of all the cattle offered for weight by any one person, unless otherwise regulated by the seller thereof; and said fees shall be paid by the seller.

Fees for weighing. 1815, 99, § 3.

SECT. 39. Any butcher or purchaser of beef cattle, intended for market or barrelling, who shall purchase any such beef cattle, contrary to the several provisions of this chapter, shall forfeit a sum not exceeding thirty dollars for each offence.

Penalty on purchaser, &c. for purchasing contrary to law. 1815, 99, § 6.

SECT. 40. When any quantity of beef or pork, exceeding fifty pounds, shall, for the purposes of a sale, be weighed by the owner or keeper of any slaughter house, store, or warehouse, or by any person in his service or under his direction, the same shall be weighed, either by sealed scales and weights, or by the vibrating steelyard authorized by the provisions of the thirtieth chapter; and every such person, who shall weigh any such quantity of beef or pork, in any other than the manner aforesaid, shall, for each offence, forfeit the sum of ten dollars to the use of the town, in which the offence shall be committed.

Manner of weighing beef and pork. 1799, 30. 1816, 66.

BEER, ALE AND CIDER.

Size of barrels, &c. for beer, ale and cider. 1828, 99, § 1.

SECT. 41. No person shall expose for sale any ale or beer, in barrels, half barrels, casks or kegs, of a less capacity, respectively, than barrels of thirty two gallons each, half barrels of sixteen gallons each, and casks or kegs of ten gallons each, unless such other barrels, half barrels, casks or kegs, shall be conspicuously and permanently marked, on both heads thereof, with the true gauge or measure thereof in gallons.

Forfeitures. 1828, 99, § 1.

SECT. 42. Any person, offending against the provisions of the preceding section, shall forfeit the value of the ale or beer so exposed to sale or sold, and the barrels, half barrels, casks or kegs containing the same, to the use of the town where the offence shall be committed.

Capacity of barrels, &c. 1828, 99, § 2.

SECT. 43. In all contracts for the sale of any ale, beer or cider, by the barrel or half barrel, the barrel shall be deemed to contain thirty two gallons, and the half barrel sixteen gallons, unless the parties shall otherwise agree.

BUTTER AND HOG'S LARD.

Inspector general of butter, &c to give bond. 1799, 84, § 9.

SECT. 44. The inspector general of butter and hog's lard shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of one thousand dollars.

Deputies to be appointed, to give bond, and be sworn. 1799, 84, § 9.

SECT. 45. The said inspector general shall, in every seaport town, from which butter and hog's lard are exported, and in such other places as he shall judge necessary, appoint deputy inspectors, in the manner hereinafter provided, for whose official conduct he shall be answerable; the said deputies shall each give bond to the inspector general, with sufficient sureties, in the penal sum of five hundred dollars, for the faithful discharge of the duties of their office, and shall also be sworn, either before the said inspector general or a justice of the peace, to the faithful discharge of the duties thereof.

All butter, &c. for exportation, to be inspected. 1799, 84, § 1.

SECT. 46. The inspector general or his deputies shall inspect and prove all butter and hog's lard in casks, firkins or kegs, that shall be intended for exportation; and no person shall ship either of the said articles for exportation, before the same shall have been inspected.

Inspector to make returns. Contents. 1799, 84, § 9. 1815, 35, § 2.

SECT. 47. The inspector general of butter and lard shall, annually, in the month of May, make a return to the secretary's office, of the whole number of casks, the different qualities, and the weight of each quality, of butter and lard inspected by him and his deputies, during the year preceding the first day of said May.

Manner of inspecting. 1820, 25.

SECT. 48. The inspector general or his deputies shall examine the casks, kegs or firkins, containing butter or hog's lard intended to be exported as aforesaid, and shall, with a hollow iron searcher, perforate the contents of said casks, kegs or firkins, from one head to the other, and thereby draw out so much as shall determine the quality of the whole; and he shall see that it has been preserved with a due proportion of good fine salt, that it is sweet, and in all respects fit to be exported to any foreign market, without danger of spoiling; and the inspector general and his deputies shall return, forthwith, the butter or hog's lard so drawn out of any cask, firkin or keg.

Brands of casks, &c.

SECT. 49. Each cask, keg, or firkin of butter, or hog's lard,

which appears to be good and fit to be exported as aforesaid, shall be branded in plain and legible letters with the words *butter* or *hog's lard*, and *first*, or *second*, or *third*; and all other butter or hog's lard with the word *refuse*; and each cask, keg or firkin so inspected shall be also branded with the letters MASS., the name of the town where it shall be inspected, the initial letter of the inspector general's or deputy's christian name, and the whole of his surname, and the month and year in which the same may be inspected; and when the name of the month shall consist of more than one syllable, it may be abbreviated. 1799, 84, § 1. 1800, 59. 1815, 114, § 2.

SECT. 50. All casks, kegs or firkins, in which butter or hog's lard shall be packed for exportation, except when packed as provided in the following section, shall be made of sound and well seasoned white oak or ash staves and heading, full bound, twelve and an half inches in length, and eight and a half inches diameter in the head, or fifteen inches in length, and ten and an half inches diameter in the head. Quality of casks 1799, 84, § 2. 1800, 28.

SECT. 51. The several inspectors may, when requested, inspect and brand kegs of butter or hog's lard of the following sizes, namely; kegs twelve inches long, and of seven and a half inches diameter in the heads, or ten inches long with six inches head. Size of kegs. 1799, 84, § 2. 1800, 28.

SECT. 52. Each cask, keg or firkin, before any butter or hog's lard shall be packed therein, shall be filled with a strong brine, which shall remain therein three days; and as soon as the brine is emptied from the cask, keg or firkin, it shall be weighed by the owner of such butter or hog's lard, who shall with a marking-iron mark, on one of the heads thereof, the full weight of the cask, keg or firkin, and shall brand the initial letter of his christian name and his surname at large. Casks, &c. to be filled with brine before packing; how branded. 1799, 84, § 3.

SECT. 53. Any butter or hog's lard, imported into this state, and inspected in the state in which it shall have been packed, shall not be subject to a reinspection; and any so imported, which shall not have been inspected in any other state, may be shipped without inspection. Imported butter, &c. not subject to inspection. 1828, 17, §§ 1. and 2.

SECT. 54. The inspector general or any deputy, for his services in inspecting, branding, weighing and delivering to the owner an invoice or weigh note, under his hand, of the weight of each cask, keg or firkin, shall receive eight cents for each cask, keg, or firkin, to be paid by the purchaser of the same. Fees. 1799, 84, § 1. 1800, 59, § 2. 1815, 114, § 3.

SECT. 55. If the inspector general or any deputy shall, on application made for the inspection of any butter or hog's lard as aforesaid, unreasonably refuse, neglect or delay to proceed to such inspection and branding, for the space of three hours, after application so made to him, he shall, for each offence, forfeit the sum of two dollars. Penalty for delaying to inspect 1799, 84, § 5.

SECT. 56. If any person shall counterfeit any brand, belonging to or used by the said inspector or his deputies, or shall impress or brand any cask, keg or firkin of butter or hog's lard, with any brand or brands of such inspector, or with any counterfeit brand as aforesaid, he shall forfeit for each offence the sum of ten dollars; and if any owner of butter or lard shall falsely mark any cask, keg or firkin thereof, he shall forfeit the sum of three dollars for each offence. —for counterfeiting brands. 1799, 84, § 6.

SECT. 57. If any person shall empty any cask, keg or firkin of —for putting

other butter into branded kegs, &c. 1799, 84, § 7.

butter or lard, inspected and branded as by this chapter is required, and shall put in any other butter or lard, for sale or exportation, without first cutting out the said brands and marks, the person or persons so offending shall for each such cask, keg, or firkin, forfeit the sum of ten dollars.

—for exporting, &c., butter, &c. not inspected. 1799, 84, § 1. 1800, 28, § 2.

SECT. 58. If any person shall export, or ship for exportation, from this state, any butter or hog's lard, not inspected and branded as aforesaid, (except as hereinbefore provided for butter and hog's lard imported into this state from any other of the United States,) such exporter or shipper shall forfeit one dollar, and the master of every such vessel shall forfeit fifty cents, for each cask, keg or firkin so shipped or exported.

When butter, &c. may be seized and libelled. 1800, 28, § 4.

SECT. 59. If any butter or lard shall be shipped for exportation or exported from the state, contrary to the provisions of this chapter, the inspector general or any deputy inspector may seize and libel the same, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods; and if upon the trial it shall appear that the seizure was lawful, the said butter or lard shall be decreed to be forfeited, and shall be sold and disposed of, according to the provisions of the same chapter.

CHOCOLATE.

Chocolate, how to be stamped. 1803, 54, § 1.

SECT. 60. Manufacturers of chocolate shall not make any cake of chocolate, except in pans, in which shall be stamped the first letter of their christian name and the whole of their surname, the name of the town where they reside, with the qualiiy of the chocolate in figures, *No.* 1, *No.* 2, *No.* 3, as the case may be, with the letters MASS. for Massachusetts.

Ingredients. Boxes, how branded. 1803, 54, § 2.

SECT. 61. Number one chocolate shall be made of cocoa of the first quality, and number two chocolate shall be made of the second quality of cocoa, and both shall be free from adulteration; number three may be made of the inferior kinds and quality of cocoa; and each box containing chocolate shall be branded on the end thereof with the word *chocolate*, the name of the manufacturer, the town where the same was manufactured, and the quality, as described and directed for the pans in the preceding section.

Chocolate, made contrary to law may be seized, &c 1803, 54, §§ 3, 4.

SECT. 62. If any chocolate manufactured in this state shall be offered for sale, or be found within the same, not being of one of the qualities described in the two preceding sections, and marked as therein directed, or, if any such chocolate shall be put on board of any vessel or carriage of conveyance, for the purpose of being transported out of this state, the same may be seized and libelled, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods; and for that purpose, any justice of the peace may, upon complaint made to him, issue his warrant, directed to any sheriff, deputy sheriff or constable, requiring them respectively to make such seizure; and if upon the trial, it shall appear that the seizure was lawful, the said chocolate shall be deemed to be forfeited, and shall be sold and disposed of, according to the provisions of the same chapter.

FIRE ARMS.

Provers of fire

SECT. 63. The governor, with the advice and consent of the

council, shall appoint suitable persons, not exceeding two in any county, where the manufacture of fire arms is carried on, to be provers of fire arms, who shall be sworn to the faithful discharge of their trust, and who shall prove all musket barrels and pistol barrels, which being sufficiently ground, bored and breeched, shall be offered to them to be proved.

arms to be appointed and sworn. 1804, 81, § 1.

SECT. 64. All musket barrels and pistol barrels, manufactured in this state, shall, before the same shall be sold, and before the same shall be stocked, be proved by one of the provers aforesaid, in manner following, namely; with a charge of powder equal in weight to the ball which fits the bore of the barrel to be proved; and the powder used in such proof shall be such, that one ounce thereof in a howitzer of four and a half inch calibre, at an elevation of forty five degrees, shall be of sufficient power to carry a twelve pound shot one hundred and thirty yards; or one ounce thereof in a howitzer of five and a half inch calibre, at an elevation of forty five degrees, shall be sufficient to carry a twenty four pound shot eighty yards; and the ball used in such proof shall be suited to the bore of the barrel to be proved as aforesaid.

How fire arms shall be proved. 1804, 81, § 1. 1813, 192, § 1.

SECT. 65. If the said musket and pistol barrels shall stand the proof aforesaid, and shall in no respect fail, then the said prover shall stamp the same on the upper side, and within one and an half inches of the breech of said barrels, with a stamp consisting of the initial letters of the prover's name, and over those letters the letter P., and, in the line with the said initial letters, and further up said barrel, the figures designating the year in which the proof is made, and over the said figures the letter M.; which said letters and figures shall be so deeply impressed on said barrel, that the same cannot be erased or disfigured, and shall be in the form following $\frac{\text{P. M.}}{\text{A. B., 1835.}}$; and when any barrels shall burst, or shall in any manner fail in the proving, as aforesaid, so that in the opinion of the prover they are unfit for use, they shall not be stamped.

How stamped. 1804, 81, § 1.

SECT. 66. Any prover, so proving musket or pistol barrels, shall be entitled to receive from the owner, for each musket barrel thirty three cents, and for each pistol barrel twenty five cents, whether the same stand proof and are stamped or not.

Fees. 1804, 81, § 1.

SECT. 67. If any person shall manufacture, within this state, any musket or pistol, or shall sell and deliver, or shall knowingly purchase any musket or pistol so manufactured, without having the barrels first proved, marked and stamped as aforesaid, or shall sell, stock, or finish, or shall knowingly purchase, any musket barrel or pistol barrel, manufactured within this state, which shall not have been first proved, marked and stamped, he shall forfeit for each offence the sum of ten dollars; provided, however, that the penalties and provisions mentioned in this section shall not extend to any muskets or pistols, or musket or pistol barrels, manufactured in any armory of the United States, for the use of, or in execution of any contract made or to be made with, the United States, for the manufacture of fire arms.

Penalty for buying, selling, &c. arms, not proved. 1813, 192, § 2.

SECT. 68. If any person shall forge or alter the stamp of any such prover of fire arms, impressed on any musket or pistol barrel pursuant to law, he shall pay a fine not exceeding fifty dollars.

—for forging stamps. 1804, 81, § 4.

FISH.

Inspector general to give bond. 1809, 120, § 2.

SECT. 69. The inspector general of pickled fish shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of ten thousand dollars.

Deputies, to be appointed, to give bond and be sworn. 1809, 120, § 2.

SECT. 70. The said inspector general may appoint deputy inspectors, in every seaport or other town, where such fish is packed for exportation, and he shall be answerable for their official conduct, and shall take bonds from each of them, with sufficient sureties, in such sum as he shall judge sufficient; and the said deputies shall be sworn, either before the said inspector general or some justice of the peace, to the faithful discharge of their duty.

Inspectors to inspect alewives, &c. 1807, 54, § 4.

SECT. 71. The inspector general and deputy inspectors of pickled fish shall also be inspectors of smoked alewives and herrings.

—to make returns. 1807, 54, §§ 3 and 4. 1815, 38, § 2.

SECT. 72. The inspector general shall, in the month of January, annually, make a return into the office of the secretary of the Commonwealth, of the gross quantities of fish inspected by him and his deputies, during the year preceding the first day of said January, designating the quantities of pickled fish and smoked fish, respectively.

Fish, how prepared and packed.

SECT. 73. The inspector general and his deputies, respectively, shall see that all kinds of split pickled fish and fish for barrelling, intended for exportation, except herring, have been well struck with salt or pickle, in the first instance, and preserved sweet, free from rust, taint or damage; and such fish as shall be found in good order and of a good quality shall be packed, either in tierces containing each three hundred pounds of fish, or in barrels containing each two hundred pounds, or in half barrels containing each one hundred pounds, or in quarter barrels containing each fifty pounds, or in eighths of a barrel or kids containing each twenty five pounds; and they shall be packed with good and clean salt suitable for the purpose, and after packing said fish with sufficient salt to preserve them, and heading said casks, they shall be filled up with a clear strong pickle. There shall be four qualities of mackerel, three of salmon and shad, and two of other kinds of pickled fish; those mackerel of best quality for family use, not mutilated, of suitable size, free from rust or damage, shall be number one and number two, the best of those selected and branded *number one*, the residue *number two*; those remaining after this selection of usual size, free from taint, and sound, shall be branded *number three*; and those of this number that are of the description called Block island mackerel, shall also be branded with the word *south*; all small size mackerel, free from taint, and sound, remaining after the above selections, shall be branded *number four*; those salmon and shad, which are of the best quality for family use, free from rust or damage, shall be selected for number one and number two, the best of them selected and branded *number one*, the residue *number two*; all that remain free from taint, and sound, shall be branded *number three*; of all other pickled fish the best, such as are free of taint and damage, shall be branded *number one*, those that remain, free from taint, and sound, *number two*.

Sorts and denominations of fish. 1809, 120, § 3. 1834, 147.

Penalty for shifting contents of casks. 1809, 120, § 3.

SECT. 74. Each cask shall be filled with fish of one and the same kind; and if any person shall intermix, take out, or shift any inspected fish, which are packed and branded as aforesaid, or put in

other fish, for sale or exportation, contrary to the true intent and meaning of the provisions of this chapter, he shall forfeit fifteen dollars for each package so altered; provided, however, if any casualty shall render it necessary to repack a cask of inspected fish, it shall in all cases be done by an inspector of such fish.

Casks, how branded. 1809, 120, § 3. 1830, 84, § 4. 1834, 147, §§ 1, and 3.

SECT. 75. The inspector general or his deputies shall brand, in plain legible letters, on the head of each cask of fish inspected by them, respectively, the denomination of the fish packed or repacked therein; the initials of the christian name and the whole of the surname of the inspector general or his deputy, as the case may be, the name of the town for which such deputy is appointed, the letters MASS. (for Massachusetts) and the year in which the fish are packed; and the said inspectors shall also, when in their judgment it may be necessary, nail, in a suitable manner, every cask in which fish are packed.

Small fish, how packed.

SECT. 76. All small fish, which are usually packed whole, with dry salt or pickle, shall be put in good casks of the size and materials required in this chapter for the packing of split pickled fish, and shall be packed close in the cask and well salted; the casks shall be filled full with the fish and salt, and no more salt shall be put with the fish, than is necessary for their preservation; and the casks containing such whole fish shall be branded with the denomination of the fish, and a like designation of the qualities, as is before prescribed in this chapter, in respect to the qualities of other pickled fish.

Fish of other states, &c. not subject to reinspection. 1829, 31.

SECT. 77. Pickled fish, which shall have been duly inspected in the state or country in which it shall have been packed, shall not be subject to reinspection in this state.

Quality and capacity of casks. 1809, 120, § 1.

SECT. 78. All casks, used for packing or repacking pickled fish intended for exportation, except casks containing less than twenty five pounds weight, shall be made of sound well seasoned white oak, ash, red oak, spruce, pine or chesnut staves, of rift timber, sound and well seasoned, with heading of either of the said kinds of wood, and if of pine, such heading shall also be free from sap and knots, and shall be planed; the barrels, half barrels and tierces shall be well hooped, with at least three good hoops of sufficient substance on each bilge, and three hoops of the like quality on each chime; the barrel staves shall be twenty eight inches in length, and the heads shall be seventeen inches between the chimes; the barrels shall contain not less than twenty eight nor more than twenty nine gallons each; the half barrels not less than fifteen gallons each; and the tierces not less than forty five nor more than forty six gallons each; and each cask shall be made in a workmanlike manner, and shall be branded on the side thereof, near the bung, with the name of the maker thereof.

Casks to be examined. 1830, 84, § 4.

SECT. 79. The inspector general or his deputies shall strictly examine and inspect all casks, in which they may be required to pack any fish; and they shall reject all such as are not made in a substantial manner, and according to the provisions of this chapter.

Fees. 1809, 120, § 7. 1824, 146. 1829, 47. 1834, 84, § 5.

SECT. 80. The fees for inspecting and branding, exclusive of cooperage, shall be; for each tierce fourteen cents, each barrel nine cents, each half barrel six cents, each cask of any smaller denomination three cents, and in addition to the fees aforesaid, one cent for

each cask that may be nailed as before provided; and all said fees shall in the first instance be paid by the original owner of said fish, or by the person employing the inspector, and may be recovered by them, respectively, of the person who shall afterwards purchase or export the same.

Inspector's proportion of deputies' fees. 1809, 120, § 7.

SECT. 81. The inspector general may receive from his deputies, for every cask of fish inspected by them, respectively, the following fees; for each tierce, four cents, for each barrel, one cent, for each half barrel, half a cent, and for each smaller cask, one quarter of a cent.

Alewives, &c. how prepared for packing. 1807, 54, § 1.

SECT. 82. All alewives or herrings, intended to be packed for sale or exportation, shall be sufficiently salted and smoked to cure and preserve the same, and afterwards shall be closely packed in boxes, in clear and dry weather.

Sorts of alewives, &c. 1807, 54, § 2.

SECT. 83. All smoked alewives or herrings shall be divided and sorted by the inspector, or his deputy, and denominated according to their quality, number one and number two. Number one shall consist of all the largest and best cured fish; number two of the smaller, but well cured fish; and in all cases, the following shall be taken out as refuse, namely, all those which are belly broken, tainted, scorched or burnt, slack salted, or not sufficiently smoked.

Quality and capacity of boxes. 1807, 54, § 1.

SECT. 84. All boxes, made for the purpose of packing smoked alewives or herrings, and containing the same, shall be made of good sound boards, sawed and well seasoned; the sides, top and bottom of not less than half inch boards, and the ends of not less than three quarters of inch boards, securely nailed, and shall be seventeen inches in length, eleven inches in breadth, and six inches in depth, in the clear, inside.

Brands. 1807, 54, § 2.

SECT. 85. Each box of alewives or herrings, so inspected, shall be branded on the top, by the inspecting officer, with the first letter of his christian name, the whole of his surname, the name of the town where it was inspected, with the addition of MASS., (for Massachusetts,) and also with the quality of *number one*, or *number two*.

Fees. 1807, 54, § 4.

SECT. 86. The fees for inspecting, packing and branding, shall be five cents for each box, which shall be paid by the purchaser; and the inspector general may require from his deputies one cent for each box inspected, packed, and branded, by them.

Penalty for exporting fish, contrary to law.

— for substituting fish of inferior quality.

Fish, imported, need not be reinspected. 1807, 54, § 5. 1824, 3, § 1.

SECT. 87. No smoked alewives or herrings shall be exported from this state, unless inspected and branded as aforesaid, under a penalty of two dollars for each box exported; nor shall any alewives or herrings be taken from any box, inspected and branded as aforesaid, and be replaced by others of an inferior quality, with intent to defraud any person in the sale of the same, under a penalty of five dollars for each box so changed; provided, that all smoked herrings and alewives, arriving from any other state in the United States, and having been there inspected, may be exported in any vessel from this state, without being reinspected.

Fish, when forfeited. 1809, 120, § 9. 1817, 34, § 1.

SECT. 88. If any pickled fish, or smoked fish, which has not been inspected and branded, according to the provisions of this chapter, shall be put on board of any boat or vessel, or into any carriage of conveyance, with intent that the same shall be sold within, or ex-

ported from, this state, the inspector general or any deputy may seize and libel the same, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods; and if upon the trial it shall appear that such seizure was lawful, the fish so seized shall be decreed to be forfeited, and shall be sold and disposed of according to the provisions of that chapter.

Penalty for lading uninspected fish on board vessels. 1784, 31, § 15. 1809, 120, § 6.

SECT. 89. If any master of a vessel or other person shall put or receive, on board of any vessel or in any carriage of conveyance, for transportation from this state, any pickled fish, or smoked fish, not inspected and branded as provided in this chapter, he shall forfeit a sum not exceeding ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity thereof.

— for selling tainted fish for food. 1809, 120, § 3.

SECT. 90. If any person shall sell within this state, or shall export therefrom, any tainted or damaged fish, unless with the intent that the same shall be used for some other purpose than as food, he shall forfeit the sum of ten dollars for every hundred pounds of such fish, and in the same proportion for any other quantity thereof; and upon any trial in such case, the burden of proof shall be upon the defendant, to show for what purpose such fish was so exported or sold.

— for branding without inspecting, &c. 1809, 120, § 8.

SECT. 91. If the inspector general or any deputy inspector shall brand any cask or package of fish, the contents of which he has not duly inspected, packed, salted, or coopered; or if he shall permit any other person to use his brands, in violation or evasion of the provisions of this chapter; he shall forfeit, for each offence, the sum of twenty dollars, and shall also be liable to removal from office.

GUNPOWDER.

Quality and size of casks, &c., for gunpowder. 1823, 121, § 1.

SECT. 92. All gunpowder, manufactured in this state, shall be put into strong and tight casks, containing twenty five pounds, fifty pounds, or one hundred pounds each, unless the same be well secured in copper, tin or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass or tin covers.

All casks to be marked. 1823, 121, § 2.

SECT. 93. Each cask containing gunpowder, manufactured within this state, or brought into the same by land or by water, and landed, shall be marked on the head thereof with black paint, in legible characters, with the word *gunpowder*, the name of the manufacturer, the weight of the cask, and the year in which the same powder was manufactured; and each canister of gunpowder shall be marked with the word *gunpowder*.

Penalty for falsely marking, &c. 1823, 121, § 3.

SECT. 94. If any person shall knowingly mark any cask of gunpowder, with the name of any person other than the manufacturer of the same, or shall change any gunpowder, from any cask marked with the name of one manufacturer, into any cask marked with the name of any other manufacturer, he shall for each offence forfeit a sum not exceeding twenty dollars, to be recovered by indictment, or on complaint before a justice of the peace.

HAY.

Weighers of hay to be appointed. 1824, 102.

SECT. 95. The selectmen of each town and the mayor and aldermen of any city may, from time to time, appoint, for a term not exceeding one year, some person or persons to have the superintendence of the hay scales belonging to such town or city, who shall

weigh hay offered for sale in such town or city, and any other article offered to be weighed.

Their duty. 1824, 102.

SECT. 96. The persons so appointed shall conform to all such rules and regulations, as shall be established by the selectmen or city council, respectively, concerning the said hay scales, and the compensation or fees for weighing hay and other articles.

May be removed. 1824, 102.

SECT. 97. The said selectmen or city council, respectively, may remove any weigher of hay, and fill any vacancy that may occur from death or otherwise.

Penalty for setting up hay scales, without authority. 1824, 102.

SECT. 98. If any person, not appointed as aforesaid, shall set up any hay scales in any town or city, for the purpose of weighing hay, or other articles, he shall forfeit the sum of twenty dollars a month, so long as the same shall be continued, to be recovered by an action of debt, and appropriated to the use of said town or city ; provided, however, that this and the three preceding sections shall not apply to any town, which shall not adopt the same, and shall cease to operate in such town, when the town shall so determine.

HOOPS AND STAVES.

Cullers of hoops and staves to be chosen. 17 15, § 4.

SECT. 99. In every maritime town, from which staves are usually exported, there shall be two or more suitable persons chosen, at the annual meeting, to be viewers and cullers of staves and hoops, and they shall be sworn to the faithful discharge of the duties of their office.

Fees. 1783, 15, § 4.

SECT. 100. They shall be allowed for their time and services, as follows, namely, twenty eight cents a thousand for barrel staves, thirty three cents a thousand for hogshead staves, forty cents a thousand for pipe staves, and forty four cents a thousand for butt staves, as well refuse as merchantable ; the merchantable to be paid for by the buyer, the refuse by the seller ; and the culler shall be allowed fifty cents a thousand for hoops.

Quality and size of staves. 1783, 15, § 3.

SECT. 101. All white oak butt staves shall be at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge, and every part thereof ; all white oak pipe staves shall be at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three quarters of an inch thick on the heart or thinnest edge ; all white oak hogshead staves shall be at least forty two inches long, and not less than half an inch thick on the heart or thinnest edge ; all white oak barrel staves, for a foreign market, shall be thirty two inches long, and for home use, shall be thirty inches long ; and all shall average half an inch thick on the heart or thinnest edge ; all white oak hogshead and barrel staves shall be at least four inches in breadth, and none less than three inches in breadth, in the narrowest part, and those of the breadth last mentioned shall be clear of sap ; all red oak hogshead and barrel staves shall be of the same length, width and thickness, with the white oak hogshead and barrel staves above mentioned ; and all staves shall be well and proportionably split.

Quality, size, &c. of hogshead hoops. 1783, 15, § 3.

SECT. 102. All hogshead hoops, that shall be exposed to sale or exported, shall be from ten to thirteen feet in length, and shall be made of white oak or walnut, and of good and sufficient substance, well shaved ; those made of oak shall not be less than one inch broad

at the least end, and those made of walnut shall be not less than three quarters of an inch broad at the least end; each bundle shall consist of thirty hoops; and all hoops of ten, twelve and thirteen feet, respectively, shall be made up in distinct bundles by themselves; and if any hoops are packed of less dimensions than those prescribed by this law, or if any bundle shall contain less than thirty hoops, such bundle shall be forfeited, and sold by the culler of hoops for the benefit of the town where it is offered for sale.

Penalty for fraud in culling, &c. 1783, 15, § 8.

SECT. 103. If any culler shall connive at or be guilty of any fraud, in the culling of staves or hoops, he shall forfeit the sum of fifty dollars for each offence; and in case of his refusal to attend to the aforesaid service, when he shall be thereto requested, he shall forfeit the sum of five dollars.

HOPS.

Inspector general to give bond. 1806, 14, § 3.

SECT. 104. The inspector general of hops shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of three thousand dollars.

To appoint deputies. 1832, 160, § 1.

SECT. 105. The inspector general shall appoint one or more deputy inspectors, in such parts of the state as will best accommodate the growers and consumers of hops; he shall be responsible for their official conduct, and may require from each of them sufficient bonds with sureties.

Inspector's return. 1815, 38, § 2.

SECT. 106. The inspector general shall, annually, in the month of January, make a return to the secretary of the Commonwealth, of the number of bags of hops, inspected and marked by him and his deputies, during the year preceding the first day of said January, designating, in such return, the different qualities and the weight of each quality respectively.

No hops to be exported without inspection, except, &c. 1806, 14, § 1. 1828, 118.

SECT. 107. No hops, other than those which are of the growth of another state as hereinafter mentioned, shall be exported from this state, unless they shall be of the qualities prescribed by this chapter, and shall have been duly inspected and marked accordingly, and shall be in square bags or pockets, each bag to contain as nearly as may be four hundred pounds weight, and each pocket two hundred pounds weight of merchantable hops; provided, nevertheless, that all hops of the growth of any other state, being duly inspected therein, and accompanied with certificates of the same, shall not be subjected to reinspection in this state.

Quality, and how packed. 1806, 14, § 2.

SECT. 108. No hops shall be deemed merchantable, unless they have been well picked, are free from stems and leaves, and are properly kiln dried; and the bags or pockets, in which they are packed, shall be made sufficiently strong to preserve the hops from damage, and of such a texture as will fairly receive the marks of the cultivator and inspector; and the bags or pockets shall be marked with the name of the cultivator and the town in which he lives.

How inspected, sorted and branded.

SECT. 109. The inspector general or one of his deputies shall examine the contents of every bag and pocket of hops, intended to be exported, in such manner as to ascertain the quality of such hops, and if it shall be found that they are merchantable, as before prescribed, and firmly packed, and that they have been so packed at least ten days previous to said examination, and that the bags or pockets are

such as have been before prescribed, the inspecting officer shall distinguish the same by marking them in legible characters, with the words *first sort*, or *second sort*, or *refuse*, as their quality may be; he shall add thereto the date of the year of which, in his opinion, they are the growth, together with the initials of his christian and the whole of his surname, and the letters MASS. (for Massachusetts,) for which services and weighing and delivering an attested schedule of the same, he shall receive at the rate of ten cents for every hundred pounds weight so inspected, to be paid to him by the purchaser, exclusive of the charges of repacking and of mending the bags or pockets, which shall be paid by the vender of the hops; and exclusive also of the storage, should said hops be stored by said inspector more than thirty days after being inspected.

Fees. 1806, 14, § 4.

Inspector's proportion of deputies' fees. 1806, 14, § 9.

SECT. 110. The inspector general of hops may receive of each deputy one fifth part of all the fees which such deputy inspector shall receive.

Penalty for delay of inspectors. 1806, 14, § 7.

SECT. 111. If an inspector of hops, on application made to him, shall unnecessarily neglect or delay to examine, mark and weigh any hops, he shall for each offence forfeit the sum of five dollars.

—for fraud. 1806, 14, § 10.

SECT. 112. If the inspector general of hops, or any of his deputies, shall be guilty of any fraud in inspecting hops, or shall put their marks on any bag, pocket or package of hops, which have not been actually examined, inspected, and found merchantable, he or they shall forfeit twenty dollars for each bag, pocket or package, so falsely marked.

—for shifting contents of bags. 1806, 14, § 8.

SECT. 113. If any person shall empty any bag or pocket of hops, marked as aforesaid, and shall put in any other hops for sale or exportation, without first cutting out the said marks, he shall, for each offence, forfeit the sum of five dollars.

—for altering or counterfeiting marks. 1806, 14, § 6.

SECT. 114. If any person shall counterfeit or alter any mark, belonging to or proper to be used by the inspector general or his deputies, or shall mark any bag or pocket of hops therewith, he shall forfeit the hops so marked, and be further liable to a penalty of ten dollars.

—for intermixing hops, after inspection. 1806, 14, § 11.

SECT. 115. If any person shall intermix, take out, or shift any hops from any bag or pocket, inspected and marked as is above required, or shall put into such bag or pocket any other hops, for sale or exportation, he shall forfeit twenty dollars for each offence.

—for exporting uninspected hops. 1806, 14, § 13.

SECT. 116. If any person shall export, or ship for exportation out of this state, any hops not inspected and marked as aforesaid, such owner or exporter shall forfeit the sum of twenty dollars; and the master of each vessel, having the same on board, the sum of ten dollars, for each bag or pocket so shipped or exported.

Hops, when forfeited. 1806, 14, § 13.

SECT. 117. If any hops, not inspected and marked as aforesaid, shall be exported or shipped for exportation from this state, contrary to the provisions of this chapter, the inspector general or any deputy inspector may sieze and libel the same, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods; and if upon the trial, it shall appear that the seizure was lawful, the said hops shall be deemed to be forfeited, and shall be sold and disposed of according to the provisions of the same chapter.

SECT. 118. Nothing contained in this chapter shall be construed to affect any hops, shipped coastwise to Boston or elsewhere within this state, for the purpose of being inspected and marked as aforesaid; but in such case, a certificate from the owner shall accompany the same so shipped, setting forth the owner's name, the number of bags, pockets or packages, and the name of the inspector to whom they are sent for inspection.

Hops, shipped coastwise, &c. 1806, 14, § 13.

SECT. 119. All penalties and forfeitures, arising under the foregoing provisions, concerning the inspection, marking, shipping and exportation of hops, shall be recoverable by indictment, to the use of the town wherein the offence shall be committed.

Penalties, how and to whose use recovered. 1806, 14, § 12.

LEATHER, BOOTS, &c.

SECT. 120. The inspector general of sole leather shall give bonds, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of three thousand dollars.

Inspector general to give bonds. 1830, 99, § 1.

SECT. 121. The said inspector general shall appoint one or more deputy inspectors; and in the city of Boston, they shall be appointed upon the application of the mayor and aldermen, and in any town, on application of the selectmen thereof; and the said inspector general shall be answerable for the doings of his deputies, and shall take a bond, with sufficient sureties, from each of them to himself and his successors in office, in a penal sum not exceeding three hundred dollars.

Deputies to be appointed, who shall give bond. 1830, 99, § 1.

SECT. 122. The inspector general of sole leather shall annually, in the month of January, make a return, to the secretary of the Commonwealth, of the number and weight of all the sides of sole leather, inspected by him and his deputies during the year, ending on the first day of that month; and in such return, he shall designate the quantity of each quality of leather so inspected, and the quantity of sole leather manufactured out of the state, so far as the same can be ascertained.

Inspector's return. 1830, 99, § 7.

SECT. 123. No sole leather, made of the hides of neat cattle, except such as shall have been previously inspected and sealed by one of the inspectors of this state, or by some inspector lawfully appointed for that purpose in some other of the United States, shall be sold to any person, for any purpose whatsoever, within any town in which there is an inspector, whether such sole leather is manufactured within this state or brought into the same from any place whatsoever, until the same shall have been inspected, weighed and sealed, by one of the inspectors of such town within this state.

Sole leather, not to be sold until inspected, weighed and sealed, except, &c. 1830, 99, § 2.

SECT. 124. If any person shall, within any town, for which an inspector has been appointed, buy or sell any sole leather, which shall not have been inspected as aforesaid, he shall forfeit one dollar for each side of leather so bought or sold, to be recovered to the use of the town where the offence shall have been committed.

Penalty for buying or selling sole leather not inspected. 1830, 99, § 2.

SECT. 125. Every inspector, whenever requested, shall inspect, within the town for which he is appointed, all sole leather offered for his inspection; provided, however, that when there shall be less than thirty sides of leather to be inspected, and the distance shall be more than one mile from his place of residence, he may either require such sole leather to be brought to him for inspection, or may demand and

Duty of inspectors. 1830, 99, § 3.

shall be entitled to receive at the rate of ten cents for each mile, which he shall travel in such case, to be computed both in going from and returning to his place of residence.

Same subject. 1830, 99, § 4.

SECT. 126. Each deputy inspector, who is appointed for any one town in a county, shall, upon application made to him, inspect sole leather in any other town of the same county, when there is no inspector for such other town; and he shall also, upon the like application, inspect sole leather in any town of any adjoining county, when there is no inspector appointed in such adjoining county.

Sole leather to be weighed and stamped. 1830, 99, § 3.

SECT. 127. Each inspector shall furnish himself with proper scales, weights and seals, for the purpose aforesaid, and shall weigh each side of sole leather which he shall inspect, and shall impress thereon his name, and the name of the place for which he is inspector, at full length, and also the weight thereof; and on all sole leather, which he shall find manufactured of good hides, in the best manner, he shall impress the word *best*, and on all manufactured of good hides, in a merchantable manner, the word *good*, and on all manufactured of damaged hides, in a merchantable manner, the word *damaged*, and on all sole leather not belonging to any of the qualities aforesaid, the word *bad*.

Penalty for counterfeiting, &c. inspector's marks. 1830, 99, § 3.

SECT. 128. If any person shall counterfeit, alter or deface, such marks on any side of sole leather, so inspected, he shall for each offence forfeit the sum of twenty five dollars, to the use of the town where the offence shall have been committed.

Fees. 1830, 99, § 5.

SECT. 129. The inspector general and each deputy inspector shall be paid for inspecting, weighing and sealing each side of sole leather, the sum of two cents, which shall be paid by the purchaser; and the inspector general may receive, from each of his deputies, two mills for each side of sole leather, which such deputy may inspect, weigh and seal as aforesaid.

Penalty when weight varies five per cent. 1830, 99, § 6.

SECT. 130. If any side of sole leather shall, when dried in a merchantable manner, so vary as to weigh five per cent. more or less than the weight marked thereon by the inspector, who inspected the same, he shall be subject to the payment of the whole variation, at a fair valuation, to be recovered, in an action of the case, by the party injured thereby.

Manufacturers of boots, shoes, &c., may stamp their articles. Such stamp a warranty. 1799, 63, §§ 1 and 2.

SECT. 131. Each manufacturer of leather, or of boots, half boots, shoes, pumps, sandals, slippers or over-shoes, shall have the exclusive right of stamping said articles, by him manufactured, with the first letter of his christian name, and the whole of his surname at large, and the name of the town or place of his abode; and such stamping shall be considered as a warranty that the article stamped is merchantable, and made of good materials and well manufactured; and none of the said articles shall be considered as merchantable, unless stamped as aforesaid.

Penalty for fraudulently stamping. 1799, 63, § 3.

SECT. 132. Any person, who shall fraudulently stamp, or aid and abet in fraudulently stamping, either of the articles enumerated in the preceding section, with the name or stamp of any other person, shall be punished either by fine, not exceeding one hundred dollars, or imprisonment, not exceeding six months, or both.

LIME AND LIME CASKS.

SECT. 133. The inhabitants of each town, in which lime is manufactured or into which it is imported, may, at their annual meeting, choose one or more inspectors of lime, who shall be sworn to the faithful discharge of the duties of their office, and they shall inspect all lime so manufactured, at the time when it is filled at the kiln, and all lime imported or sold in their town or harbour.

Towns may choose inspectors of lime. To be sworn. 1809, 62, §§ 5, 6 & 9.

SECT. 134. Every cask of lime so inspected shall be branded with the word *inspected*, and with the first letter of the christian name, and the whole of the surname of the inspector, and with the name of the town where it is manufactured.

Casks, how branded. 1809, 62, § 3.

SECT. 135. The inspectors shall receive, for the inspection and branding of each cask of such manufactured lime, the sum of four cents, to be paid by the manufacturer or owner; and for the inspection of each cask of lime, imported or sold as aforesaid, the sum of four cents, to be paid by the purchaser.

Fees. 1809, 62, §§ 5 & 6.

SECT. 136. No stone lime, manufactured within this state, shall be sold, or exposed to sale, or shipped on board of any vessel, in casks, unless it shall be well burnt and pure, and contained in good and sufficient new casks, containing either fifty gallons each, or one hundred gallons each, and made of well seasoned heads and staves, with ten good and sufficient hoops on each cask, well driven and sufficiently secured with nails or pins.

Quality of lime and casks. 1809, 62, § 1.

SECT. 137. If any person shall sell or expose to sale, or ship, or receive on board of any vessel, in casks, any lime, manufactured within this state, other than such as shall be contained in casks made according to the provisions of the preceding section, and having the aforesaid marks or brands, respectively, he shall forfeit one dollar and fifty cents, for each cask so sold, or offered for sale, or shipped, or received on board of any vessel; and all such lime and casks shall be forfeited to the use of the town, in which the offence shall have been committed; provided, that nothing contained in this chapter shall be construed to restrain any manufacturer of lime, or other person, from retailing lime by the bushel, or other quantities, not in casks.

Penalty for breach of law in selling, &c. Forfeitures. 1809, 62, § 7.

SECT. 138. If any casks of lime shall be sold or exposed to sale, or be put on board of any vessel, contrary to the provisions of this chapter, the inspector may seize and libel the same, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods; and if upon the trial, it shall appear that such seizure was lawful, the lime so seized shall be decreed to be forfeited, and shall be sold and disposed of according to the provisions of that chapter.

Forfeitures. 1809, 62, § 7.

SECT. 139. If, after any cask containing lime shall have been branded as aforesaid, any person shall shift the contents of said cask and put therein any other lime, with intent to sell the same, he shall forfeit the sum of one dollar and fifty cents, for each cask of lime so shifted, to be recovered to the use of the town, in which the offence shall have been committed.

Penalty for shifting contents of casks. 1809, 62, § 8.

SECT. 140. All penalties and forfeitures, mentioned in this chapter, concerning the manufacture, inspection, sale and exportation of lime, may be recovered by indictment, or on complaint before any justice of the peace.

Penalties, how recovered. 1809, 62, § 7.

LUMBER; TIMBER.

Towns to choose surveyors of lumber. 1783, 15, § 1.

SECT. 141. There shall be one or more persons, elected by the inhabitants of each town, at their annual meeting, to be surveyors of lumber, who shall be well skilled in the surveying and admeasurement of lumber, and who shall hold the office for one year, and until their successors be chosen, unless they shall be sooner removed.

Their duty.

SECT. 142. The said surveyors shall survey oak and other hard wood, commonly used in ship building, and mahogany, ash, cedar and other ornamental wood and lumber, and all other lumber, brought into their town by water for sale.

Quality and denomination of pine boards and planks.

SECT. 143. In the survey of pine boards and planks, there shall be four sorts; the first sort shall be denominated number one and shall include boards not less than one inch thick, straight grained, and free from rot, sap, knots and shakes; the second sort shall be denominated number two, and shall include boards not less than one inch thick, free from rot and large knots, and suitable for planing; provided, that such boards as are clear, but are deficient in thickness as aforesaid, shall be received as number two, by making such allowance for the deficiency in thickness, as may be required to make them equal to one inch thick; the third sort shall be denominated number three, and shall include boards not less than seven eighths of an inch thick, nearly free from rot, and nearly square edged, and suitable for covering buildings; the fourth sort shall be denominated number four, and shall include all boards and planks of every description, not being within the other three denominations.

—of pine joists.

SECT. 144. In the survey of pine joist there shall be two sorts; the first sort shall be denominated number one, and shall include all joist that are sound and square edged; the second sort shall be denominated number two, and shall include all other descriptions.

—of spruce boards, &c.

SECT. 145. In the survey of spruce, hemlock, and juniper boards plank and joist, there shall be two sorts; the first sort shall be denominated number one, and shall include all boards, plank and joist that are sound and square edged; the second sort shall be denominated number two, and shall include all other descriptions.

—of ash, maple, &c.

SECT. 146. In the survey of ash, maple and other hard wood, and ornamental boards, plank and joist, there shall be two sorts; the first sort shall be denominated number one, and shall include all boards, plank and joist that are sound and free from shakes; the second sort shall be denominated number two, and shall include all other descriptions.

—of timber, except, &c.

SECT. 147. In the survey of timber, except mahogany and cedar, there shall be two sorts; the first sort shall be denominated number one, and shall include all timber that is sound, straight, square edged and in lengths or joists not less than sixteen feet long, due allowance being made for sap; the second sort shall be denominated number two, and shall include timber of all other descriptions.

—of mahogany and cedar.

SECT. 148. In the survey of mahogany and cedar, there shall be but one sort; and the surveyor shall number all the mahogany and cedar logs or sticks, contained in each lot or cargo, in regular numerical order and mark the number of each log or stick upon the same, in legible characters; and he shall to the best of his ability, ascertain the whole number of feet, board measure, in every log or

stick, and what quantity thereof is merchantable, and what is refuse; and he shall thereupon issue a certificate, or survey bill, of said survey, in which shall be stated the number of each log or stick, and the whole number of feet contained in the same, and specifying the number of feet, which are merchantable and refuse, respectively.

Hewn and sawed timber, how surveyed and sold.

SECT. 149. All hewn timber six inches square and upwards, except timber called scab, shall be surveyed and sold as ton timber, at the rate of forty cubic feet to a ton; all sawed timber shall be surveyed and sold by board measure.

Contents of boards, &c. to be plainly marked.

SECT. 150. In the survey of boards, planks, joists and sawed timber, the contents of the same shall be truly marked thereon, in plain and legible numbers, and all other marks shall be erased; and on the second and third sorts of boards and planks, the numbers two and three shall be in like manner marked thereon, respectively; and allowance and deduction shall be made for splits, not exceeding in any case one half the extent of the splits.

Boards, &c., to be sold according to marks.

SECT. 151. All boards, planks, joist and sawed timber shall be received and sold, according to the contents thereof, as fixed and marked under the eight preceding sections.

Fees.

SECT. 152. The fees for surveying and marking, according to the foregoing provisions, and to be paid by the purchaser shall be as follows, namely; for pine, spruce, hemlock and juniper boards, plank, joist and sawed timber, twenty four cents for every thousand feet, board measure; for pine, spruce, hemlock and juniper timber, twelve cents for every ton; for oak timber, twenty four cents for every ton; for ash, maple and other hard wood, and ornamental boards, plank, and joist, forty cents for every thousand feet, board measure; for Cuba, St. Domingo, and other branch or hard mahogany, one dollar for every thousand feet, board measure; and for mahogany from the Bay of Honduras, and for cedar, seventy five cents for every thousand feet, board measure.

Penalty for fraud and for delay of surveyor. 1783, 15, § 8.

SECT. 153. If any surveyor shall be guilty of, or connive at, any fraud or deceit, in surveying, marking, or numbering the contents of any boards, plank, joist or timber, he shall for each offence forfeit a sum not exceeding twenty dollars; and if on due notice and request, he shall unreasonably neglect or refuse to perform the duties aforesaid, he shall for each offence forfeit a sum not exceeding twenty dollars; the aforesaid forfeitures to be recovered, by indictment or information, to the use of the town in which the offence shall have been committed.

Boards, &c. not to be sold or purchased unless surveyed, except, &c.

SECT. 154. No person shall sell or purchase any boards, plank, joist or timber, brought by water into said town, unless they shall be surveyed, marked and numbered conformably to the provisions aforesaid; except only such as are intended to be exported from any town, and shall be actually shipped for that purpose, within one year after the same shall have been sold and delivered to the person first purchasing or receiving the same, in such town.

Penalty. 1829, 68, §§ 1 & 2.

SECT. 155. Any person who shall sell or purchase any such boards, plank, joist or timber, not surveyed, marked or numbered, according to the provisions of this chapter, (subject only to the exception contained in the preceding section,) shall forfeit for all boards, plank, joist and timber so sold and purchased, double the amount of

fees, due for the service of surveying the same, to be recovered, by indictment or complaint, to the use of the town in which the offence shall have been committed; provided, that in the city of Boston, the city government may establish any ordinances and regulations, with suitable penalties, respecting the appointment of surveyors and the survey and admeasurement of boards, plank, timber, and lumber of every description, brought by water into said city for sale, as they may from time to time determine to be expedient.

9 Greenl. 54.

SHINGLES; CLAPBOARDS.

Towns to choose surveyors of shingles and clapboards. 1783, 15, § 1.

SECT. 156. The inhabitants of each town shall, at their annual meeting, elect two or more suitable persons to be surveyors of shingles and clapboards; and they shall be under oath faithfully to discharge the duties of their office.

Quality, size and denomination of shingles. 17 Mass. 258. 1783, 15, § 3. 1824, 136, § 1.

SECT. 157. All shingles made in this state, or offered for sale, shall be from fifteen to eighteen inches in length, and may be sawed or shaved; they shall be free from shakes and worm holes, and shall be half an inch thick at the butt end, when green, and full three eighths of an inch when thoroughly seasoned, if for exportation to a foreign market, and not less than one third of an inch thick at the butt, when fully seasoned, if for home use, and four inches and a half wide on an average, and none less than three inches wide, and to hold their width three fourths of the way to the thin end; and they shall be bound in bundles, which shall each contain either one thousand, or half a thousand, or one quarter of a thousand; and the quality of shingles shall be designated by the numbers one, two, three, and refuse.

How branded.

SECT. 158. Each surveyor of shingles shall use his best skill and judgment in affixing the qualities of all shingles surveyed by him, and in addition to affixing the town brand, shall brand each bundle with his own name, and with the number designating the quality; and all shingles branded numbers *one* or *two*, whether made of pine, spruce or cedar, shall be free from sap; and the surveyor shall be allowed by the buyer eight cents a thousand for surveying and telling; and before any shingles are sent from the town where they are made, or at the place of first sale, before their delivery, they shall be viewed, surveyed and measured by a sworn surveyor, and the town brand set upon the hoop of the bundle; and all shingles offered for sale without being surveyed and marked as aforesaid shall be forfeited to the use of the town where they shall be so offered for sale.

Fees.

Forfeiture. 1783, 15, §§ 3 & 4. 1824, 136, § 2.

CLAPBOARDS.

Quality and size of clapboards.

SECT. 159. All pine clapboards, that shall be exposed to sale, shall be made of good sound timber, clear of sap; and clapboards shall be free from shakes and worm holes, and of the following dimensions, namely, full five eighths of an inch on the back, or thickest part, five inches wide, and four feet six inches long, and they shall be straight and well shaved or sawed.

MEAL, INDIAN AND RYE.

All meal, except, &c. to be sold by weight. 1813, 51.

SECT. 160. All Indian meal, rye meal and other meal, except oatmeal, shall be sold by weight; and one hundred pounds avordupois, shall be the standard for the hundred weight by which such meal shall be sold.

SECT. 161. If any person shall sell any meal, except oatmeal, otherwise than according to the preceding section, he shall forfeit the sum of five dollars for every hundred pounds, and after the same rate for any greater or less quantity so sold; and the said forfeiture may be recovered to the use of the town where the offence shall be committed. Penalty. 1813, 51.

SECT. 162. All corn, wheat, oats, and other grain, measured for sale, shall be subject to the provisions contained in the two hundred and second [§ 199] section of this chapter. Provisions concerning corn, wheat, and other grain.

NAILS.

SECT. 163. All wrought nails, manufactured within this state, shall be packed in good strong casks, made of seasoned timber, and well hooped, with the initials of the christian name and the whole of the surname of the manufacturer, and the name of the town in which he resides, or, if manufactured by a corporation or company, the name of such corporation, or style of said company, and the name of the town in which the same is established, together with the true weight of the tare of said cask, inscribed in plain, legible letters, with a brand, or marking iron, on the side of each cask; and no cask shall contain more than three hundred pounds of such nails. Wrought nails, how packed and branded. 1799, 64, § 1. 1826, 122, § 1.

SECT. 164. All cut nails and brads, of all sizes, shall be packed in strong and sufficient casks, made of seasoned timber and well hooped, and not containing more than three hundred pounds each; the nails and brads to be well made, and packed free from waste pieces of iron (unless refuse nails or brads) or any fraudulent mixture increasing the weight; and every manufacturer, who shall also be the owner of such nails or brads, shall brand in plain legible letters the initial of his christian name, and the whole of his surname on the side of each cask, and also the name of the town where he resides, and shall also mark the true weight of the tare of said cask, with a brand or marking iron, under the name of the town. Cut nails and brads, how packed and branded. 1802, 103, § 5.

SECT. 165. If any cask, package, or quantity of wrought or cut nails or brads, manufactured in this state, and not branded or marked as aforesaid, shall be offered for sale, or be put on board of any vessel or carriage of conveyance, to be carried out of this state, the same shall be forfeited and liable to seizure; and the manufacturer of the same shall, for each pound of tare more than is marked on the cask, and for each pound of refuse, scraps, or waste, which shall be mixed with said nails or brads, forfeit one dollar. Forfeiture and penalty. 1802, 103, § 6.

SECT. 166. If any person shall counterfeit any brand, used or intended to be used for the purpose aforesaid, or shall destroy or alter any mark or impression, made by another person's brand, on any cask of wrought or cut nails or brads, and cause a different impression, by such counterfeit brand, to be marked or impressed thereon, or shall shift any such nails or brads, from one branded cask to another, and thereby avail himself of another person's brand, he shall forfeit the sum of twenty dollars. Penalty for counterfeiting brand; shifting contents of casks, &c. 1802, 103, § 7.

SECT. 167. If any person shall place on board any vessel or carriage of conveyance, any cask or other quantity of wrought or cut nails or brads, manufactured in this Commonwealth, which are apparently intended to be transported out of the same, and are not brand- —for attempting to transport out of the state, nails not branded, &c. 1802, 103, § 8.

ed and marked as above provided and directed, he shall forfeit a sum equal to the full value of such nails or brads.

How recovered. 1802, 103, § 9. 1826, 122, § 5.

SECT. 168. All penalties and forfeitures, under the provisions of this chapter, respecting wrought and cut nails or brads, shall be recovered to the use of the town from which they may be exported.

OILS.

What shall be deemed pure spermaceti oil. 1833, 215, § 1.

SECT. 169. All descriptions of oils, sold under the names of sperm, spermaceti, lamp, summer, fall, winter, and second winter oils, shall be deemed pure winter pressed or summer strained spermaceti oil.

Penalty for adulteration. 1833, 215, § 2.

SECT. 170. All oils sold under the names aforesaid, which shall be adulterated with whale, tight pressed, or any other oil of less value than pure spermaceti oil, shall be deemed whale oil, and the vender shall be liable to the purchaser for double the amount of the difference in value between pure spermaceti oil and whale oil, when the quantity sold exceeds five gallons, and four times the difference, when said quantity is less than five gallons, unless the proportions of the respective oils, of which the mixture consists, are disclosed to the purchaser in writing, at the time of sale; and when the quantity sold is less than five gallons, the vender shall attach to the vessel, in which it is delivered, a label, upon which shall be legibly written the names and proportions of the respective oils, composing such mixture.

—for selling adulterated oil as pure oil. 1833, 215, § 3.

SECT. 171. Any person, who shall sell any oil or oils, commonly known under the names of sperm, spermaceti, lamp, summer, fall, winter and second winter oils, which have been adulterated from pure spermaceti oil, by a mixture of whale, tight pressed or any other inferior oil, and shall not disclose to the purchaser the proportion of the oils of which it consists, at the time of sale, in writing, in the manner prescribed in the preceding section, shall for each offence forfeit the sum of fifty dollars, to be recovered with costs of suit, in an action of debt, by the person suing for the same, and to his use.

Same subject. 1833, 215, § 4.

SECT. 172. All oils, sold under any of the names mentioned in the preceding section, which shall have been mixed with tight pressed oil, shall be deemed tight pressed oil, and the vender thereof, or of tight pressed oil under any of the names aforesaid, shall be liable to the purchaser for double the value of the difference between the first quality of spermaceti oil and tight pressed oil, unless at the time of sale the vender shall disclose in writing the mixture aforesaid, and, if not mixed, its quality; and if such disclosures shall not be made as aforesaid, the venders shall be liable to the penalties provided in the preceding section, to be recovered to the use of the person prosecuting for the same.

Test.

SECT. 173. The test of pure spermaceti oil shall be Southworth's oleometer.

PAPER.

Paper, how packed and marked. 1817, 170, § 1.

SECT. 174. No paper, excepting paper of foreign manufacture, press paper, bonnet paper, and paper usually sold by weight, shall be sold or offered for sale, unless the same shall be packed in reams or half reams, each ream containing twenty quires, each half ream con-

taining ten quires, and each quire twenty four sheets; and unless on the face of each parcel, there shall be stamped or otherwise legibly marked, the names of the manufacturers, and their place of residence, and also the words *one ream*, or *half ream*, (as the case may be); provided, that printing paper may be packed in parcels of two reams each, and shall be stamped or otherwise legibly marked with the words *two reams*, and the names of the manufacturers and their place of residence, as aforesaid.

Penalty for selling paper contrary to law. 1817, 170, § 1.

SECT. 175. If any person shall offer for sale or shall sell any paper, contrary to the provisions of the preceding section, or shall transport or cause to be transported out of this state, or shall put on board of any vessel or carriage of conveyance, with intention to transport the same out of this state, any paper, contrary to the said provisions, he shall, for each ream, package or parcel so offered for sale, or sold, or so put on board of any vessel or carriage of conveyance, with the intention that the same shall be so transported, forfeit the sum of four dollars to the use of the county in which such offence shall be committed.

Forfeiture. 1817, 170, § 2.

SECT. 176. All such paper, not packed, or not stamped, as aforesaid, shall at all times be further liable to be seized, to the use of any person who may seize the same; and in case of such seizure, the said paper shall be libelled and proceeded against, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods.

POT AND PEARL ASHES.

Inspector general to give bond. 1791, 8, § 10.

SECT. 177. The inspector general of pot and pearl ashes shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of five thousand dollars.

Deputies to be appointed; to give bond and to be sworn. 1791, 8, § 10.

SECT. 178. The inspector general shall appoint deputy inspectors in every seaport town, where pot and pearl ashes are exported, and in such other places as he shall judge necessary; he shall be answerable for his said deputies, and shall take a bond from each of them, with sufficient sureties, for the faithful discharge of the duties of his office; and each of said deputies shall also, either before the inspector general or a justice of the peace, be sworn to the faithful discharge of his duty.

Inspector to make returns. 1815, 38, § 2.

SECT. 179. The inspector general shall, in the month of January, annually, make a return into the office of the secretary of the Commonwealth, of the number of casks of pot and pearl ashes, inspected by him and his deputies, during the year preceding the first day of said January, specifying the number under each brand, and the weight of each quality.

Casks, how branded. 1791, 8, § 9.

SECT. 180. Every manufacturer of pot and pearl ashes shall brand each cask containing the same, with the initial letters of his christian name, and the whole of his surname, and with the name of the town where the same shall have been manufactured, before the same shall be removed from the manufactory, under the penalty of one dollar for each cask so removed, without being previously branded as aforesaid.

Ashes, how inspected.

SECT. 181. No person shall ship any pot or pearl ashes, for exportation, before he shall first have submitted the same to the exam-

Sorts and denominations. 1791, 8, § 1. 1821, 55.

ination of the inspector or his deputy; and they shall start the same out of the casks, and carefully inspect the same, and sort the same in three different sorts, if necessary; and they shall put each sort by itself in tight new casks, well hooped and coopered, which they shall distinguish by the words, *first sort*, *second sort*, or *third sort*, with the words *pot ashes* or *pearl ashes*, as the case may be, branded in plain legible letters, together with the letters of his name, the place where such pot or pearl ashes shall be inspected, and the word MASSACHUSETTS, at full length, on each cask; provided, that any pot or pearl ashes which shall have been imported into this state from any of the United States, where laws exist for the inspection of the same, may be exported without being reinspected in this state; the same being accompanied by a certificate of inspection, signed by an inspector of the state whence they shall be imported, describing the quality and weight thereof; and provided also, that the casks, containing the pot and pearl ashes so imported, shall be branded with the name of the state, from which the same shall have been imported, and shall be in all respects made conformably to law.

Fees. 1791, 8, § 1.

SECT. 182. The inspector general or his deputy shall receive, for inspecting and weighing and delivering to the owner an invoice or weight note, under his hand, of the weight of each cask of pot or pearl ashes, the sum of six cents for every hundred weight so inspected; and also the further sum of twelve cents, for coopering and nailing each cask and putting the same in shipping order, to be paid by the purchaser.

Inspector's proportion of deputies' fees. 1791, 8, § 10.

SECT. 183. The said inspector shall not receive from any deputy more than seven and an half per cent. on the sum mentioned in the preceding section, nor any part of the sum allowed for cooperage.

Penalty for unreasonable delay. 1791, 8, § 5.

SECT. 184. If any inspector general of pot and pearl ashes shall, after application made for the inspection of any pot or pearl ashes aforesaid, unreasonably refuse, neglect or delay to make such inspection, for the space of three hours after such application, the inspector so refusing, neglecting or delaying, shall for each offence forfeit the sum of five dollars.

Quality and size of casks. 1791, 8, § 2.

SECT. 185. Every cask, in which pot or pearl ashes shall be packed for exportation, shall be made of sound and well seasoned oak or white ash staves and heading, full bound, twenty nine inches in length, nineteen inches diameter in the head, and of such weight, in proportion to its contents, as will amount, as near as may be, to fourteen per cent. tare thereon.

Casks to be weighed. 1791, 8, § 3.

SECT. 186. The inspector general or his deputy, at the time of starting pot or pearl ashes for inspection, shall weigh the casks, and mark the weight with a marking iron on each head thereof.

Inspectors may search vessels.

SECT. 187. The inspector general or any deputy may enter on board of any vessel lying in the harbor, where such inspector is authorized to inspect pot or pearl ashes shipped or shipping on board of any such vessel, for exportation from this state; and if he shall, on search, discover any cask of pot or pearl ashes, which is not branded as before directed in this chapter, the person so shipping, or having shipped the same, shall forfeit every such cask of pot and pearl ashes; and such inspector general or his deputy shall seize and libel the same, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods.

Forfeiture. 1791, 8, § 4.

SECT. 188. The master or commander of any such vessel, who shall receive on board any such cask of pot or pearl ashes, not branded as aforesaid, shall forfeit the sum of twenty dollars for each cask so received.

Penalty on masters, &c. for receiving ashes not branded. 1791, 8, § 4.

SECT. 189. If the master or commanding officer of any vessel, or any of his servants or seamen, shall obstruct or hinder the said inspector in making search, as aforesaid, every person so offending shall forfeit for each offence the sum of fifty dollars, to the use of the town.

—for obstructing search. 1791, 8, § 4.

SECT. 190. If any person shall, with intent to defraud, brand any cask of pot or pearl ashes manufactured by himself, with the name of any other person, or shall brand any such cask manufactured by another person with his own name, or shall counterfeit any brand belonging to, or proper to be used by said inspector, or any of his deputies, or shall impress or brand any cask of pot or pearl ashes, with any brand of such inspectors, or with any counterfeited brand as aforesaid, he shall forfeit and pay for each offence the sum of two hundred dollars.

—for branding falsely. 1791, 8, § 6.

SECT. 191. If any person shall empty any cask of pot or pearl ashes, inspected and branded as by this act is required, and put in any other pot or pearl ashes, for sale or exportation, without first cutting out the said brand marks, the person so offending shall, for each cask, forfeit the sum of two hundred dollars.

For shifting contents of casks. 1791, 8, § 7.

SALT AND GRAIN.

SECT. 192. There shall be three inspectors general of salt manufactured in this state, who shall be well skilled in the manufacture; one for the counties of Barnstable and Duke's county; one for the county of Bristol; and one for the remaining counties; and they shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the penal sum of two thousand dollars.

Inspectors general to give bond. 1829, 46, § 1.

SECT. 193. Each of such inspectors general shall appoint, within his limits, a number of deputies sufficient, in his judgment, to execute the provisions of law in this behalf, and for whom they shall be respectively answerable, and of whom the inspector general, so appointing, shall take bonds with sufficient surety or sureties.

Deputies to be appointed. 1829, 46, § 1.

SECT. 194. The inspectors general, or their deputies, shall receive of the manufacturer of salt, for their services, each time when said services shall be required and rendered, twenty cents upon every ten thousand superficial feet of salt works with covers, and half of that sum, when the works in which they may so inspect have no covers, and at the same rate for a greater or smaller number of feet; provided, however, that when the salt works, in which said salt is to be inspected, are of the brush work construction, they shall be entitled to receive of the manufacturer of salt for their services aforesaid twenty cents for every one thousand superficial feet of salt vats, in which they may so inspect, and at the same rate for a greater or smaller number of feet.

Fees. 1829, 46, § 1.

SECT. 195. The inspectors general may receive of their respective deputies twelve per cent. of all sums which they may receive under the provisions aforesaid, and no more; provided, however, that the several inspectors general shall appoint one or more deputy

Inspector's proportion of deputies' fees. 1829, 46, § 4.

inspectors, in every town in this Commonwealth, where any salt works are established; and in case no person is found willing in any town to accept the office, then the said inspector general shall make his appointment, for such town, in one of the nearest adjoining towns.

Manner of inspection. 1829, 46, § 2.

SECT. 196. When any manufacturer shall be prepared to remove any salt from his vats, he shall, before removing the same, apply to the inspector, within whose limits the salt works may be situated, to inspect the same, and said inspector shall proceed to inspect such salt before it shall be removed from the vats; and if in his judgment it be necessary in order to ascertain its quality, he shall cause the impure brine, which may be in the vats with the salt to be inspected, to be drawn off, and after having caused the salt in said vats to be broken up, he shall cause such vats to be supplied with a sufficient quantity of new brine, to purify said salt and enable him to ascertain the quality thereof; and said new brine shall remain in said vats not less than twenty four hours, and if, after this process, the inspector shall approve the quality of the salt so inspected, he shall forthwith give to the manufacturer a written or printed permit to remove the said salt.

Duty of manufacturer. 1829, 46, § 2.

SECT. 197. If any person shall take, or cause to be taken, any salt from any salt works which shall not have been inspected in the manner above prescribed, or shall, if the weather be suitable for that purpose, neglect for the space of forty eight hours, after it shall have been so inspected, to remove the same, he shall not, after that time, remove the same, until it shall have been again inspected, in the same manner, as if it had not been before inspected.

Penalty on inspector for unreasonable delay. 1829, 46, § 3.

SECT. 198. If any inspector shall, upon application made for the inspection of any salt within his prescribed limits, unreasonably refuse, neglect, or delay to proceed to such inspection, for the space of three hours after application made to him, he shall for each offence forfeit ten dollars.

Salt, Indian corn, wheat, &c., to be sold by weight, except, &c. 1817, 130.

SECT. 199. No person shall sell any salt, Indian corn, wheat, rye, buck wheat, barley or oats, unless the quantity so sold be first weighed; and in order to ascertain the mean or true weight, the vender shall weigh ten measures at least in every hundred bushels sold, five measures at least in every fifty bushels sold, and two measures at least in every less quantity than fifty bushels sold; and a bushel of salt shall be deemed to be seventy pounds, a bushel of Indian corn or rye, fifty six pounds, a bushel of barley or buck wheat, forty six pounds, a bushel of oats, thirty pounds, a bushel of wheat sixty pounds, as the standard weight and measure of the same in all purchases and sales thereof; and every person, offending against the provisions of this section, shall, for every bushel of such salt and grain so sold, and in the like proportion for any greater or less quantity, forfeit the sum of two dollars, to be recovered in an action on the case to the sole use of any person who shall first prosecute therefor; provided, that this section shall not be construed to extend to sales of any of the articles aforesaid, where the vender and purchaser shall appoint a third person to measure or ascertain the weight or quantity of the same, or otherwise shall mutually agree thereon, nor to any sales of the articles aforesaid not exceeding ten bushels, where the purchaser shall not require the same to be weighed.

WOOD, BARK AND CHARCOAL.

SECT. 200. All cord wood exposed to sale shall be either four feet, three feet, or two feet long, including half the carf; and the wood, being well and close laid together, shall measure in quantity equal to a cord of eight feet in length, four feet in width, and four feet in height. Dimensions of cord wood. 1827, 19, § 1.

SECT. 201. If any fire wood or bark, exposed to sale in any market, or upon any cart or other vehicle, shall be offered for sale before the same shall have been measured by a public measurer of wood and bark, and a ticket thereof signed by him delivered to the driver, certifying the quantity of wood which the load contains, the name of the driver, and the town in which he resides, the driver and owner of such wood or bark shall, for each load thereof, severally forfeit the sum of five dollars, to the use of the town where such wood or bark shall be so offered for sale. Penalty for selling wood, &c., not measured. 1796, 67, § 3.

SECT. 202. The measurers of wood and bark in any town shall be entitled to such fees for their services, as the selectmen of such town shall establish; and the said fees shall, in each case, be paid to the measurer, by the driver, and shall be repaid by the purchaser. Fees.

SECT. 203. All cord wood, brought by water into any town for sale and landed, shall be measured by a measurer, sworn as aforesaid; and for that purpose, the wood shall be corded and piled by itself in ranges, making up in height what shall be wanting in length, and being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service; provided, that in the city of Boston, the city government may establish ordinances and regulations, with suitable penalties, for the inspection, survey, admeasurement and sale of wood, coal and bark for fuel, brought by water into said city for sale, and that the said city may also provide for the appointment of such surveyors, inspectors and other officers, and establish their fees of office. Wood, brought in by water, how measured. 1799, 26, § 1. Special provisions for Boston. 1830, 27, § 2.

SECT. 204. Each wharfinger, carter or driver, who shall convey any firewood or bark from any wharf or landing place in any town, shall be furnished by the owner or seller of such wood or bark, with a ticket certifying the quantity which the load contains, and the name of the driver; and if any firewood or bark shall be conveyed as aforesaid, without such ticket accompanying the same, or if any driver shall refuse to produce and show such ticket on demand, to any measurer duly sworn as aforesaid, or to give his consent to have the same measured, or if such tickets shall certify a greater quantity of wood or bark than the load contains, in the opinion of the measurer aforesaid, after measuring the same, the driver and owner of such wood or bark shall, for each load thereof, forfeit the sum of five dollars, to the use of the town where the offence shall be committed; provided, nevertheless, that nothing contained in this chapter shall be construed to extend to any person who shall transport or cart, or cause to be transported or carted, from any wharf or landing place to his own dwelling house or store, any cord wood or bark which he shall have purchased on such wharf or landing place, or shall have landed thereon upon his own account. Carters to have tickets. 1799, 26, § 2. 1796, 67, § 4.

SECT. 205. All baskets, used in measuring charcoal for sale, shall contain two bushels, and shall be of the following dimensions, to Dimensions, &c., of charcoal baskets. 1796, 67, § 5.

wit; nineteen inches in diameter in every part thereof, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and the basket shall be well heaped, and also be sealed by the sealer of the town, where the person so using the same shall usually reside; and every person, who shall measure any charcoal, offered for sale in any basket of less dimensions, or not sealed as aforesaid, shall forfeit for each offence fifty cents, to the use mentioned in the preceding section, and such basket shall also be destroyed.

Illegal baskets to be seized. 1796, 67, § 6.

SECT. 206. The selectmen of any town may appoint some suitable person, to seize and secure all baskets, used for measuring coal, that shall not be of the dimensions prescribed in the preceding section, and sealed as therein required, and may also prosecute all persons, who shall offend against the said provisions.

Dimensions of charcoal boxes. 1833, 193, § 1.

SECT. 207. In the sale of charcoal, it shall further be lawful to measure the same in boxes of the following capacities, namely; of two bushels, five bushels, ten bushels, and twenty bushels, said boxes being first duly sealed; and five thousand one hundred and twenty eight cubic inches shall be deemed equal to two bushels, or the heaped basket above described.

Penalty for using other measures. 1833, 193, § 2.

SECT. 208. Every person, who shall measure charcoal offered for sale in any box of other capacity, or not sealed as aforesaid, shall forfeit for each offence one dollar.

Forfeitures, how recovered. 1796, 67, § 7.

SECT. 209. All the forfeitures, mentioned in the four preceding sections, may be recovered by indictment.

CHAPTER 29.

OF SALES BY AUCTIONEERS.

SECTION
1. Auctioneers, to be licensed by selectmen.
2. Selectmen to record licenses.
3. If selectmen refuse to license, application may be made to county commissioners.
4. Penalty for receiving goods from minors and servants; and for selling by night their own goods.
5. Auctioneers, to keep an account of sales.
6. " to give bond.
7. Penalty for selling without license.
8. Penalty for selling out of their towns, &c., except, &c.
9. Forfeitures.
10. Tenants answerable, if they permit unlicensed sales in their premises.
11. Sales by sheriffs, executors, &c., not included in this chapter.
12. Licenses to be in force for one year only.
13. Auctioneers' licenses in Boston.
14. Penalty for selling in Boston contrary to license.

Auctioneers, to be licensed by selectmen. 5 Mass. 505. 1795 8, § 1.

SECTION 1. The selectmen of any town may, by writing under their hands, license, for the term of one year, one or more suitable inhabitants of such town, to be auctioneers within the same; and each person receiving such license shall pay to the selectmen, for their use, the sum of two dollars.

SECT. 2. The selectmen shall record every license, so granted, in a book to be by them kept for that purpose.

Selectmen to record licenses.

SECT. 3. If the selectmen shall unreasonably refuse or neglect, after application made to them in writing, to license any person applying, such person, after giving fourteen days' notice to them, and also giving them bonds to pay all costs in the case, may apply to the county commissioners of his county, who, on hearing the parties, may license the person so applying, if they shall judge it reasonable.

If selectmen refuse to license, application may be made to commissioners. 1815, 29.

SECT. 4. If any person, licensed as aforesaid, shall receive for sale by auction, any goods from any minor or servant, knowing him to be such, or shall sell by auction any of his own goods before sunrise or after sunset, he shall forfeit to the use of the town a sum not exceeding two hundred dollars, for each offence.

Penalty for receiving goods from minors and servants, and for selling by night, their own goods. 5 Mass. 505. 1795, 8, § 2.

SECT. 5. Every licensed auctioneer shall keep a fair and particular account of all goods and chattels sold by him, of the persons of whom the same were received, and of the names of the persons to whom the same shall have been sold.

Auctioneers to keep an account of sales. 1795, 8, § 2.

SECT. 6. Each auctioneer shall give a bond, in a reasonable penalty, with sufficient sureties, to the treasurer of the Commonwealth, with condition to pay all auction duties, required by law, to the treasurer of the Commonwealth, and also that he shall, in all things, well and truly conform to the laws relating to auctions; which bonds shall be taken by the persons who granted the license, and be by them duly transmitted to the treasurer of the Commonwealth, with an indorsement of their approval thereon.

—to give bond. 1822, 87, § 3.

SECT. 7. If any person, not licensed and qualified as an auctioneer, shall sell or attempt to sell any real or personal estate whatsoever, by way of public auction, he shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, for every offence.

Penalty for selling without license. 1822, 87, § 2.

SECT. 8. If any auctioneer shall, in any other town than that for which he is licensed, sell or offer for sale, by auction, any lands, goods or chattels, he shall be punished by a fine not exceeding fifty dollars; provided, that any parcel of real estate, lying partly in one town and partly in another, may be sold, within either of such towns, by an auctioneer of either town.

Penalty for selling out of their towns, &c. except, &c. 4 Greenl. 333.

SECT. 9. If any person, not being licensed as an auctioneer in any town, shall sell or offer for sale, by auction, in such town, any goods or chattels, he shall forfeit the said goods and chattels to the use of such town; and the same may be seized by the selectmen of such town and libelled, according to the provisions of the one hundred and eighteenth chapter, concerning the seizing and libelling of forfeited goods.

Forfeitures.

SECT. 10. The tenants or occupants of any house or store, having the actual possession and control of the same, who shall knowingly permit any person to sell any real or personal estate by public auction, in his [*their*] said house or store, or in any apartment or yard appurtenant to the same, contrary to the provisions of this chapter, shall forfeit to the use of the town, a sum not exceeding five hundred dollars.

Tenants answerable, if they permit unlicensed sales in their premises.

SECT. 11. Nothing in this chapter shall extend to sales made by sheriffs, deputy sheriffs, coroners, constables, collectors of taxes,

Sales by sheriffs, executors, &c. not includ-

ed in this chapter.
1795, 8, § 2.
Licenses to be in force for one year only.
1795, 8, § 3.
Auctioneers' licenses in Boston.
1819, 132, § 1.
Penalty for selling in Boston, contrary to license.
1819, 132, § 1.

executors, administrators, guardians, or any other person required by law to sell any real or personal estate by public auction.

SECT. 12. No license granted as aforesaid shall remain in force for more than one year from the date thereof.

SECT. 13. In all licenses granted to auctioneers in the city of Boston, the mayor and aldermen may make such conditions, respecting the places of selling goods and chattels by auction, within said city, as they shall think expedient.

SECT. 14. If any person shall make any sale by auction in the city of Boston, at any place not authorized by his license, he shall be subject to the like penalties as for selling by auction without license; and the same shall be recovered, by action of debt or by indictment, to the use of the city of Boston.

CHAPTER 30.

OF WEIGHTS AND MEASURES.

SECTION
1. The standard weights and measures of the state.
2. Weights and measures, to be preserved by the state treasurer.
3. Dimensions, &c., of the bushel and other measures.
4. Treasurer to appoint deputy, and to make duplicates of standards for his use.
5. County treasurers, to keep sets of standard weights and measures.
6. " treasurers, to have their standards sealed every ten years.
7. Penalty on county treasurers for neglect.
8. Town treasurers, to keep town standards.
9. " treasurers, to have the town standards sealed every ten years.
10. Fees of state and county treasurers for sealing weights, &c.
11. Penalty on town treasurers for neglect.
12. Sealers in towns, to be appointed by selectmen.
13. Selectmen may remove sealers and fill vacancies.
14. Each town sealer to have a set of standards.
15. Sealers accountable to towns for preservation of standards.
16. " to give notice, annually, and to seal all weights.
17. Fees of sealers.
18. Town sealers, to visit all stores, &c., and prove their weights—fees—exception as to banks.
19. Town sealer to visit hay scales, &c.
20. Penalty for refusing to have weights, &c., sealed.
21. " for neglect of sealers.
22. Vibrating steelyards allowed to be used, if sealed.
23. Provisions respecting measures for salt and grain.
24. Penalty for selling by weights, &c., not sealed.
25. "Hundred weight," to be construed the net hundred.
26. Public weighers, to weigh according to the preceding section.
27. Who shall be deemed a public weigher; his duty in weighing and penalty for breach thereof.

The standard weights and measures of the state.
1799, 60, § 1.

SECTION 1. The brass and copper weights and measures, heretofore sent from England, with a certificate from the exchequer, that they were approved Winchester measures, according to the standard in the said exchequer, and which have been adopted, used and allowed in this state, shall remain the authorized public standards, by which

all weights and measures shall be tried, proved, and sealed, in the manner provided in this chapter.

SECT. 2. The said weights and measures, and those made in conformity therewith, which are now or may hereafter be deposited in the treasury of the Commonwealth, shall be preserved by the treasurer, and used as public standards; those now in the treasury being as follows, namely: one bushel, one half bushel, one peck, one half peck, one ale quart, one wine gallon, one wine half gallon, one wine quart, one wine pint, one wine half pint, and one wine gill; the said measures being made of copper or pewter, conformable, as to contents, to the said Winchester measures; also one ell and one yard; also one set of brass weights to four pounds, computed at sixteen ounces to the pound, with suitable scales and steel beam; and one set of iron weights, consisting of one fifty six pound weight, one twenty eight pound weight, one fourteen pound weight, and one seven pound weight; and also a good beam and scales for troy weights, and a nest of troy weights from one hundred and twenty eight ounces down to the least denomination.

Weights and measures to be preserved by the state treasurer. 1799, 60, § 1.

SECT. 3. Such weights and measures as may be procured from time to time to replace the same, shall be made and preserved in the same form and of the same dimensions, with the aforesaid weights and measures, that is to say, the bushel and its parts shall be made of copper or of pewter; and the diameter of the bushel shall be not less than eighteen inches and a half, containing thirty two Winchester quarts; the diameter of the half bushel not less than thirteen inches and three quarters, containing sixteen Winchester quarts; the diameter of the peck, not less than ten inches and three quarters, containing eight Winchester quarts; and that of the half peck, not less than nine inches, containing four Winchester quarts; the admeasurement being made, in each case, inside of the measure; and the weight of each weight, and the length of each ell and yard, shall be marked or stamped thereon, respectively, and sealed with the seal which is kept for that purpose by the treasurer.

Dimensions, &c. of the bushel and other measures 1799, 60, § 1.

SECT. 4. The treasurer of the Commonwealth shall keep the authorized public standard weights and measures in the state treasury; and he shall cause duplicates thereof to be made, which shall be kept by a deputy to be appointed by him; the said deputy shall be under oath, and shall give bonds for the faithful discharge of the duties of his office; and the said duplicates may be used by the said deputy for sealing weights and measures, in like manner, as the standards kept in the state treasury may be used by the treasurer, for the like purpose.

Treasurer to appoint deputy, and to make duplicates of standards for his use.

SECT. 5. The treasurer of each county shall keep, at the expense of the county, a complete set of the weights and measures aforesaid, except the bushel measure, and sets of the said scales and beams, all of which shall be tried and proved by the said standards, and sealed and marked, or stamped as aforesaid, and shall, as to the materials of which they are made, and also as to their form, dimensions and contents, conform to the state standards; and the said county treasurers shall also keep a seal for sealing town standards, and shall preserve the same, and also all the said county standards, for their respective counties, and to be used for the purposes of standards only.

County treasurers to keep sets of standard weights and measures. 1799, 60, § 2. 1800, 18.

County treasurers, to have their standards sealed every ten years. 1799, 60, § 2.

SECT. 6. Once in every ten years from the first day of January in the year one thousand eight hundred and thirty, the respective county treasurers for the time being shall cause their said standards to be tried, proved and sealed by the state standards, under the direction of the treasurer of the Commonwealth.

Penalty on county treasurers for neglect. 1799, 60, § 2.

SECT. 7. If any county treasurer shall neglect his duty in this behalf, he shall for each neglect forfeit a sum not exceeding two hundred dollars.

Town treasurers, to keep town standards, except, &c. 1799, 60, § 2. 1800, 54.

SECT. 8. The treasurer of each town shall, at the expense of the town, keep, as town standards, a complete set of the said scales, beams, weights and measures, except the bushel measure, conformable in all respects to the state standards aforesaid; excepting, that the half bushel, peck and half peck measures, to be kept as town standards, may be of wood instead of copper or pewter, and that no town treasurer shall be bound to keep a nest of troy weights, other than from the lowest denomination to the size of eight ounces; and every town treasurer shall also keep a seal, for sealing the weights and measures of the inhabitants of the town.

Town treasurers, to have the town standards sealed every ten years. 1799, 60, § 3.

SECT. 9. The treasurer of each town shall, once in every ten years from the first day of January in the year one thousand eight hundred and thirty, cause all the said town standards to be tried, proved, sealed and stamped as aforesaid, either by the treasurer of the Commonwealth, or by the treasurer of the county within which the town is situated.

Fees of state and county treasurers for sealing weights, &c. 1799, 60, § 3.

SECT. 10. The state and county treasurers, respectively, shall be entitled to demand of each town treasurer a fee of three cents, for the first sealing of any weight, measure, scale or beam, and two cents for every subsequent sealing of the same.

Penalty on town treasurers for neglect. 1799, 60, § 3.

SECT. 11. If any town treasurer shall neglect to perform his duty as prescribed in this chapter, he shall for each neglect, forfeit a sum not exceeding one hundred dollars.

Sealers in towns, to be appointed by the selectmen.

SECT. 12. One or more suitable persons shall be annually appointed in each town, in the manner provided in the fifteenth chapter, to be sealers of weights and measures for such town.

Selectmen may remove sealers and fill vacancies. 1799, 60 § 4.

SECT. 13. The selectmen may remove from office any sealer of weights and measures in their town, and may fill all vacancies occasioned by such removal or otherwise.

Each town sealer to have a set of standards. 1799, 60, § 4.

SECT. 14. When any town shall vote to have more than one sealer of weights and measures, the treasurer of the town shall, at the expense thereof, procure and preserve the necessary additional seals, weights and measures before specified; so that each sealer in such town may have complete sets of the same.

Sealers accountable to towns for preservation of standards. 1799, 60, § 5.

SECT. 15. Every sealer of weights and measures shall receive of the town treasurer the said town standards and seal, and shall give him a receipt therefor, expressing the condition in which the same may be; and he shall be accountable to the town for the due preservation of the same in the like condition, until he shall redeliver them to the treasurer.

Sealers, to give notice, annually, and to seal all weights, &c.

SECT. 16. Every sealer of weights and measures shall, in the month of May in every year, advertise in some newspaper, or post up notifications in different parts of the town, stating the time and place when and where he will attend such of the inhabitants, as live

within the limits described in the respective notifications, and seal all such of their great and small beams, weights and measures, as they shall bring in for that purpose; and he shall deface and destroy all such as cannot be brought to the just standard.

Fees of sealers. 1799, 60, § 6.

SECT. 17. The sealer shall be entitled to demand, for trying and proving and sealing, as aforesaid, three cents for each beam, weight and measure, found to be not conformable to said standards, and one cent and five mills for each beam, weight and measure found to be conformable thereto.

Town sealers to visit all stores, &c. to prove their weights. 1796, 60, § 7. 1817, 50.

SECT. 18. The sealer of every town, excepting Boston, shall go once in every year to the houses, stores and shops of all such merchants, traders, innholders, and retailers of spirituous liquors, and of such other inhabitants of the town using scales, beams, weights, or measures, for the purpose of buying and selling, as shall neglect to bring or send in their said scales, beams, weights and measures, and he shall there try, prove and seal the same; and for the services required by this section, he shall be entitled to demand and receive of such merchants or other persons, double the fees before provided for the like services, together with four cents for every mile he shall necessarily travel for that purpose, going out and returning home; provided, that nothing contained in this chapter shall control the provision contained in the thirty sixth chapter, respecting the trying, proving, and sealing of the beams and weights used by banks.

Fees.

Exception as to banks. 1828, 96, § 22.

Town sealer to visit hay scales, &c. 1835, 126.

SECT. 19. The sealer of every town, excepting Boston, shall go once in every year, to all hay scales and platform balances, kept by any person for public use, and shall try and seal the same, at the expense of the owner or keeper thereof.

Penalty for refusing to have weights, &c. sealed. 1799, 60, § 7. 1817, 50.

SECT. 20. Every person, refusing or neglecting to have his scales, beams, hay scales, platform balances, weights or measures so tried, proved and sealed, once in every year, shall forfeit to the use of the town a sum not exceeding twenty dollars for each offence.

Penalty for neglect of sealers. 1799, 60, § 7.

SECT. 21. If any sealer of weights and measures shall neglect to perform his duty, as prescribed in this chapter, he shall for each neglect forfeit to the use of the town a sum not exceeding twenty dollars.

Vibrating steelyards allowed to be used, if sealed. 1800, 32. 1816, 60.

SECT. 22. The vibrating steelyards, which have been heretofore allowed and used in this state, may continue to be used; provided, that each beam, and the poizes thereof, shall be annually tried, proved and sealed, by a sealer of weights and measures, like other beams and weights.

Provisions respecting measures for salt and grain. 1823, 117.

SECT. 23. Every measure, by which salt or grain shall be sold, in addition to being conformable in capacity and diameter to the public standards, shall have a bar of iron across the middle thereof at the top, to be approved by a sealer of weights and measures, and a bar or standard of iron from the centre of the first mentioned bar to the centre of the bottom of the measure, to be approved in like manner; and every such measure shall be filled by shovelling such salt or grain into the same; and the striking thereof shall always be lengthwise of the said first described bar; and if any person shall sell or expose to sale any salt or grain, in any other measure, or shall fill or strike such measure, in any other manner, than is provided in this section, he shall forfeit to the use of the town where the offence is com-

mitted the sum of fifty cents, for every bushel of salt or grain measured, filled or stricken contrary to the provisions of this section; provided, that salt may be measured from vessels in such measures as are used by the government of the United States, and that nothing contained in this section shall prevent the measuring of salt in tubs, or any proportional parts of hogsheads without bars, as may be determined by any town; and that the regulations of this section shall not take effect in any town, except where they shall be adopted by a vote, at a legal meeting of the inhabitants, and such vote shall have been published for the space of one month, in some newspapaper printed in such town, or in its vicinity, if none is printed in the town.

Penalty for selling by weights, &c. not sealed. 1799, 69.

SECT. 24. If any person shall sell or expose to sale any goods, wares or merchandize, fruit, grain or other commodity whatsoever, by any beams, weights or measures, that have not been sealed as provided in this chapter, he shall for each offence forfeit to the use of the town a sum not exceeding ten dollars.

"Hundred weight" to be construed the net hundred. 1826, 121.

SECT. 25. When any commodities shall be sold by the hundred weight, it shall be understood to mean the net weight of one hundred pounds avordupois; and all contracts concerning goods sold by weight shall be understood and construed accordingly.

Public weighers to weigh according to the preceding section.

SECT. 26. Every public weigher of goods or commodities shall weigh the same, according to the provisions of the preceding section, and make his certificate accordingly.

Who shall be deemed a public weigher; his duty in weighing, and penalty for breach thereof. 1826, 121.

SECT. 27. Every public weigher, who shall offend against the provisions of the preceding section, shall for every such offence forfeit to the use of the town a sum not exceeding ten dollars; and every weigher of goods or commodities, appointed by any town, and every weigher of goods or commodities, for hire or reward, shall be deemed and taken to be a public weigher, so far as relates to the provisions of this and the preceding section.

CHAPTER 31.

OF THE WEIGHING OF LIGHTERS AND OTHER VESSELS EMPLOYED IN TRANSPORTING STONE, GRAVEL AND SAND.

SECTION
1. Weighers of lighters, &c., to be appointed by selectmen.
2. Lighters, &c., to be marked.
3. Duty of weighers.
4. Deduction may be made of one ton for every inch, &c.
5. Persons on board, to keep between bulk head and fore chains, under penalty.
6. Marks, to be examined every year.
7. Fees.
8. Penalty for neglecting to have lighters weighed.
9. " for falsely placing marks, &c.

Weighers of lighters, &c. to be appointed by selectmen, &c. 1822, 103, § 2.

SECTION 1. The selectmen of every town, where lighters or other vessels are employed in transporting stones, gravel, or sand, and the mayor and aldermen of the city of Boston, shall, in the

months of March or April, annually, appoint one or more weighers of vessels, who shall be sworn to the faithful discharge of the duties of that office.

SECT. 2. Every lighter or other vessel employed in transporting any stone sold by weight, or any gravel or sand, shall be marked on the stem and stern post, nearly level with the bend of such vessel, with stationary marks of bar iron, not less than six inches in length, and two and a half inches in breadth, fastened with two good and sufficient iron bolts, driven through said stem and stern post and riveted into the said bar iron, from which all other marks shall take their distance, in feet, inches, and parts of inches, as the distance may require, from the lower edge of the said stationary marks to the lower edge of the other marks; which marks shall be as follows, namely: light water marks, not less than four inches in length and one inch and a half in breadth; and every four tons above said light water marks, legibly cut, or cast, in figures, of 4, 8, 12, 16, 20, and so forth, up to the full capacity of the vessel; and said figures shall express the weight, which such vessel is capable of carrying, when the lower part of the respective numbers aforesaid shall touch the water; and all the said marks shall be of good and sufficient lead or copper, fastened on the stem and stern post of each vessel with sufficient nails, not less than one inch in length.

Lighters, &c. to be marked. 1822, 103, § 1.

SECT. 3. Every such weigher shall furnish all the requisite marks and nails, when thereto requested, and shall cause all such lighters and other vessels to be weighed and marked in conformity with the provisions of the preceding section, and during the time of so weighing and marking them, all the persons, employed on board of such vessels, shall be stationed between the bulk head and the fore chains thereof; he shall also keep a correct account of the distance of each mark, below the stationary marks, in feet, inches and parts of inches, in a book to be kept for that purpose, and give a certificate thereof, expressing the distance as aforesaid, to the master of every such vessel.

Duty of weighers. 1822, 103, § 3.

SECT. 4. In taking the tonnage of every such vessel, a deduction may be made of one ton, for every inch that the light water marks may be under water, after such vessels shall have discharged their loading.

Deduction may be made of one ton for every inch, &c. 1822, 103, § 4.

SECT. 5. Every person, on board of any such vessel, who shall not keep within the bounds of the bulk head and fore chains, during the time of taking her marks, or while any weigher shall be employed in weighing or marking as aforesaid, unless in case of absolute necessity, shall forfeit a sum not exceeding twenty dollars for every offence.

Persons on board to keep between bulk-head and fore chains, under penalty. 1822, 103, § 5.

SECT. 6. All such vessels shall have their marks examined in the month of June in each year, by a sworn weigher, who shall ascertain if their marks agree with their former certificates, and, if so, shall certify the same accordingly; and in case such marks should not agree with the former certificates, the said weigher shall keep such certificates in his possession, to be used as evidence against the master or owner of such vessel, in any prosecution under the provisions of this chapter; and such vessel shall moreover, in such case, be weighed again.

Marks, to be examined every year. 1822, 103, § 7.

Fees. 1822, 103, §§ 6, 7

SECT. 7. Every weigher of vessels shall be entitled to receive, from the owner or master of each vessel, weighed and marked according to the provisions of this chapter, the following fees to wit; twenty cents for every ton of such vessel, and four dollars for furnishing marks, nails, and other necessary articles, and fastening the same, and giving the certificate, as before provided; and for the services required of him by the preceding section, he shall receive one dollar and fifty cents.

Penalty for neglecting to have lighters weighed. 1822, 103, § 5.

SECT. 8. Every owner or master of any such vessel, who shall neglect to have the same weighed, marked and examined, according to the provisions of this chapter, or who shall remove any marks, or alter his certificate, shall forfeit a sum not exceeding three hundred dollars for every offence.

Penalty for falsely placing marks, &c. 1822, 103, § 5.

SECT. 9. Every such weigher, who shall be guilty of placing any such mark, contrary to the provisions of this chapter, or who shall give a false certificate, shall forfeit a sum not exceeding three hundred dollars for every offence.

CHAPTER 32.

OF SHIPPING, SHIP OWNERS, AND CHARTERERS; AND OF PILOTAGE.

SECTION

OF SHIPPING, SHIP OWNERS, AND CHARTERERS.

1. Ship owners, how far answerable for embezzlement, loss, &c.
2. Contribution for embezzlement, loss, &c. in certain cases.
3. Charterer to be deemed the owner, in case, &c.
4. The preceding provisions, not to affect any other remedies of parties.

PILOTAGE; GENERAL PROVISIONS.

5. Pilots to be appointed by the governor —Their power to appoint deputies.
6. All pilots to give bond.
7. General duty of branch pilots.
8. Districts of pilots.
9. Pilots, to keep boats.
10. Fees of the pilots appointed by the governor, to be fixed by him.
11. Pilots liable for negligence while in charge of vessels.
12. When masters may pilot their own vessels.
13. When pilots not entitled to fees.
14. Governor and council may remove pilots.

PILOTAGE OF THE HARBOR OF BOSTON.

15. Two commissioners of pilots, to be appointed for Boston.

SECTION

16. Commissioners may grant and revoke commissions and warrants.
17. Pilots to give bond to state treasurer.
18. Sureties on pilots' bonds may be released therefrom.
19. Commissioners, to keep an office, hear complaints, &c.
20. Pilots, to render quarterly accounts to commissioners—Additional fees—Penalty for a false return.
21. Commissioners may make regulations for pilots, &c.—Regulations to be published.
22. " to keep fair records of their proceedings, &c.
23. No person, except a pilot, to pilot vessels, except, &c.
24. When a ship master may pilot his own vessel.

PILOTAGE OF THE PORT OF SALEM.

25. The governor may appoint pilots for Salem.
26 " " may remove them for good cause.
27. Regulations for Salem, to be made by presiding officers of the Marine and East India Marine societies.
28. Pilots of Salem, to be governed by those regulations, and this chapter.

SECTION

PILOTAGE OF NEWBURYPORT.

29. The governor may appoint pilots for Newburyport.
30. Pilots, to give bond.
31. Penalty for piloting, when not a pilot.
32. Pilots for Newburyport, to be subject to the regulations of this chapter.

PILOTAGE OF NEW BEDFORD AND FAIRHAVEN.

33. Wardens, appointed by the governor, shall commission pilots.
34. " to make regulations respecting pilotage, and may revoke commissions.
35. Pilots to be sworn and to give bond.
36. Any one pilot may take charge of vessels drawing more than nine feet of water.
37. Rates of pilotage.
38. Non-commissioned pilots' duty and compensation, &c.
39. Pilots, to take charge of vessels ready for sea, &c.—Their services may be declined.
40. " liable for delays and damages.
41. Fishing and coasting vessels exempted from provisions of this chapter.

PILOTAGE THROUGH THE VINEYARD SOUND OVER NANTUCKET SHOALS IN CERTAIN CASES.

42. Compensation for piloting through the Vineyard Sound, &c.

OF SHIPPING, SHIP OWNERS AND CHARTERERS.

SECTION 1. No ship owner shall be answerable, beyond the amount of his interest in the ship and freight, for any embezzlement, loss, or destruction, by the master or mariners, of any goods, wares, or merchandize, or any property put on board of such ship or vessel, nor for any act, matter or thing, damage or forfeiture done, occasioned or incurred, by the said master or mariners, without the privity or knowledge of such owner.

Ship owners, how far answerable for embezzlement, loss, &c. 11 Mass. 99. 1818, 122, § 1.

SECT. 2. If any such embezzlement loss or destruction, as mentioned in the preceding section, shall be suffered by several freighters or owners of goods, wares or merchandize, or any property whatever, on the same voyage, and the whole value of the ship or vessel and her freight for the voyage, shall not be sufficient to make compensation to each of them, they shall receive compensation from the owner of the ship, in proportion to their respective losses; and for that purpose, the said freighters and owners of property, and the owners of the ship or vessel, or any of them, may prosecute a bill in equity, for a discovery of the amount of loss or damage, suffered as aforesaid, and of the value of the ship and freight, and for the equal distribution and payment of the sum, for which the owner or owners of the ship may be liable, among the parties entitled to the same.

Contribution for embezzlement, loss, &c. in certain cases. 1818, 122, § 2.

SECT. 3. The charterer of any vessel, in case he shall navigate such vessel at his own expense, shall be deemed the owner, within the meaning of the two preceding sections.

Charterer, to be deemed the owner, in case, &c. 1818, 122, § 3.

SECT. 4. Nothing contained in any of the preceding sections of this chapter, shall be construed to take away, or affect the remedy, to which any party may be entitled against any master or mariners, for, or on account of the embezzlement, loss or destruction of goods, wares or merchandize, or any property put on board of any ship or vessel, or on account of any fraud, or malversation of such master or mariners respectively.

The preceding provisions, not to affect any other remedies of parties. 1818, 123, § 2.

PILOTAGE; GENERAL PROVISIONS.

SECT. 5. The governor, with the advice and consent of the council, may appoint one or more suitable persons to be pilots for

Pilots, to be appointed by the governor.

the several harbors and coasts of this state, except those for which special provision is hereafter made in this chapter; giving each of the said pilots a branch or warrant for the due execution of his office, with authority to appoint deputies, in the cases to be specified in such branch or warrant; provided, each pilot shall report his said deputies to the governor for his approbation.

Their power to appoint deputies. 1783, 13, § 1.

All pilots to give bond. 1783, 13, § 2.

SECT. 6. Every such pilot and deputy shall, before entering upon his office, give bond, with sufficient suretie, to the treasurer of the Commonwealth, in the sum of two thousand dollars, for the faithful performance of the duties of his office.

General duty of branch pilots. 7 Mass. 306. 14 Mass. 17. 1783, 13, §§ 2. 10.

SECT. 7. Every such branch pilot is authorized and directed, by himself or his deputy, to take charge of any vessels bound into or going out of the port assigned to him, except fishing vessels, and vessels bound to or coming from any port within the state, and all vessels of less than two hundred tons, sailing under a coasting license; the said pilot first showing his branch or warrant to the master of any such vessel, if required.

Districts of pilots. 1783, 13, § 3.

SECT. 8. The several pilots mentioned in this section shall have the following districts assigned to them, that is to say; the pilots for the ports of Salem and Marblehead, from Nahant rock on the south, to Norman's Woe on the north; the pilots for the port of Gloucester, from said Norman's Woe round the Cape to Chebacco Bar, so called; the pilots for the port of Newburyport, from Chebacco Bar on the south, to the Isle of Shoals on the north; the pilots for the port of Plymouth, from the highlands of Marshfield on the north, to the point of Cape Cod on the south; the pilots for the coasts of Nantucket, to take charge of any vessels on the coasts thereof, that shall be bound over the shoals.

Pilots, to keep boats. 1783, 13, § 4.

SECT. 9. Each of the said branch pilots, except the pilots for the coasts of Nantucket, shall always keep one decked boat in good repair; and the pilots for the said coasts of Nantucket, as well as all the said other branch pilots, shall at all times keep a sufficient number of suitable row boats for the purposes aforesaid; and one of the said decked boats, for the port of Plymouth, shall be stationed in the harbor of Plymouth; two, for the port of Salem, in the harbor of Salem; two at Marblehead; one in the harbor of Gloucester, and one in Sandy Bay; four for the coasts of Martha's Vineyard, at Gay Head; four at Holmes's Hole; and two at Edgartown; and all the said boats shall cruize on the pilot ground of their respective stations, at all times when the weather shall permit.

Fees of the pilots, appointed by governor, to be fixed by him. 1783, 13, § 4.

SECT. 10. The governor, with the advice of the council, is authorized to determine the fees of pilotage of the pilots by him appointed, and to specify the same in their respective warrants.

Pilots liable for negligence while in charge of vessels. 8 Pick. 23. 1783, 13, § 8.

SECT. 11. If any vessel, while under the charge of a branch or warrant pilot or his deputy, shall be lost or run aground, or sustain any damage, through the negligence or unskilfulness of such pilot or deputy, such pilot shall be liable, both for himself and his deputy, to pay all damages sustained by any person interested in such vessel or her cargo; and may, moreover, be removed from his office.

When masters may pilot their own vessels. 1783, 13, §§ 6. 10.

SECT. 12. Any master of a vessel, other than such as are excepted in the seventh section of this chapter, who may choose to pilot his own vessel into or out of any port, shall be permitted so to

do; but he shall, notwithstanding, be liable to pay to such pilot of the port, as shall first come on board of his vessel, the full pilotage according to the fees specified in his warrant.

When pilots not entitled to fees. 1783, 13, § 7.

SECT. 13. If any vessel shall be within the chops of the harbor of Salem, Marblehead or Gloucester, or within the bar at the entrance of the harbor of Newburyport, or within the Gurnet at the entrance of the harbor of Plymouth, or within any barred harbor, before a pilot shall go on board, and the master of such vessel shall then decline taking a pilot, he shall be exempt from any fees for pilotage into the said ports.

Governor and council may remove pilots. 1783, 13, § 11.

SECT. 14. The governor and council are authorized to hear and determine all complaints, exhibited against the pilots appointed by him as aforesaid, and their deputies, and to suspend or remove them, and appoint others in their places.

PILOTAGE IN THE HARBOR OF BOSTON.

Two commissioners of pilots to be appointed for Boston. 1835, 149, §§ 1. 7.

SECT. 15. The governor, with the advice and consent of the council, is authorized to appoint and commission two persons, to execute the office of commissioners of pilots for the harbor of Boston, who shall hold their office during the term of three years, unless sooner removed by the governor and council; provided always, that the said persons shall first be recommended by the trustees of the Boston marine society, and that no such commissioner shall at the same time be one of said trustees.

Commissioners may grant and revoke commissions and warrants, &c. 1835, 149, § 2.

SECT. 16. The said commissioners shall grant commissions for pilots, and warrants for apprentices, to such persons as may be approved by the trustees of the Boston marine society; and they may, upon satisfactory evidence of misconduct, carelessness or neglect of duty, suspend until the meeting of the trustees then next ensuing, any pilot or apprentice who now holds or shall hereafter hold a branch, commission or warrant; and if the said trustees, at their said next meeting, shall decide that such branch, commission or warrant ought to be revoked, the said commissioners of pilots may revoke the same, or may, at their discretion, continue the suspension of such pilot or apprentice, until the next stated meeting of said trustees, and no longer, for the same offence.

Pilots to give bond to state treasurer. 1835, 149, § 5.

SECT. 17. No person shall receive a commission or exercise the office of a pilot, for the harbor of Boston, until he shall have deposited, with the treasurer of the Commonwealth, a bond in the penal sum of two thousand dollars, payable to the said treasurer, and with sureties satisfactory to the said commissioners, for the faithful performance by himself and his apprentices of all the duties required by law of any pilot or apprentice.

Sureties on pilots' bonds may be released therefrom. 1835, 149, § 5.

SECT. 18. Any surety on such bond of a pilot may, at the end of any year after signing the same, terminate his liability as surety for the future acts of such pilot, by giving notice of his determination, in writing, at least thirty days before the expiration of any such year, to the treasurer of the Commonwealth and to the commissioners of pilots; and thereupon the said commissioners shall give notice to the said pilot, that unless he shall procure some other surety, his commission will be annulled at the end of such year, and the same shall in such case be annulled by them and delivered up accordingly; and

if any such pilot shall, after demand made, refuse to deliver up his commission, he shall forfeit the sum of fifty dollars for every month, during which he shall retain the same.

Commissioners, to keep an office, hear complaints, &c. 1835, 149, § 3.

SECT. 19. The commissioners of pilots shall keep an office, and shall be in attendance during a part of each day, to receive and consider complaints by and against pilots, and to examine the evidence concerning the same; and in case any pilot, either by himself or his apprentice, shall be guilty of any act, whereby the condition of his bond shall be broken, the said commissioners shall make immediate complaint thereof to the treasurer of the Commonwealth, who shall cause a suit to be forthwith commenced and security to be taken, for the benefit of all persons who may have suffered by the misconduct or negligence of such pilot or apprentice; and the like proceedings and judgment shall be had and rendered in such suit, as in the case of sheriffs' bonds.

Pilots to render quarterly accounts to commissioners.

SECT. 20. Once in every three months, each branch pilot for the harbor of Boston shall render, to the said commissioners of pilots, an account of all vessels piloted, and of all moneys received by him or by any person for him for pilotage; and he shall pay to the said commissioners five per cent. on the amount thereof, which shall be taken in full for their official services and for the expenses of the office; and the said pilots may add five per cent. to the rates established by law, at the time when they shall perform the service of piloting any vessel, and they may collect the same in the like manner, as they are now authorized to collect the pilotage fees; and if any pilot shall make a false return of moneys so received, he shall forfeit a sum not exceeding fifty dollars.

Additional fees.

Penalty for a false return. 1835, 149, § 6.

Commissioners may make regulations for pilots, &c.

SECT. 21. The commissioners of pilots may, from time to time, alter or amend any of the existing regulations, for the pilotage of the harbor of Boston, and may make any new regulations therefor; and all such altered, amended and new regulations, after being approved by the trustees of the Boston marine society, and being published one week in two of the newspapers printed in Boston, shall be binding on all persons; and the said commissioners, at least twice a year, shall publish as aforesaid all the regulations, which shall at such times be in force, concerning the pilotage of the harbor of Boston, and also shall see that the said regulations and the laws concerning said pilotage are duly observed and executed.

Regulations to be published.

Commissioners to keep fair records of their proceedings, &c. 1835, 149, § 4.

SECT. 22. The commissioners of pilots shall keep fair records of all their doings, under the provisions of this chapter, and shall exhibit the same to the trustees of the Boston marine society, as often as once in every six months, and whenever the said trustees shall require the same.

No person except a pilot, &c., to pilot vessels, except, &c. 1829, 2, § 1.

SECT. 23. If any person, not having a branch, commission or warrant, as a pilot or pilot's apprentice, for the harbor of Boston, shall undertake to pilot into or out of the said harbor any vessels, excepting such as are excepted in the seventh section of this chapter, he shall forfeit a sum not exceeding fifty dollars for each offence.

When a ship master may pilot his own vessel. 12 Pick. 334. 1829, 2, § 4.

SECT. 24. In case no Boston branch pilot shall offer his services to the master of a vessel bound into the harbor of Boston, before such vessel shall have passed a line drawn from Harding's Rocks to the Outer Graves, and from thence to Nahant Head, such master

shall be at liberty to pilot his own vessel, or to employ any other person to pilot his vessel into the said harbor, without incurring the penalty mentioned in the preceding section.

PILOTAGE OF THE PORT OF SALEM.

SECT. 25. The governor, with the advice and consent of the council, may appoint one or more suitable persons to be a branch pilot or pilots for the port of Salem; provided, that the said persons shall first have the recommendation of the master of the marine society in Salem, and of the president of the Salem East India marine society.

Governor may appoint pilots for Salem. 1826, 114.

SECT. 26. Any pilot, so appointed for the port of Salem, may be removed from office by the governor, with the advice and consent of the council, whenever the master and president of the societies aforesaid shall certify that such pilot is incapable of discharging the duties of said office, or otherwise unsuitable to be continued therein, or that the public interest does not require, that he should any longer remain in office.

Governor may remove them for good cause. 1813, 164, § 1. 1826, 114.

SECT. 27. The master of the marine society in Salem, and the president of the Salem East India marine society, may make regulations, defining the limits called the chops of the harbor, and for the government of the pilots of said port, and may alter and amend the same from time to time, as in their judgment the public interest shall require; provided always, that such regulations shall not go into operation, until they shall be approved by the governor and council.

Regulations for Salem, to be made by presiding officers of the Marine and East India Marine societies. 1826, 114. 1813, 164, § 4.

SECT. 28. The pilots for the said port of Salem and their deputies shall have all the powers, and be subject to all the duties and liabilities, prescribed by the preceding provisions of this chapter, except those which relate specially to any other port or harbor therein mentioned, and except so far as the same shall be modified or controlled, by any regulations made by the master and president of the societies aforesaid.

Pilots of Salem, to be governed by those regulations, and this chapter.

PILOTAGE OF NEWBURYPORT.

SECT. 29. The governor, with the advice and consent of the council, may appoint one or more suitable persons, to be a branch pilot or pilots for the port of Newburyport; provided, that every such person shall first obtain from the marine society of Newburyport a certificate, signed by their clerk, stating that in the opinion of said society, such person is capable and suitable to be appointed to that office; and every such person may be removed by the governor and council, whenever the said society shall in like manner certify that he is incapable of discharging the duties of said office, or is otherwise unsuitable to be continued therein, or that the public interest does not require that he should any longer remain in office.

Governor may appoint pilots for Newburyport. 1785, 29, § 3.

SECT. 30. Before any person shall receive a commission or branch as a pilot under the provisions of the preceding section, he shall give bond, with sufficient sureties, to the treasurer of the Commonwealth, in the sum of five hundred dollars, for the faithful performance of the duties of said office.

Pilots to give bond. 1785, 29, § 4.

SECT. 31. If any person, not having a branch or warrant, as a pilot or deputy, for the harbor of Newburyport, shall falsely repre-

Penalty for piloting, when not a pilot.

1785, 29, § 4. 1835, 90.

sent himself as a pilot or deputy for said harbor, and shall undertake to pilot, into or out of said harbor, any vessels drawing eight feet of water or more, he shall forfeit a sum not exceeding one hundred dollars, for each offence, and he shall be further liable to pay all damages, that may be sustained by reason of his so undertaking to pilot such vessel; provided, however, that if the person so acting as pilot or deputy shall be employed for that purpose, by the master or commander of any vessel, knowing that such person was not a legal pilot for said harbor, the person so acting as pilot shall not be liable to pay any forfeiture or damages in case of loss.

Pilots for Newburyport, to be subject to the regulations of this chapter.

SECT. 32. The several pilots for the said port of Newburyport and their deputies shall have all the powers, and be subject to all the duties and liabilities, mentioned in the preceding provisions of this chapter, except those which specially relate to any port or harbor therein mentioned, and except so far as the said provisions are modified or controlled by the three preceding sections.

PILOTAGE IN NEW BEDFORD AND FAIRHAVEN.

Wardens, appointed by the governor, shall commission pilots. 1826, 88, § 1.

SECT. 33. There shall be appointed by the governor, with the advice and consent of the council, five persons, three of whom shall reside in New Bedford and Fairhaven, and two in Duke's county, to be denominated wardens of the port and district of New Bedford, who shall hold their offices during the pleasure of the governor and council, and whose duty it shall be to grant commissions or warrants to a suitable number of persons, to be pilots for the ports of New Bedford and Fairhaven.

Wardens to make regulations respecting pilotage, and may revoke commissions. 1826, 88, § 1.

SECT. 34. The said wardens may make all necessary and suitable regulations for the government of such pilots, as they shall commission, and may revoke any such commission, when in their judgment it shall become necessary.

Pilots to be sworn and to give bond. 1826, 88, § 4.

SECT. 35. Every pilot appointed by the said wardens shall, before entering upon his office, be sworn to the faithful discharge of the duties thereof, and shall also give bond to the wardens of said port for the time being, in the sum of one hundred dollars, with condition that he shall faithfully perform the duties of said office, and shall give up his branch or commission, when demanded of him by a vote of the said wardens, and in default of such delivery shall forfeit the sum of fifty dollars, for every vessel, which he shall attempt to pilot after having notice so to give up the same.

Any one pilot may take charge of vessel drawing more than nine feet of water. 1826, 88, § 4.

SECT. 36. Any one pilot, commissioned and qualified as aforesaid, may take charge of any vessel drawing more than nine feet of water, going into either of the ports of New Bedford or Fairhaven, from any foreign port or voyage, and vessels of the same draught of water, bound on any foreign voyage from either of said ports; first showing to the master of such vessel his warrant, and stating the amount of his fees.

Rates of pilotage. 1826, 88, § 5. 1831, 6.

SECT. 37. The rates of pilotage, which each of said pilots may demand, shall be as follows, to wit; for all vessels inward bound, two dollars a foot; and for all vessels outward bound, one dollar a foot.

Non-commissioned pilots' duty and com-

SECT. 38. When any vessel, bound into either of the ports of New Bedford or Fairhaven, shall have on board any pilot, not com-

missioned by the wardens of the port and district of New Bedford, as aforesaid, he shall, when requested, surrender such vessel to either of the pilots commissioned by said wardens, and shall be compensated for his services, in the following manner, that is to say; if he shall have conducted such vessel into the upper harbor of New Bedford, before surrendering her as aforesaid, he shall receive the whole of the sum, which is provided in the preceding section to be paid to a warrant pilot; and if he shall have conducted such vessel into Tarpaulin cove to anchor, he shall receive one half of the whole sum, which is allowed by the preceding section, for piloting a vessel from sea into the harbor of New Bedford or Fairhaven; and if he shall conduct any vessel through Quick's Hole into Buzzard's bay, and there surrender her as aforesaid, he shall receive two thirds of the whole sum, which is provided in the same section, for piloting a vessel from sea into the harbor of New Bedford or Fairhaven; and for conducting any vessels as aforesaid, so far towards said harbors, as to intersect a line drawn from the south part of Noman's Land to Seconnet Point, he shall receive one fourth part of the whole sum aforesaid; and for conducting any vessel as aforesaid into the mouth of Buzzard's bay, so far as to intersect a line, drawn from the Hen and Chickens to the light house on Cuttyhunk, he shall receive three quarters of the whole sum aforesaid; and for conducting any vessel, so far as to intersect a line drawn, due east and west, across the north part of the Great Ledge, he shall receive seven eighths of the said whole sum; provided, that all such sums, as shall be so allowed and paid to such non-commissioned pilots, shall be deducted from the amount, allowed by this chapter to any warrant pilot, to whom such non-commissioned pilot shall surrender any vessel, so that the sums paid to both pilots shall not together exceed the whole sum allowed, by the preceding section, for piloting a vessel from sea into the harbor of New Bedford or Fairhaven.

pensation, &c. 1826, 88, § 6.

SECT. 39. Either of the pilots appointed by said wardens shall, while in New Bedford, when requested, take charge of any vessel ready for sea, and shall conduct her to sea, at the rates specified in the thirty seventh section; and if any such pilot shall offer himself as a pilot to any vessel, coming into either of the ports of New Bedford or Fairhaven, from any foreign port or voyage, or going out of either of said ports to any foreign port, and the master of such vessel shall decline receiving said pilot, then the said pilot shall be entitled to demand, from the master or owner of such vessel, one half of the amount of pilotage, to which he would have been entitled, if he had been received on board of such vessel, unless some other pilot commissioned by said wardens shall be on board.

Pilots to take charge of vessels ready for sea, &c.

Their services may be declined. 1826, 88, § 3.

SECT. 40. Every pilot, commissioned by the wardens of New Bedford, as aforesaid, shall be liable for all delays and damages, occasioned by his neglect or ignorance, to be recovered by a suit on his bond, in the name of the said wardens for the time being, to the use of the party injured.

Pilots liable for delays and damages. 1826, 88, § 7.

SECT. 41. All licensed fishing vessels and coasting vessels shall be exempted from the operations of all the provisions of this chapter, respecting the pilotage of the ports of New Bedford and Fairhaven.

Fishing and coasting vessels exempted from provisions of this chapter. 1826, 88, § 8.

PILOTAGE THROUGH THE VINEYARD SOUND OVER NANTUCKET SHOALS IN CERTAIN CASES.

Compensation for piloting through the Vineyard Sound, &c. 1819, 155.

SECT. 42. Any person, who shall faithfully and skilfully pilot any vessel through the Vineyard Sound, over Nantucket shoals, to her port of destination in Boston bay or eastward thereof, shall be entitled to receive the following rates of pilotage, to wit; from the first day of November until the thirty first day of March, inclusive, for a vessel drawing not more than eleven feet of water, three dollars and fifty cents a foot; if drawing more than eleven feet and not more than fourteen feet, four dollars a foot; if drawing more than fourteen feet, four dollars and fifty cents a foot; from the first day of April until the thirty first day of October, inclusive, for a vessel drawing not more than eleven feet of water, two dollars and fifty cents a foot; if drawing more than eleven feet and not more than fourteen feet, three dollars a foot; if drawing more than fourteen feet, three dollars and fifty cents a foot; with an addition of five dollars in each of the cases aforesaid, if such person shall be landed at any place eastward of Cape Ann, and not eastward of Portsmouth, and of ten dollars, if landed eastward of Portsmouth; provided, that this section shall not be construed to extend to any case, where an agreement in writing shall be made, between the master or owner of a vessel, and the person who may undertake to act as pilot of such vessel, fixing any other rate of pilotage or compensation for such services.

CHAPTER 33.

OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

SECTION

BILLS OF EXCHANGE.

1. Damages on bills payable without the limits of the United States, except, &c.
2. " on bills payable beyond the Cape of Good Hope, &c.
3. " on bills payable out of the state, but within the United States.
4. Damages on bills payable within this state.
5. Days of grace, to be allowed on bills, &c.
6. " of grace, not allowed, when payable on demand.

NOTES FOR LESS THAN FIVE DOLLARS.

7. Penalty for issuing small notes as currency.

BILLS OF EXCHANGE.

Damages on bills payable without the limits of the U. States, except, &c. 1825, 177, § 1.

SECTION 1. Whenever any bill of exchange, drawn or indorsed within this state, and payable without the limits of the United States, (excepting places in Africa beyond the Cape of Good Hope, and places in Asia and the islands thereof,) shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same, at the current rate of exchange at the time of the demand, and damages at the rate of five per cent. upon the contents thereof, together with in-

terest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest, shall be in full of all damages, charges and expenses.

SECT. 2. Whenever any bill of exchange, drawn or indorsed as mentioned in the preceding section, and payable at any place in Africa beyond the Cape of Good Hope, or any place in Asia or the islands thereof, shall be duly protested for non-acceptance or non-payment, every party liable for the contents thereof shall, on due notice and demand, pay the same at the par value thereof, together with twenty per cent. thereon, in full of all damages, interest and charges.

Same, on bills payable beyond the Cape of Good Hope, &c. 1825, 177, § 2.

SECT. 3. The rates of damages, to be allowed upon bills of exchange duly protested for non-acceptance or non-payment, if drawn or indorsed within this state, payable at any place without this state, but within the United States, shall be as follows, in addition to the contents of such bill with interest and costs, that is to say; upon all such bills, payable within the states of Maine, New Hampshire, Vermont, Rhode Island, Connecticut and New York, three per cent. on the contents of the bill; if such bill be payable within the states of New Jersey, Pennsylvania, Delaware, Maryland, Virginia, or the District of Columbia, five per cent.; and if payable within the states of North Carolina, South Carolina, or Georgia, six per cent.; and if payable elsewhere within any other of the United States, nine per cent.

Damages on bills payable without this state, but within the U. States. 1819, 41, § 1. 1820, 2.

SECT. 4. The rate of damages, upon all bills of exchange, or orders for the payment of money, drawn or indorsed within this state, for any sum not less than one hundred dollars, and payable within the state, at any place not less than seventy five miles distant from the place where the same is drawn or indorsed, when such bills or orders shall not be duly accepted or duly paid, shall be one per cent. in addition to the contents thereof, and interest on said contents.

Damages on bills payable within this state. 5 Greenl. 174. 1819, 41, § 2.

SECT. 5. On all bills of exchange, payable at sight or at a future day certain, within this state, and on all promissory negotiable notes, orders and drafts, payable at a future day certain, within this state, in which there is not an express stipulation to the contrary, grace shall be allowed, except as provided in the following section, in like manner as it is allowed, by the custom of merchants, on foreign bills of exchange, payable at the expiration of a certain period after date or sight.

Days of grace, to be allowed on bills, &c. 4 Mass. 251. 1824, 130.

SECT. 6. The provisions of the preceding section shall not extend to any bill of exchange, note or draft, payable on demand.

—not when payable on demand. 1824, 130.

NOTES FOR LESS THAN FIVE DOLLARS.

SECT. 7. If any person shall issue or pass any note, bill, order or check, other than the notes or bills of any bank, incorporated under the authority of this Commonwealth or of some one of the United States, for a sum less than five dollars, or whereon a less sum than five dollars shall be due, at the time of such issuing or passing thereof, with intent that the same shall be circulated as currency, he shall for every offence forfeit the sum of fifty dollars.

Penalty for issuing small promissory notes as currency. 1804, 136, § 1.

CHAPTER 34.

OF LIMITED PARTNERSHIPS.

SECTION
1. Limited partnerships may be formed except for banking and insurance.
2. General and special partners, and their liabilities.
3. Certificates to be made by the partners, specifying names, stock, &c.
4. " to be acknowledged and recorded—If false, all shall be liable as general partners.
5. " to be published for six weeks, otherwise partnership shall be deemed general.
6. Provision for renewal of partnerships.
7. Partnership style, &c.
8. Capital stock, not to be withdrawn, &c
9. Assignments, not valid, unless, &c.
10. Assent of creditors, to assignment, to be presumed, unless, &c.
11. Suits to be by and against the general partners, except, &c.
12. Dissolution, how effected.
13. Liability of partners, in cases not specially provided for.
14. Equity jurisdiction of supreme judicial court.

Limited partnerships may be formed except for banking and insurance. 1835, 48, § 1.

SECTION 1. Limited partnerships, for the transaction of mercantile, mechanical or manufacturing business within this state, may be formed by two or more persons, upon the terms, and subject to the conditions and liabilities, prescribed in this chapter; but nothing contained in this chapter shall authorize such partnerships for the purpose of banking or insurance.

General and special partners, and their liabilities. 1835, 48, § 2.

SECT. 2. The said partnerships may consist of one or more persons, who shall be called general partners, and shall be jointly and severally responsible, as general partners now are by law, and of one or more persons, who shall contribute to the common stock a specific sum, in actual cash payment, as capital, and who shall be called special partners, and shall not be personally liable for any debts of the partnership, except in the cases hereinafter mentioned.

Certificates to be made by the partners, specifying names, stock, &c. 1835, 48, § 3.

SECT. 3. The persons forming such partnerships shall make and severally sign a certificate, which shall contain the name or firm under which said partnership is to be conducted, the names and respective places of residence of all the general and special partners, distinguishing who are general and who are special partners, the amount of capital, which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate.

— to be acknowledged and recorded.

SECT. 4. No such partnership shall be deemed to have been formed, until a certificate, made as aforesaid, shall be acknowledged by all the partners, before some justice of the peace, and recorded in the registry of deeds of the county, in which the principal place of the business of the partnership is situated, in a book to be kept for that purpose, open to public inspection; and if the partnership shall have places of business situated in different counties, a copy of the certificate certified by the register of deeds, in whose office it shall be recorded, shall be filed and recorded in like manner, in the office of the register of deeds in every such county; and if any false state-

— if false, all

ment shall be made in any such certificate, all the persons interested in the partnership shall be liable as general partners, for all the engagements thereof.

shall be liable as general partners. 1835, 48, § 4.

SECT. 5. The partners shall, for six successive weeks immediately after such registry, publish a copy of the certificate above-mentioned, in a newspaper printed in the county, where their principal place of business is situated; and if no such paper be there printed, then in a newspaper printed in the city of Boston; and in case such publication be not so made, the partnership shall be deemed general.

— to be published for six weeks, otherwise, partnership shall be deemed general. 1835, 48, § 5.

SECT. 6. Upon every renewal or continuation of a limited partnership, beyond the time originally agreed upon for its duration, a certificate thereof shall be made, acknowledged, recorded and published, in the like manner as is provided in this chapter for the original formation of limited partnerships; and every such partnership, which shall not be renewed, in conformity with the provisions of this section, shall be deemed a general partnership.

Provision for renewal of partnerships. 1835, 48, § 6.

SECT. 7. The business of the partnership shall be conducted under a firm, in which the names of the general partners only shall be inserted, without the addition of the word company, or any other general term; and the general partners only shall transact the business; and if the name of any special partner shall be used in such firm, with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, with any person except the general partners, he shall be deemed and treated as a general partner.

Partnership style, &c. 1835, 48, § 7.

SECT. 8. During the continuance of any partnership, under the provisions of this chapter, no part of the capital stock thereof shall be withdrawn, nor any division of interest or profits be made, so as to reduce such capital stock below the sum stated in the certificates before mentioned; and if at any time during the continuance, or at the termination, of the partnership, the property or assets shall not be sufficient to pay the partnership debts, then the special partners shall severally be held responsible for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time when they were so withdrawn, respectively.

Capital stock, not to be withdrawn, &c. 1835, 48, § 8.

SECT. 9. No general assignment by said partnership, in case of insolvency, or where their goods and estate are insufficient for the payment of all their debts, shall be valid, unless it shall provide for a distribution of the partnership property among all the creditors, in proportion to the amount of their several claims, excepting the claims of the government of the United States, arising from bonds for duties, which are first to be paid or secured.

Assignment not valid, unless, &c. 1835, 48, § 8.

SECT. 10. In case of an assignment, as provided for in the preceding section, the assent of the creditors shall be presumed, unless they shall, within sixty days after notice thereof, dissent, either expressly or by some act clearly implying such dissent; and no such assignment shall be valid, unless notice thereof shall be given in some newspaper, printed in the county where the place of business of the party making it is situated, or if no newspaper be printed in such county, then in some newspaper printed in the city of Boston, within fourteen days after the making of such assignment; provided, that

Assent of creditors to assignment to be presumed, unless, &c. 1835, 48, § 8.

notice of such assignment, made by partners whose place of business is in Duke's county or Nantucket, shall be given in some newspaper printed in Boston, within sixty days from the date of the assignment, in case no newspaper is printed in those counties, respectively, where such place of business is situated.

Suits to be by and against the general partners, except, &c. 1835, 48, § 9.

SECT. 11. All suits, respecting the business of such partnership, shall be prosecuted by and against the general partners only, except in those cases, in which provision is made in this chapter that the special partners shall be deemed general partners, and that special partnerships shall be deemed general partnerships; in which cases, all the partners deemed general partners may join or be joined in such suits; and excepting also those cases, where special partners shall be held severally responsible, on account of any sums by them received or withdrawn from the common stock, as before provided.

Dissolution, how effected. 1835, 48, § 10.

SECT. 12. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate before mentioned, unless a notice of such dissolution shall be recorded in the registry, in which the original certificate, or the certificate of renewal or continuation of the partnership, was recorded, and in every other registry where a copy of such certificates was recorded; and unless such notice shall also be published for six successive weeks in some newspaper printed in the county, where the certificates of the formation of such partnership were published, according to the provisions of this chapter; and if no newspaper shall, at the time of such dissolution, be printed in such county, then the notice of such dissolution shall be published in some newspaper printed in the city of Boston.

Liability of partners, in cases not specially provided for. 1835, 48, § 11.

SECT. 13. In all cases not otherwise provided for in this chapter, the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners.

Equity, jurisdiction of S. J. Court. 1835, 48, § 11.

SECT. 14. The justices of the supreme judicial court may hear and determine in equity all questions arising under the provisions of this chapter.

CHAPTER 35.

GENERAL PROVISIONS RESPECTING TRADE.

SECTION

INTEREST OF MONEY.

1. Rate of interest to be six per cent.
2. Contracts not avoided by usury, but the defendant to forfeit three fold interest and costs.
3. Party having paid usury, may recover back three fold the sum paid.
4. Parties may be witnesses.

SECTION

MONEY OF ACCOUNT.

5. The money of account of this state.
6. All accounts to be reduced to the legal money of account, in suits.

OF HAWKERS AND PEDLARS.

7. Hawkers and pedlars, not to sell any goods, except, &c.
8. " and pedlars, may sell certain goods of American manufacture.

INTEREST OF MONEY.

SECTION 1. The interest of money shall continue to be at the rate of six dollars, and no more, upon one hundred dollars for a year, and at the same rate, for a greater or less sum, and for a longer or shorter time.

Rate of interest to be six per cent. 12 Pick. 586. 1825, 143, § 1.

SECT. 2. No contract or assurance for the payment of money, with interest at a greater rate than is allowed by the preceding section, shall be thereby rendered void; but whenever, in any action brought on such contract or assurance, it shall appear, upon a special plea to that effect, that a greater rate of interest has been directly or indirectly reserved, taken, or received, than is allowed by law, the defendant shall recover his full costs, and the plaintiff shall forfeit three fold the amount of the whole interest reserved or taken, and shall have judgment for the balance only, which shall remain due after deducting said three fold amount.

Contracts, not avoided by usury; but deft. to forfeit three fold interest and costs. 1825, 143, § 1. 1826, 27, § 1. 7 Pick. 40.

SECT. 3. Whenever a greater rate of interest, than is allowed by law, shall have been paid, the party paying the same may recover back three fold the amount of the whole interest paid, either by an action of debt or by a bill in chancery; provided, that such action or bill shall be prosecuted within two years from the time when the said interest shall have been paid.

Party, having paid usury, may recover back three fold the sum paid. 1826, 27, § 1.

SECT. 4. In the trial of any action, wherein it shall appear, by the pleadings, that the fact of unlawful interest having been taken or reserved is put in issue, it shall be lawful for the debtor, (the creditor being living) to become a witness, and he shall be admitted as such; and the creditor, if he shall offer his testimony, shall also be admitted as a witness, together with any other legal evidence, that may be introduced by either party.

Parties may be witnesses. 1826, 27, § 5.

MONEY OF ACCOUNT.

SECT. 5. The money of account of this Commonwealth shall be the dollar, cent and mill; and all accounts in the public offices, and other public accounts, and all proceedings in court, shall be kept and had in conformity to this regulation.

The money of account of this state. 1794, 42, § 1.

SECT. 6. Nothing contained in the preceding section shall vitiate or affect any account, charge or entry, originally made, or any note, bond, or other instrument expressed in any other money of account; but the same shall be reduced to dollars and parts of a dollar, as herein before directed, in any suit thereupon.

All accounts to be reduced to the legal money of account, in suits. 1794, 42, § 2.

OF HAWKERS AND PEDLARS.

SECT. 7. Every hawker, pedlar, petty chapman or other person going from town to town, or from place to place in the same town, either on foot or with a horse, or otherwise carrying to sell, or exposing to sale, any goods, wares or merchandize, except as provided in the following section, shall forfeit a sum not exceeding one hundred dollars for every offence.

Hawkers and pedlars, not to sell goods, except, &c. 1820, 45, § 1.

SECT. 8. Any person may go about as aforesaid, selling and exposing to sale any fruits or provisions whatever, and also any goods, wares or merchandize, of the produce or manufacture of the United States, except indigo, feathers, playing cards, jewelry, and essences.

—may sell certain goods of American manufacture, &c. 1820, 45, § 2.

TITLE XIII.

Of corporations; and proprietors of common lands.

CHAPTER 36. Of banks.
CHAPTER 37. Of insurance companies.
CHAPTER 38. Of manufacturing corporations.
CHAPTER 39. Of turnpike, rail-road, and canal corporations.
CHAPTER 40. Of aqueduct corporations.
CHAPTER 41. Of library corporations; and lyceums.
CHAPTER 42. Of agricultural corporations.
CHAPTER 43. Of proprietors of lands, wharves, general fields, and other real estate lying in common.
CHAPTER 44. General provisions respecting corporations.

CHAPTER 36.

OF BANKS.

SECTION

BANKS.

1. Banks, to be subject to the provisions of this chapter.
2. " their name, privileges and liabilities.
3. " may loan, &c., and divide profits every six months.
4. " not to go into operation till one half of capital is paid in, &c.
5. No loan to be made to a stockholder, until, &c.
6. Loans on pledge of its own stock, not to exceed, &c.
7. Capital stock not transferable, until, &c.
8. Amount of bills issued, not to exceed, &c. All loans &c. to be made at banking house.
9. Amount of debts due to and from banks limited.
10. Preceding section, how construed.
11. Liability of directors, when debts exceed, &c..
12. Absent or dissenting directors, how to be exonerated.
13. Corporation to remain liable.
14. Banks shall not trade, &c.
15. Right of banks to hold real estate, limited.
16. No person shall own more than half of the stock in any bank.

SECTION

17. Directors to be citizens and residents of this state.
18. A majority to reside within the county, &c.
19. Number of directors.
20. One of directors to be chosen president.
21. A majority to be a quorum.
22. Stockholders to choose directors annually.
23. Votes allowed to each stockholder.
24. Vacancies, how to be filled.
25. Special meetings.
26. Appointment of cashier.
27. Cashier, to give bond.
28. " when to call special meetings.
29. Penalty for delaying payment of bank notes.
30. In case of deficiency, &c., stockholders liable individually.
31. Stockholders liable at expiration of charter.
32. " may compel contribution by bill in equity.
33. Corporations owning bank stock, to be under the same liabilities and have the same rights as individuals.
34. Bank, where to be kept.
35. Banks, to loan to the Commonwealth.
36. When the treasurer borrows, he shall give notice to banks.

SECTION
37. Treasurer to apportion amount of loans required.
38. Forfeiture, if banks refuse to loan to treasurer.
39. Treasurer to institute suit for such refusal.
40. Legislature, may examine any bank by committee, and declare its charter forfeited, in case, &c.
41. Penalty on officers of banks refusing to exhibit books, &c.
42. Commonwealth may take stock in banks.
43. The legislature may appoint directors.
44. Banks, to pay altered bank notes.
45. " to pay a tax on capital.
46. " whose capital is not paid in, to furnish treasurer with abstracts, &c.
47. Weights of banks, to be proved every five years.
48. No tender of gold valid, unless weights proved, &c.
49. Bank shares may be attached and sold.
50. Real estate of banks may be sold on execution.
51. Officer may adjourn such sale.
52. Lands mortgaged to banks may be seized on execution.
53. Cashier or clerk, to furnish copies of notes, &c., to the officer levying.
54. No transfer of such note or mortgage, after notice to the bank, &c., shall be valid, except, &c.
55. Bills, in whose name to be issued, how signed, and when the corporation shall be liable to redeem.
56. Denominations of bank notes, that may be issued.
57. Banks not to issue securities, payable on a future day certain, or drawing interest, except, &c.
58. Amount of loans, &c., to be payable on demand, &c.—penalty.
59. Banks not to take more than six per cent. interest, and existing rate of exchange.

SECTION
60. Penalty for offences against the preceding section.
61. All bills, &c., redeemable in specie, on demand at the banking house, under penalty of two per cent. a month.
62. The preceding section, not to extend to certain checks and drafts.
63. Banks may draw for any balance due.
64. Punishment for embezzlement by bank officers.
65. Cashiers, to make returns of the state of the banks, annually, to secretary—Form of return—How authenticated.
66. Penalty for neglect to make returns.
67. Secretary, to provide forms of returns.
68. " to prepare abstracts of the returns—His further duty as to returns.
69. All banks entitled to new privileges granted to any bank.
70. Penalty for passing or issuing any notes, &c., except, &c.

SAVINGS BANKS.

71. Savings banks, to be governed by the provisions of this chapter.
72. Officers of such banks.
73. " to be sworn—Tenure of office—Treasurer to give bond.
74. Choice and appointment of officers.
75. Special meetings, how called.
76. Members, how elected, and how they may withdraw.
77. Deposits may be received, not exceeding, &c.
78. " how to be invested.
79. Same subject.
80. Officers who invest shall not borrow.
81. Dividends, how made, and deposites, how withdrawn.
82. Treasurer, to make return, annually, to the secretary of the Commonwealth—Contents of return, and how authenticated.
83. The secretary to furnish blank forms and prepare abstracts of returns.
84. The general court may make further regulations, and examine into condition of savings banks.

SECTION 1. Every bank, which now is or shall hereafter be incorporated, under the authority of this Commonwealth, shall be subject to the liabilities, and be governed by the rules and provisions, contained in this chapter.

Banks to be subject to the provisions of this chapter. 1828, 96, § 1.

SECT. 2. Each bank, incorporated as aforesaid, shall be known by the corporate name of the president, directors, and company of the ———— bank, (this blank to be filled with the names of the respective banks as the case may require,) and shall, except when special provision is otherwise made, be entitled to all the powers and

—their name, privileges and liabilities. 5 Mass. 97. 99. 1828, 96, § 2.

privileges, and be subject to all the liabilities, contained in the forty fourth chapter.

—may loan, &c. and divide profits every six months. 10 Mass. 284. 1828, 96, § 2, and § 9.

SECT. 3. Every bank may loan and negotiate its moneys and effects, by discounting on banking principles, upon such security, as the stockholders shall deem expedient; and dividends of the profits of the banks may be made by the directors, every six months.

Banks not to go into operation till one half of capital is paid in, &c. 1828, 96, § 3.

SECT. 4. No bank shall go into operation, until one half, at least, of its capital stock shall have been paid in gold and silver money, and shall be in its vaults, and until the said money shall have been examined by three commissioners appointed by the governor; and the said commissioners shall, at the expense of the bank, examine and count the money actually in the vaults, and ascertain, by the oaths of a majority of the directors, that such money has been paid in by the stockholders, toward payment of their respective shares, and not for any other purpose, and that it is intended that the same shall remain therein, as part of said capital; and the said commissioners shall return a certificate thereof to the governor.

No loan to be made to a stockholder, until, &c. 1828, 96, § 3.

SECT. 5. No loan shall be made to any stockholder, until the full amount of his shares shall have been paid into the bank.

Loans, on pledge of its own stock, not to exceed, &c. 1828, 96, § 3.

SECT. 6. No bank shall have owing to it, at one time, on loans made on a pledge of its own stock, a greater amount than one half of its capital actually paid in.

Capital stock not transferrable, until, &c. 1828, 96, § 3.

SECT. 7. No part of the capital stock of any bank shall be sold, or transferred, until the whole amount thereof shall have been paid in.

Amount of bills issued, not to exceed, &c. All loans, &c. to be made at banking house. 1828, 96, § 4. 4 Pick. 314.

SECT. 8. The amount of bills issued by any bank shall not, at any one time, exceed the amount of the capital stock actually paid in, more than twenty five per cent; and no loan or discount shall be made, nor shall any bill or note be issued by such bank, or by any person on its account, in any other place than at its banking house.

Amount of debts due to and from banks, limited. 1828, 96, § 5. 1834, 203, § 2.

SECT. 9. The total amount of debts, which any bank shall at any time owe, shall not exceed twice the amount of its capital stock, actually paid in, exclusive of sums due on account of deposites not bearing interest; nor shall there be due to such bank, at any time, more than double the amount of its capital stock actually paid in.

Preceding section, how construed. 1834, 203, § 2.

SECT. 10. Debts due to any bank from any other bank, including bills of the bank so indebted, shall not be deemed debts due to a bank, within the intent and meaning of the preceding section.

Liability of directors, when debts exceed, &c. 1828, 96, § 5.

SECT. 11. If any bank shall become indebted, beyond the amount allowed by the two preceding sections, the directors, under whose administration it shall happen, shall be liable for the excess, in their private capacities; and an action of debt may in such case be brought against them or any of them, their or any of their heirs, executors or administrators, by any creditor of such corporation, and may be prosecuted to final judgment and execution; or such creditor may have a remedy by a bill in equity against them, in the supreme judicial court.

Absent or dissenting directors, how to be exonerated. 1828, 96, § 5.

SECT. 12. Any directors, who may have been absent when such excess of debts was contracted, or who may have dissented from the resolution or act whereby the same was contracted, may exonerate themselves from being so liable, by forthwith giving notice of the fact, and of their absence or dissent, to the governor and council, and to

the stockholders, at any general meeting; which meeting they shall have power to call for that purpose.

SECT. 13. The provisions of the two preceding sections shall not be construed to exempt any bank, or the lands, goods or chattels of the same, from being also liable for the excess therein mentioned.

Corporation to remain liable. 1828, 96, § 5.

SECT. 14. No bank shall use or employ any of its moneys, goods, chattels or effects in trade or commerce; but any bank may sell all kinds of property held by it in pledge; and if the proceeds of such sale shall be more than sufficient to repay the sum loaned on such pledge, together with interest and expenses, the surplus shall be paid over by the bank, upon request, to the person who conveyed the property in pledge, or to his assigns.

Banks shall not trade, &c. 7 Mass. 433. 1828, 96, § 6.

SECT. 15. Every bank may hold such real estate as may be requisite for the convenient transaction of the business thereof; but the real estate so held shall not, unless by virtue of special authority for that purpose, exceed twelve per cent. on the amount of the capital stock, exclusive of what the bank may hold on mortgage, receive on execution, or take as security for, or in payment of, any debts.

Right of banks to hold real estate, limited. 1828, 96, § 6.

SECT. 16. No person shall directly or indirectly hold or own more than one half of the amount of the capital stock of any bank, exclusive of any stock, which may be held as collateral security by such person.

No person shall own more than half of the stock of any bank. 1830, 58, § 2.

SECT. 17. No person shall be a director of any bank, unless he is a stockholder therein, and a citizen of, and resident in, the state; and no person shall be a director in two banks at the same time.

Directors to be citizens and residents of this state. 1828, 96, § 7.

SECT. 18. A majority of the directors in every bank shall be residents within the county where the bank is established.

A majority to reside within the county, &c. 1828, 96, § 7.

SECT. 19. No bank shall have less than five nor more than twelve directors, as shall be determined by their by-laws.

Number of directors. 1828, 96, § 7.

SECT. 20. The directors shall choose one of their own number to act as president, and may make him such compensation as they shall think reasonable.

One of the directors to be chosen president. 1828, 96, § 7.

SECT. 21. A majority of the directors shall always be necessary to constitute a quorum for doing business.

A majority to be a quorum. 1828, 96, § 7.

SECT. 22. The directors shall be chosen annually, by ballot, at a meeting of the stockholders on the first Monday in October, to be held at such time and place, within the town where the bank is established, as the directors may designate, and of which they shall give public notice fourteen days previous thereto in some newspaper published in the county, and if there be no newspaper in said county, then in some one published in the city of Boston.

Stockholders to choose directors annually. 1828, 96, § 8.

SECT. 23. Every stockholder shall be entitled to vote, according to the number of shares he may hold, in the following proportion, that is to say, for one share he shall have one vote, and for every two additional shares he shall have a right to one vote more; provided always, that no one stockholder shall have more than ten votes; and absent members may vote by proxy authorized in writing.

Votes allowed to each stockholder. 1828, 96, § 8.

SECT. 24. Any vacancies, occurring in the board of directors, may be filled at any meeting of the stockholders, duly called for that purpose.

Vacancies, how to be filled. 1828, 96, § 8.

SECT. 25. The directors may call special meetings of the stockholders, as often as the interest of the corporation shall require.

Special meetings. 1828, 96, § 8.

Appointment of cashier, &c. 1828, 96, § 9.

SECT. 26. The directors shall appoint a cashier, and may appoint clerks and other officers, for conducting the business of the bank; which cashier, clerks, and other officers shall be removable at the pleasure of the directors.

Cashier, to give bond. 3 Pick. 335. 4 Pick. 314. 1828, 96, § 10.

SECT. 27. The cashier, before he enters on the duties of his office, shall give a bond or bonds, with two or more sureties, to the satisfaction of the directors, with condition for the faithful performance of the duties of his office; and in no case shall bonds be taken for a less sum than twenty thousand dollars, nor for a greater sum than fifty thousand dollars.

Cashier, when to call special meetings. 1828, 96, § 10.

SECT. 28. The cashier of every bank shall, on the application in writing of the proprietors of one fifth part of the capital stock thereof, call special meetings of the stockholders, by giving notice of such meetings in the manner provided for notifying the annual meeting.

Penalty for delaying payment of bank notes. 8 Mass. 445. 5 Pick. 106. 1828, 96, § 11.

SECT. 29. If the officers of any bank shall refuse or delay payment, in gold or silver money, of any note or bill of such bank, presented for payment in their usual hours of business, the said bank shall be liable to pay to the holder of such note or bill, as damages, at the rate of twenty four per cent. a year, for the time during which such payment shall be delayed or refused.

In case of deficiency, &c., stockholders liable individually. 8 Mass. 472. 1828, 96, § 12.

SECT. 30. If any loss or deficiency of the capital stock in any bank shall arise from the official mismanagement of the directors, the stockholders at the time of such mismanagement shall, in their individual capacities, be liable to pay the same; provided, that no stockholder shall be liable to pay a sum, exceeding the amount of the stock actually held by such stockholder at that time.

Stockholders liable at expiration of charter. 3 Mason, 308. 1828, 96, § 13.

SECT. 31. The holders of stock in any bank, at the time when its charter shall expire, shall be liable, in their individual capacities, for the payment and redemption of all bills, which may have been issued by said bank, and which shall remain unpaid, in proportion to the stock they may respectively hold, at the dissolution of the charter.

Stockholders may compel contribution by bill in equity. 1828, 96, § 14.

SECT. 32. Any stockholder of a bank, who shall have been obliged to pay any debt or demand against said bank, out of his individual property, may have a bill in equity, in the supreme judicial court, to recover the proportional parts of such sums of money, as he may have so paid, from the other stockholders, who may be liable for the same, and such damages and costs as the court may decree.

Corporations owning bank stock, to be under the same liabilities and have the same rights as individuals. 1830, 58, § 3.

SECT. 33. Any corporation, which is or shall be a stockholder in any bank, shall be liable, in its corporate capacity, to pay any loss or deficiency of the capital stock in such bank, arising from the official mismanagement of its directors, and shall also be liable for the payment and redemption of all bills, which shall have been issued by said bank, and which shall remain unpaid, when its charter shall expire, in the same manner, as individual stockholders are liable in their individual capacities; and such corporation may compel a contribution from other stockholders in the manner prescribed in the preceding section.

Banks, where to be kept. 1828, 96, § 15.

SECT. 34. Every bank shall be kept in the town in which it is established, and in such part of such town as is prescribed by its charter.

— to loan to the Commonwealth.

SECT. 35. Upon any requisition of the legislature each bank shall loan to the Commonwealth a sum not exceeding five per cent. of its

capital stock at any one time, reimbursable by five annual instalments, or at any shorter period, at the election of the Commonwealth, with the annual payment of interest, at a rate not exceeding five per cent.; but the Commonwealth shall not be entitled to demand of any bank loans which shall together at any one time exceed one tenth part of its capital. 1828, 96, § 16

SECT. 36. Whenever the treasurer of the Commonwealth shall be authorized, by any act or resolve of the legislature, to borrow any sum of money of any bank, he shall give notice in writing, to the president or cashier thereof, of the amount which is to be furnished by such bank, and shall require a loan of the same conformably to the provisions of this chapter; and thereupon the bank shall forthwith place to the credit of the Commonwealth the amount of the loan required. When the treasurer borrows, he shall give notice to banks. 1828, 96, § 16.

SECT. 37. The treasurer, in making the demand upon the banks for a loan as aforesaid, shall equalize, as far as shall be conveniently practicable, the amount of such demand among the several banks within the Commonwealth, having reference to the amount of the obligation of each bank to loan to the Commonwealth, and to the amount previously borrowed of each bank, under authority thereof. Treasurer to apportion amount of loans required. 1828, 96, § 16.

SECT. 38. If any bank shall neglect or refuse, for the space of thirty days after notice from the treasurer, to make the loan required by the treasurer, and to place the amount thereof to the credit of the Commonwealth, such bank shall forfeit and pay into the treasury of the Commonwealth, at the rate of two per cent. a month upon the amount, so long as such neglect or refusal shall continue; provided, that the notice demanding such loan shall be approved by the governor in writing, and accompanied by an attested copy of such act or resolve. Forfeiture, if banks refuse to loan to treasurer. 1828, 96, § 16.

SECT. 39. The treasurer, at the expiration of thirty days, after demand made as provided in the three preceding sections, and after such neglect or refusal of any bank, shall institute an action, in the name of and for the use of the Commonwealth, against the bank so neglecting or refusing, for the recovery of the said penalty; and from month to month, shall institute similar suits for the recovery of the penalty, so long as such neglect or refusal shall continue; and upon obtaining judgment and execution in such actions, he shall cause the amount thereof to be forthwith levied upon the goods, chattels or lands of the bank against which the judgment shall have been obtained. Treasurer, to institute a suit for such refusal. 1828, 96, § 16.

SECT. 40. Any committee, appointed by the legislature for the purpose, may examine into the doings of any bank chartered under the authority of this Commonwealth, and shall have free access to all their books and vaults; and if upon such an examination it shall appear, and after a hearing of said bank thereon, it shall be determined by the legislature, that said bank has exceeded its powers or has failed to comply with any of the rules, restrictions and conditions provided by law, its charter may be declared forfeited. Legislature may examine any bank by committee; and declare its charter forfeited, in case, &c. 1828, 96, § 17.

SECT. 41. If any officer of a bank, or any other person, having charge of the books and property of any bank, shall refuse or neglect to exhibit them to such committee, or shall in any way obstruct the examination thereof by such committee, he shall be deemed guil- Penalty on officers of banks refusing to exhibit books, &c. 1828, 96, § 17.

ty of a misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars, or imprisonment not exceeding three years.

Commonwealth may take stock in banks. 1828, 96, § 18.

SECT. 42. In addition to the capital stock, to which any bank may be entitled, the Commonwealth may subscribe thereto, to an amount not exceeding fifty per cent. of its authorized capital, whenever provision shall be made therefor by law; and the Commonwealth, from the time of making any such payment towards the capital stock of such bank, shall be entitled to its proportionate share of the profits and dividends arising from the amount thereof.

The legislature may appoint directors. 1828, 96, § 19.

SECT. 43. In addition to the directors, authorized by law to be chosen by the stockholders of the several banks, the legislature may from time to time appoint a number of directors in any bank, in such proportion to the whole number, as the sums paid by the Commonwealth towards the stock of said bank shall bear to the whole amount of the stock actually paid in.

Banks, to pay altered bank notes. 1828, 96, § 20.

SECT. 44. Every bank shall be liable to pay, to any bona fide holder, the original amount of any bill of such bank, which shall have been altered to a larger amount, in the course of its circulation, notwithstanding such alteration.

Banks, to pay a tax on capital. 1828, 96, § 21.

SECT. 45. Every bank shall, within ten days after the first Mondays of October and April in each year, pay to the Commonwealth a tax of one half of one per cent. on the amount of stock actually paid in by the stockholders, as is provided in the ninth chapter.

Banks, whose capital stock is not all paid in, to furnish treasurer with abstracts, &c. 1828, 96, § 21.

SECT. 46. Every bank, which shall be hereafter incorporated, or which has not already paid in the whole of its capital stock, shall furnish the treasurer of the Commonwealth, on or before the first Mondays in October and April after every payment of its capital, with an abstract of the amount of stock actually paid by the stockholders into their respective banks, together with the time when the several instalments were paid.

Weights of banks, to be proved every five years. 1828, 96, § 22.

SECT. 47. The directors of the several banks, once in five years, shall have all the weights used in their respective banks compared, proved and sealed by the treasurer of the Commonwealth, or by some person specially authorized by him for that purpose; which shall supersede, so far as respects such banks, the sealing of their weights by the town sealer.

No tender of gold valid, unless weights proved, &c. 1803, 141, § 2. 1828, 96, § 22.

SECT. 48. No tender of gold, by any bank, weighed with weights other than those compared, proved and sealed, as required in the preceding section, shall be legal; and the payer or receiver may also require that the gold shall be weighed in each scale, and the mean weight resulting therefrom shall be considered as the true weight.

Bank shares may be attached and sold. 1828, 96, § 23.

SECT. 49. The shares in any bank shall be liable to be attached on mesne process and taken in execution and sold, agreeably to the provisions of the ninetieth and ninety seventh chapters.

Real estate of banks may be sold on execution. 1828, 96, § 24.

SECT. 50. The lands of any bank may be taken in execution and sold by public auction to the highest bidder; and the officer, levying such execution, having first given notice of the time and place of sale, at least fourteen days previous thereto, in two or more public places in the town where such lands lie, and also in some newspaper printed in the county, and if there be no newspaper printed in said county, then in some one printed in the city of Boston, shall convey the said lands to the purchaser, and such conveyance shall be

effectual, to transfer to the purchaser all the estate and interest of the bank therein.

SECT. 51. The officer, who may levy any such execution, may adjourn the sale from time to time, not exceeding seven days at any one time, until the sale of such lands shall be completed.

Officer may adjourn such sale. 1811, 105. 1828, 96, § 24.

SECT. 52. All the right, title, claim and interest of any bank, in any lands, which have been or shall be mortgaged for security of any debt due or assigned to such bank, may be seized on execution and sold by public auction, in the same manner as is prescribed, in the two preceding sections, for the sale and conveyance of the lands of banks; and any debt, secured by such mortgage and due to such bank, at the time of the sale of the mortgage, shall pass by deed of conveyance executed by the officer, who shall levy such writ of execution; and the purchaser, or his legal representatives, may, in his or their own name, maintain any action, proper to recover such debt, or to obtain possession of such lands, which might have been maintained in the name of the bank, had no such sale been made, and a copy of such mortgage deed, duly certified by the register of deeds, for the county or district, where such lands are situate, and where such mortgage deed is recorded, shall be admissible evidence of such mortgage deed.

Lands mortgaged to banks may be seized on execution, &c. 1828, 96, § 24.

SECT. 53. The cashier or clerk of such bank, on reasonable request, shall furnish the officer serving such execution, or the judgment creditor, with a certified copy of the note or obligation, and the indorsements thereon, secured by such mortgage, together with a statement of all such payments as shall have been made thereon by such debtor, and after the sale of such mortgage, shall deliver said note or obligation to the purchaser thereof.

Cashier or clerk to furnish copies of notes, &c., to the officer levying, &c. 1828, 96, § 24.

SECT. 54. The officer making such seizure on execution shall, if required by the creditor, file a notice thereof in the registry of deeds, and also give a like notice to the cashier or president, or leave the same at the banking house; and no sale or transfer of such note, obligation or mortgage, made by the bank, after such notice, shall have any validity or effect against the purchaser under such sale by auction, but the same shall be void, except only as between the bank and the person to whom the bank shall make such sale or transfer, his heirs, executors, administrators or assigns.

No transfer of such note or mortgage after notice to the bank, &c., shall be valid, except, &c. 1828, 96, § 24.

SECT. 55. All bills shall be issued in the name of the president, directors and company of the bank issuing them, and shall be signed by the president and cashier thereof; but all bills signed by either the president or cashier thereof, which shall be in circulation, through the agency or neglect of any officer of the bank, shall be redeemed by the corporation.

Bills, in whose name and how issued, and when the corporation shall be liable to redeem. 1828, 96, §§ 20 & 25.

SECT. 56. Every bank within this Commonwealth may issue bills under five dollars, to the amount of one quarter part of its capital actually paid in, and no more; but no bank shall issue bills of a less denomination than one dollar, under a penalty of one hundred dollars for each offence.

Denominations of bank notes that may be issued. 1828, 96, § 25.

SECT. 57. No bank shall make or issue any note, bill, check, draft, acceptance, certificate or contract, in any form whatever, for the payment of money, at any future day certain, or with interest, excepting for money that may be borrowed of the Commonwealth,

Banks, not to issue securities payable on a future day certain, or drawing interest, except, &c.

1828, 97, § 2.
1834, 203, § 1.

or of any institution for savings incorporated under the authority of the Commonwealth, and excepting also, that all debts due to any bank from any other bank, including bills of the bank so indebted, may lawfully draw interest.

Amount of loans, &c. to be payable on demand, &c.

Penalty.
1828, 96, § 25.

SECT. 58. No bank shall directly or indirectly make any loan, or grant any discount, unless the amount of the loan or the proceeds of the discount shall be payable by the bank, on demand, in specie, or in the bills of the bank; and every loan or discount, made contrary to the provisions of this section, shall be so far void, that the bank shall not be enabled to recover the amount thereof from the borrower, or from any other person; and every bank, offending against the provisions of this section, shall moreover forfeit the sum of five hundred dollars.

Banks not to take more than six per cent. interest, and existing rate of exchange.
12 Pick. 586.
1828, 96, § 25.
1828, 97, § 1.

SECT. 59. No bank in this state shall take any greater rate of interest or discount on any note, draft or security, than at the rate of six per cent. a year; but such interest or discount may be calculated and taken according to the established rules of banking; provided, that in discounting drafts or bills of exchange, the bank may, in addition to the said interest, charge the then existing rate of exchange between the place where such draft may be discounted and the place where it is payable.

Penalty for offences against the preceding section.
1828, 97, § 3.

SECT. 60. For every offence against the provisions of the preceding section, the bank so offending shall forfeit, to the use of the Commonwealth, the sum of five hundred dollars, to be recovered by the treasurer, who shall prosecute for the same.

All bills, &c. redeemable, in specie on demand, at the banking house, under penalty of two per cent. a month.
15 Mass. 453.
4 Pick. 314.
1828, 96, § 25.

SECT. 61. Every bank, which shall issue any bill, note, check or draft, redeemable in any other manner, than by payment in specie on demand, or payable at any place, other than the place where such bank is by law established and kept, shall be liable to pay the same in specie to the holder thereof on demand at said bank, without a previous demand at the place where the same is, on the face of such bill, note, check or draft, made payable; and if the bank, which issued the same, shall neglect or refuse so to pay on demand, such bank shall be liable to pay to the holder thereof two per cent. a month damages, as before provided in this chapter.

The preceding section not to extend to certain checks and drafts.
1828, 96, § 25.

SECT. 62. Nothing contained in the preceding section shall extend to any check or draft, drawn by the president or cashier of any bank within this state, on any other bank, either within or without the state, for any sum exceeding one hundred dollars; but all such checks or drafts shall first be presented for payment, at the bank on which the same shall be drawn; and, in default of payment the holder shall be entitled to recover against the bank, which issued the same, the amount of such check or draft, with additional damages of two per cent. a month on the amount thereof, from the time when the bank issuing the same shall have refused payment thereof.

And banks may draw for any balance due.
1828, 96, § 25.

SECT. 63. Nothing contained in this chapter shall restrain any bank from drawing any check or draft for any balance due to said bank.

Punishment for embezzlement by bank officers.
1824, 51, § 1.
1828, 96, § 26.

SECT. 64. If any cashier or other officer or servant of any bank shall embezzle, or fraudulently convert to his own use, or shall fraudulently take or secrete, with intent to convert to his own use, any effects or property belonging to such bank or deposited therein, he

shall be punished as is provided in the one hundred and twenty sixth chapter.

SECT. 65. The cashier of each bank shall, in every year, make a return of the state of such bank, as it existed at two oclock in the afternoon of the first Saturday, in such preceding month as the governor may direct; and he shall transmit the same, as soon as may be, not exceeding fifteen days thereafter, to the secretary of the Commonwealth; which return shall specify the amount due from the bank, designating, in distinct columns, the several particulars included therein, and shall also specify the resources of the bank, designating, in distinct columns, the several particulars included therein; and the said return shall be in substance, as follows, to wit: Cashiers to make returns of the state of the banks annually to secretary.

State of — Bank, on the first Saturday of — 18 , *2 o'clock, P. M.* Form of return.

DUE FROM THE BANK.							RESOURCES OF THE BANK.										
Capital stock.	Bills in circulation.	Net profits on hand.	Balances due to other banks.	Cash deposited, including all sums whatsoever due from the bank, not bearing interest, its bills in circulation, profits and balances due to other banks excepted.	Cash deposited bearing interest.	Total amount due from the bank.	Gold, silver and other coined metals in its banking house.	Real estate.	Bills of other banks incorporated in this state.	Bills of other banks incorporated elsewhere.	Balances due from other banks.	Amount of all debts due, including notes, bills of exchange, and all stocks and funded debts of every description, excepting the balances due from other banks	Total amount of the resources of the bank.	Rate and amount of the last dividend.	Amount of reserved profits at the time of declaring the last dividend.	Amount of debts due to the bank, secured by a pledge of its stock.	Amount of debts due and not paid, and considered doubtful.

Which return shall be signed by the cashier of such bank, who shall make oath, before some justice of the peace, to the truth of said return, according to his best knowledge and belief; and a majority of the directors of each bank shall certify and make oath, that the books of the bank indicate the state of facts so returned by the cashier, and that they have full confidence in the truth of said return; and no further return shall be required from said banks. —how authenticated. 1828, 96, § 27. 1828, 97, § 4.

SECT. 66. Every bank, neglecting to comply with the provisions of the preceding section, shall forfeit to the use of the Commonwealth, to be recovered by the treasurer thereof, one hundred dollars for each and every day's neglect. Penalty for neglect to make returns. 1828, 97, § 7.

SECT. 67. The secretary of the Commonwealth shall furnish four printed copies of the form of the return required by this chapter, to the cashier of every bank, in the months of March or April, annually. Secretary to provide forms of returns. 1828, 97, § 5.

SECT. 68. The secretary of the Commonwealth, after he shall have received the returns from the several banks as aforesaid, shall as soon as may be, cause to be prepared and printed a true abstract from those returns, with each column of such abstract added up; and he shall transmit by mail one copy thereof to the cashier of each — to prepare abstracts of the returns. 1828, 96, § 29. —his further duty as to returns.

bank in this state, and shall submit the same to the legislature at the next session thereof.

All banks, entitled to new privileges, granted to any bank. 1828, 96, § 31.

SECT. 69. If, during the continuance of any existing bank charter, any new or greater privileges shall be granted to any bank, which may hereafter be created, every bank in operation at the time of such grant shall be entitled to the same privileges.

Penalty for passing or issuing any notes, &c., except, &c. 1833, 206.

SECT. 70. If any person shall issue or pass any note, bill, order, or check, other than foreign bills of exchange, the notes or bills of some bank, incorporated by the laws of this Commonwealth, or by the laws of the United States, or of some one of the United States, or by the laws of either of the British Provinces in North America, with the intent that the same shall be circulated as currency, he shall forfeit for every such offence the sum of fifty dollars.

SAVINGS BANKS.

Savings banks to be governed by the provisions of this chapter. 1834, 190, § 1.

SECT. 71. All savings banks or institutions for savings, that have been, or shall hereafter be, incorporated under the authority of this Commonwealth, may exercise the powers and shall be governed by the rules, and be subject to the duties, liabilities and other provisions, contained in the following sections of this chapter, so far as the same shall be consistent with the provisions of the respective charters, that have been or shall be granted to such institutions.

Officers of such banks. 1834, 190, § 2.

SECT. 72. The officers of every such corporation shall consist of a president, treasurer, and such number of trustees or managers, as the corporation shall agree upon, together with such other officers, as may be found necessary for the ordinary management of its affairs.

Officers to be sworn. Tenure of office. Treasurer to give bond. 1834, 190, § 3.

SECT. 73. All the officers shall be duly sworn to the faithful discharge of their respective duties, and shall hold their several offices, until others are chosen and qualified in their stead; and the treasurer shall further give bond, to the satisfaction of the managers or trustees, for the faithful discharge of the duties of his office.

Choice and appointment of officers. 1834, 190, § 3.

SECT. 74. The officers aforesaid, except the treasurer, shall be chosen at the annual meetings of such corporations, to be held at such time as the by-laws thereof may direct; the treasurer shall be appointed by the managers or trustees, and shall hold his office during their pleasure; and if any office become vacant during the year, the managers or trustees may appoint a person to fill the same, until it shall be regularly filled at the next annual meeting.

Special meetings, how called 1834, 190, § 4.

SECT. 75. In addition to the annual meetings of such corporations, special meetings thereof may be held at any time, by order of the trustees or managers thereof; and the treasurer shall also notify a special meeting, upon the requisition in writing of any ten members of the corporation; and notice of all meetings shall be given by public advertisement in some newspaper of the county, where the corporation is established, or, if there be no such newspaper, then in some newspaper of the city of Boston.

Members how elected, and how they may withdraw. 1834, 190, § 5.

SECT. 76. Every such corporation may, at any legal meeting, elect by ballot any citizen of this Commonwealth to be a member thereof; and any member may cease to be a member of such corporation, at any annual meeting, by filing a written notice of his intention so to do, with the treasurer of the corporation, three months at

least before such meeting; and no person shall continue to be a member, after removing out of the state.

SECT. 77. Every such corporation may receive on deposite, for the use and benefit of the depositors, all sums of money offered for that purpose; provided, that it shall not hold, at the same time, more than one thousand dollars of any one depositor, other than a religious or charitable corporation.

Deposites may be received not exceeding, &c. 1834, 190, § 6.

SECT. 78. All such sums may be invested in the stock of any bank, incorporated under the authority of this Commonwealth, or of the United States, or may be loaned on interest to any such bank, or may be loaned on bonds or notes, with collateral security of the stock of any of the said banks, at not more than ninety per cent. of its par value; or they may be invested in the public funds of this Commonwealth, or of the United States, or loaned on a pledge of any of the said funds; or invested in loans to any county, or town in this state, or in mortgages of real estate; provided, that the whole amount of stock, held by the institution at one time in any one bank, both by way of investment and as security for loans, shall not exceed one half of the capital stock of such bank, and that not more than three quarters of the whole sum, deposited in the institution, shall be at any one time invested in mortgages of real estate.

Deposites how to be invested. 1834, 190, § 7.

SECT. 79. If the moneys, held by any such corporation, cannot be conveniently invested in any or all of the modes herein before prescribed, then it shall be lawful to loan, not exceeding one half part of the amount thereof, on bonds or other personal securities, with at least two sureties; provided, that the principal and sureties shall all be citizens of this Commonwealth, and resident therein.

Same subject. 1834, 190, § 8.

SECT. 80. No officer or committee of such corporation, charged with the duty of investing the deposites, shall borrow any portion thereof, or use the same, except in payment of the expenses of the corporation.

Officers, who invest, shall not borrow. 1834, 190, § 9.

SECT. 81. The income or profit of all deposites shall be divided among the depositors, or their legal representatives, in just proportion, with a deduction of all reasonable expenses incurred in the management thereof; and the principal deposites may be withdrawn, at such time or in such manner, as the corporation shall in its by-laws direct.

Dividends, how made, and deposites, how withdrawn. 1834, 190, § 10.

SECT. 82. The treasurer of every such corporation shall, as often as once in every year, make return of the state thereof, as it was at two o'clock in the afternoon of the last Saturday of some preceding month, to be prescribed by the governor; which return shall be made to the secretary of the Commonwealth, within fifteen days after an order to that effect; and said return shall specify the following particulars, namely:

Treasurer to make return annually to the secretary of the Commonwealth.

Contents of return;

The number of depositors.
Total amount of deposites.
Amount invested in bank stock.
Amount deposited in banks on interest.
Amount secured by bank stock.
Amount invested in the public funds.
Loans on security of the public funds.
Loans on mortgages of real estate.

Loans to county or town.
Loans on personal securities.
Amount of cash on hand.
Total dividends for the year.
Annual expenses of the institution.

—and how authenticated. 1834, 190, § 11.

All of which shall be certified and sworn to by the treasurer; and five or more of the trustees or managers of the corporation shall also certify, and make oath, that the said return is correct, according to their best knowledge and belief.

The secretary to furnish blank forms, and prepare abstracts of returns. 1834, 190, § 11.

SECT. 83. Blank forms of such returns shall be furnished to every such corporation by the secretary of the Commonwealth; and he shall prepare suitable yearly abstracts thereof, and lay the same before the general court.

The general court may make further regulations, and examine into condition of savings banks. 1834, 190, § 12.

SECT. 84. The general court may at any time make other or further regulations, for the government of institutions for savings, or take away their corporate powers; and all such institutions and their officers shall be subject to examination, by a committee of the general court, in like manner, and under all the liabilities and penalties, provided in this chapter, with respect to the examination of the doings of banking corporations.

CHAPTER 37.

OF INSURANCE COMPANIES.

SECTION

INSURANCE COMPANIES.

1. Insurance companies, to be governed by the provisions of this chapter.
2. The first meeting and special meetings, how to be called.
3. Officers of such companies.
4. Clerk to be chosen and sworn.
5. Choice of directors, and mode of voting.
6. President to be chosen and sworn—Vacancies to be filled.
7. A majority of the directors shall make a quorum.
8. Directors, to appoint officers and to make rules and by-laws.
9. Capital stock to be paid in within twelve months.
10. " how to be invested.
11. Part of the capital may be loaned on bottomry, &c.
12. Companies may take marine and life risks, and risks against fire.
13. How policies shall be subscribed.
14. Insurance companies shall not trade, &c.
15. Dividends to be made of profits.
16. Individual responsibility of stockholders in certain cases.
17. Statement of profits to be laid before the stockholders, triennially, &c.
18. After losses to a certain extent, the officers individually liable for further insurance.
19. Public notice to be given of amount of stock, &c.
20. Right of legislature to examine, &c.
21. Limitation of single risks.
22. Insurance companies may be taxed.
23. In suits where a company is a party, the general issue may be pleaded, if notice given, &c.

MUTUAL INSURANCE COMPANIES.

24. Powers, liabilities, &c., of mutual insurance companies.
25. Number of directors, and mode of voting.
26. Officers to be chosen; treasurer to give bond; secretary to be sworn, &c.
27. Officers to remain till others are chosen.

SECTION
28. When $50,000 subscribed, company may insure for seven years.
29. Policies, how to be signed.
30. Assured become members.
31. Funds, how to be invested, and appropriated—Assessments, when made.
32. When the directors shall be personally liable for the corporation.
33. When the treasurer shall be personally liable.
34. When directors are liable, creditors may sue, and how.
35. Directors, to have a remedy against the corporation, and other directors.
36. Policies, to create a lien on the interest insured, &c.
37. Proceedings in case of resort to the lien.
38. Members, entitled to have their share on expiration of their policy.
39. Liability to be taxed, and to be examined by legislature.

SECTION
AGENCIES OF FOREIGN INSURANCE COMPANIES WITHIN THIS STATE.
40. Agents of foreign insurance companies, shall deposite copies of charters, &c., with the treasurer.
41. Agents of foreign insurance companies, to deposit with treasurer, statements of the investments, &c., of foreign property.
42. No contract shall be made on account of such company, unless, &c.
43. Penalty on agents, for violating provisions of this chapter.
44. Tax on agents of such companies, in case, &c.
45. Agents, to make semi-annual returns, to the treasurer, in case, &c.
46. Penalty on agents for neglect or fraud.
47. Agents, to give bond to the treasurer, in case, &c.
48. But not until the expiration of 60 days, &c.

INSURANCE COMPANIES.

SECTION 1. All insurance companies, that have been or that shall hereafter be incorporated in this Commonwealth, may exercise the powers, and shall be subject to the duties and liabilities, contained in this chapter, so far as may be consistent with the provisions of their respective charters.

Insurance companies to be governed by provisions of this chapter.

SECT. 2. The first meeting of any such insurance company, for the purpose of organizing the same, shall be called, in the manner provided in the forty fourth chapter, for calling the meetings of corporations; and special meetings shall be called by the secretary or clerk of the company, upon the written application of the owners of one fifth part of the capital stock, to be held at such time and place as he shall direct, for the purposes set forth in such application; and such special meetings shall be notified in the manner provided either in the act of incorporation, or in the by-laws of such company, respectively.

First meeting and special meetings, how called. 1819, 46. 1833, 83, § 1.

SECT. 3. The business of every such company shall be managed and conducted by not less than seven directors, one of whom shall be president of the company; and they shall hold their offices for one year, and until others are chosen and qualified in their stead; and they shall all be stockholders of the company, and residents in this state.

Officers of such companies. 1832, 95, § 3.

SECT. 4. All insurance companies, which have been incorporated since the sixth day of March, in the year one thousand eight hundred and thirty two, and all, which shall hereafter be incorporated, shall elect by ballot, annually or oftener, a secretary who shall be the clerk of the company, and shall be sworn to the faithful discharge of his duty; and he shall, in addition to his other official duties, keep a true record of all the votes of the stockholders and of the directors, and a true list of the stockholders, and of the number of shares held by each one, and shall record every transfer of shares in a transfer book to be by him kept for that purpose.

Clerk to be chosen and sworn. 1832, 95, § 1.

Choice of directors, and mode of voting. 1832, 95, § 3.

SECT. 5. The directors shall be chosen by the stockholders, at such time and place and in such manner, as shall be provided in the by-laws of the company, and the elections shall be made by ballot; and absent stockholders may vote by proxy authorized in writing; and each share shall entitle the holder to one vote; provided, that no one stockholder shall be allowed more than thirty votes.

President to be chosen and sworn. Vacancies to be filled. 1832, 95, § 4.

SECT. 6. The directors shall choose from their number one person to be president, who shall be sworn to the faithful discharge of the duties of his office; and every vacancy in the office of president and directors, that may occur during the year, may be filled by a new election, in the manner prescribed in this and the preceding sections.

A majority of the directors shall make a quorum. 1832, 95, § 5.

SECT. 7. Any four of the directors shall constitute a quorum for the transaction of business; and all questions before them shall be decided by a majority of those present, except in cases which are otherwise provided for by law.

Directors, to appoint officers and to make rules and by-laws. 1832, 95, § 5.

SECT. 8. The directors may appoint such officers as they may think necessary, and allow them a reasonable compensation; and shall make all proper rules and by-laws, for conducting the business of the company; provided always, that such rules and by-laws shall not be repugnant to the laws of the Commonwealth.

Capital stock to be paid in within 12 months. 1832, 95, § 2.

SECT. 9. The capital stock of such companies shall be all paid in within twelve months from the grant of their respective charters.

Capital stock, how to be invested. 1817, 120, § 3.

SECT. 10. The capital stock of said companies, paid at each instalment, shall within six months thereafter be invested, either in the funded debt of the United States, or of this state, or in the stock of any bank incorporated under the authority of the United States, or of this state, in either or all of them, and in such proportion, as may be most for the interest of said companies; or any sum, not exceeding two third parts of the capital, may be loaned to persons resident in this state, on mortgages of real estate situated therein, or on pledges of the public stocks of the United States, or of this state, or of any bank incorporated under the authority of the United States, or of this state.

Part of capital may be loaned on bottomry, &c. 1817, 120, § 3.

SECT. 11. The president and directors of the said companies may, nevertheless, from time to time, withdraw from the said investments any portion of their capital stock, not exceeding one half, and may loan the same to any person, resident in this state, on bottomry or respondentia; provided, that the sum loaned on any one bottom at one time, together with all sums insured in any other way upon the same bottom, shall not exceed one tenth part of the capital stock of the company, and that no such loan on bottomry or respondentia shall be made, without the assent of three fourths of the directors of the company; and an entry of every such loan, and of the assent as aforesaid, shall be made in the records of the company, and shall be laid before the stockholders at their next meeting.

Companies may take marine and life risks, and risks against fire. 1817, 120, § 1. 1819, 141.

SECT. 12. Every such company may make insurance upon vessels, freight, money, goods and effects, and against captivity of persons, and on the life of any person, during his absence at sea, and on money lent upon bottomry and respondentia; and they may also make insurance against fire, on any dwelling houses or other buildings, and on merchandize or other property, within the United States.

How policies

SECT. 13. All policies of insurance, made by such companies,

shall be subscribed by the president, or in case of his death, inability, or absence, by any two of the directors, and countersigned by the secretary of the company; and they shall be binding upon the company, in like manner as if executed under the corporate seal thereof.

shall be subscribed. 8 Pick. 56. 1817, 120, § 1.

SECT. 14. The said companies shall not, directly or indirectly, deal or trade in buying and selling any goods, wares, merchandize, stocks or commodities whatever.

Insurance companies shall not trade. 1817, 120, § 3.

SECT. 15. The directors of every such company, at such times as their charter or by-laws shall prescribe, shall make dividends of so much of the profits of the company, and of the interest arising from their capital stock, as to them shall appear advisable; but the moneys received and notes taken for premiums of risks, which shall be undetermined and outstanding at the time of making such dividends, shall not be considered as part of the said profits.

Dividends to be made of profits. 1817, 120, § 2.

SECT. 16. In case of any loss, whereby the capital stock of any of the said companies shall be lessened, before all the instalments are paid in, each stockholder's estate shall be held liable for the instalments, that may remain unpaid on his shares, at the time of such loss taking place; and no dividend shall be thereafter made, until a sum arising from the profits of the business of the company, equal to such diminution, shall have been added to the capital.

Individual responsibility of stockholders in certain cases, 1812, 120, § 1.

SECT. 17. Once in every three years, and oftener if required by the stockholders, the directors shall lay before them, at a meeting, an exact and particular statement of the profits, if any there be, after deducting losses and dividends.

Statement of profits to be laid before stockholders, triennially, &c. 1817, 120, § 1.

SECT. 18. If any of the said companies shall be under liability for losses, to an amount equal to their capital stock, and the president or directors, after knowing the same, shall make any new or further insurance, the estates of all, who shall make such insurance, or assent thereto, shall be jointly and severally liable, for the amount of any loss, which shall take place under such insurance.

After losses to a certain extent, the officers individually liable for further insurance. 1817, 120, § 4.

SECT. 19. The president and directors of every such company shall, previous to subscribing any policy, and once in every year afterwards, publish, in two newspapers printed in this state, the amount of their stock, against what risks they insure, and the largest sum they will take on any one risk.

Public notice to be given of amount of stock, &c. 1817, 120, § 5.

SECT. 20. The president and directors of every such company shall, whenever required by the legislature, lay before them a statement of the affairs of the company, and submit to an examination on oath concerning the same.

Right of legislature to examine, &c. 1817, 120, § 6.

SECT. 21. The said companies shall never take on any one risk, whether it be a marine risk, or an insurance against fire, a sum exceeding one tenth part of their capital stock actually paid in.

Limitation of single risks. 1817, 120, § 7.

SECT. 22. All insurance companies, that have been incorporated since the sixth day of March, in the year one thousand eight hundred and thirty two, shall be liable to be taxed by any general law providing for the same.

Insurance companies may be taxed. 12 Mass. 252. 1832, 95, § 7.

SECT. 23. In all suits and actions, in which any insurance company shall be a party, the defendants may plead the general issue, and thereupon give in evidence any facts, causes and circumstances, which they shall have notified in writing to the plaintiffs or their attorney, seven days at least before the day of the trial thereof; unless

In suits when a company is a party, the general issue may be pleaded, if notice given, &c. 1832, 95, § 8.

the matter of defence is of such a nature, that it would be inconsistent with the plea, or would not tend to maintain the issue.

MUTUAL FIRE INSURANCE COMPANIES.

Powers, liabilities, &c., of mutual fire insurance companies. 1835, 147, §§ 1, 2.

SECT. 24. All mutual fire insurance companies, which shall hereafter be incorporated, or whose charters shall be extended, may exercise the powers and shall be subject to the duties and liabilities contained in this chapter, and in the provisions of the first three sections of the forty fourth chapter.

Number of directors, and mode of voting. 1835, 147, § 3.

SECT. 25. Every such corporation shall annually elect not less than five directors, who shall be citizens of this state, and after the first election members of the corporation, and they shall manage and conduct all the business thereof; and all elections shall be by ballot, and in the manner that shall be prescribed by the by-laws; but no one member shall be allowed more than five votes; and absent members may vote by proxy authorized in writing.

Officers to be chosen.

Treasurer to give bond.

Secretary to be sworn, &c. 1835, 147, § 4.

SECT. 26. The directors shall choose one of their number to be president, who shall also be president of the corporation; and they shall also choose a secretary and treasurer; the treasurer shall give bonds, with sureties, in such sum as the directors shall order; and the secretary shall be sworn to the faithful discharge of his duty, and shall keep a true record of all votes of the corporation and of the directors, and of all policies issued by the corporation, and of all assignments of such policies assented to by them; the record of which policies and assignments shall be open to the inspection of any person interested therein.

Officers to remain, till others are chosen. 1835, 147, § 4.

SECT. 27. All the officers of such corporation shall hold their offices until others are chosen and qualified; and all vacancies may be filled by a special election, in the manner prescribed for elections of officers at the annual meetings.

When $50,000 dollars subscribed, company may insure for 7 years. 1835, 147, § 5.

SECT. 28. When the sum of fifty thousand dollars shall be subscribed, to be insured by any such corporation, they may insure, for a term not exceeding seven years, upon any building within this state, any amount not exceeding three fourths of the value thereof.

Policies, how to be signed. 8 Pick. 56. 1835, 147, § 5.

SECT. 29. All policies of insurance, made by such corporation, shall be subscribed by the president, or in case of his death, absence or inability, by any two of the directors, and countersigned by the secretary, and shall be binding upon the corporation, as if executed under their corporate seal.

Assured become members.

SECT. 30. Every person, insured by any such corporation, shall be a member thereof, so long as he shall be so insured.

Funds, how to be invested and appropriated. Assessments, when made. 1835, 147, § 7.

SECT. 31. The funds of every such corporation shall be invested in stocks, or loaned on security, as the directors may order, and shall be appropriated, first, to pay the expenses of the corporation, and then, to pay the damages which any member may be entitled to recover on his policy; and if any member shall have a just claim on the corporation, founded on a policy issued by them, exceeding the amount of their then existing funds, exclusive of deposite notes given by the members, the directors shall forthwith assess such sum, as may be necessary to pay the same, upon the members, in proportion to the amount of their premiums and deposites, severally, for seven years; but no member shall be liable to pay, in the whole, more than double the amount of his premium and deposite.

SECT. 32. Whenever sufficient goods or estate of any such corporation cannot be found, to satisfy any execution issued against them, upon a judgment recovered on any policy made by them, and the said corporation have goods or estate to satisfy such execution, and the directors shall neglect or refuse to pay the same, or if the directors shall, for thirty days after the rendition of such judgment, refuse or neglect to make such an assessment, as they may be authorized to make therefor, and to deliver the same to the treasurer for collection, or if they shall refuse or neglect to apply such assessment, when collected, towards satisfying such execution; then and in either of the cases aforesaid, the directors shall be personally liable for the whole amount of said execution.

When the directors shall be personally liable for the corporation. 1835, 147, § 8.

SECT. 33. Whenever the treasurer of such corporation shall unreasonably neglect or refuse to collect any assessment, committed to him by the directors for collection, and to apply the proceeds of the same to discharge the claim for which the said assessment was made, he shall, in his private capacity, be liable for the aggregate amount of such assessment, to the person having such claim against the corporation; and the treasurer may retain to his own use, out of any moneys received by him for the corporation, any sums which he may pay in consequence thereof.

When the treasurer shall be personally liable. 1835, 147, § 9.

SECT. 34. Whenever the directors shall be liable, by the provisions of this chapter, to pay any execution issued against such corporation, the creditor in such execution may have a bill in equity in the supreme judicial court, or an action of debt against the said directors, or any of them, in which he shall set forth the claim against the corporation, and the grounds on which he expects to charge the defendants personally.

When directors are liable, creditors may sue, and how.

SECT. 35. Any director, who shall, voluntarily or by compulsion, pay any execution against such corporation, for which he is personally liable, may have a bill in equity in the said court, for a contribution, against any other director or directors, for his or their due proportion thereof; and every director shall also have a remedy, by action at law or by bill in equity, against the corporation, for any money so paid by him.

Directors to have a remedy against the corporation and other directors. 1835, 147, § 10.

SECT. 36. Every policy, made by such corporation, shall of itself create a lien on the interest of the person insured in any building thereby insured, and in the land under the same, for securing the payment of his deposite note, and any sums for which he may be assessed, in consequence of effecting such policy; provided, the extent of such liability, and the intention of the corporation to rely upon such lien, shall be set forth in the policy, and that, upon the expiration of the policy, or upon the alienation of the estate to a bona fide purchaser, the lien shall cease as to all losses, which shall thereafter happen, unless the policy shall be continued in force by consent of the purchaser.

Policies, to create a lien on the interest insured, &c. 1835, 147, § 11.

SECT. 37. If it shall become necessary to resort to such lien, for the payment of any sum secured thereby, the treasurer of the corporation shall demand payment thereof, from the assured or his legal representatives, and also from any tenant in possession of the insured premises, setting forth in writing the sum due; and in case the same shall not be paid, the corporation may have an action therefor, and

Proceedings in case of resort to the lien. 1835, 147, § 11.

may levy any execution, issued in such action, upon the estate subject to the lien; and the officer making the levy may sell the whole or any part thereof by auction, and shall apply the proceeds of such sale, in like manner as is provided by law in the sale upon execution of an equity of redemption of mortgaged real estate; and the owner shall have the like right to redeem the same, as is provided in case of the sale last mentioned.

Members, entitled to have their share, on the expiration of policy. 1835, 147, § 12.

SECT. 38. Every member of such corporation shall, at the expiration of his policy, have a right to a share of the funds then remaining, after all expenses and losses then incurred have been deducted, in proportion to the sums by him actually paid on account of said policy.

Liability to be taxed and to be examined by legislature. 12 Mass. 252. 1835, 147, § 13.

SECT. 39. Every such corporation shall be liable to be taxed by any general law for taxing similar corporations; and the directors thereof shall, when required by the legislature, lay before them or before any committee appointed by them, a statement of the affairs of the corporation, and submit to an examination on oath concerning the same.

AGENCIES OF FOREIGN INSURANCE COMPANIES WITHIN THIS STATE.

Agents of foreign insurance companies shall deposite copies of charters, &c. with the treasurer. 1826, 141, § 1. —also statements of the investments, &c. of such companies, and shall renew the same annually. 1826, 141, § 2.

SECT. 40. Every person, who shall undertake to make insurance in this state, as the agent for, or in behalf of, any corporation established in any other state or country, shall deposite with the treasurer of this state, a copy of the charter of such foreign corporation, and a copy of the power of attorney given to him by the corporation.

SECT. 41. Every such agent shall also, before making any contract of insurance as aforesaid, deposite, with the treasurer of this Commonwealth, a statement signed and sworn to by a majority of the directors of the corporation for which he acts, specifying the amount of its capital, and the manner of its investment, designating the amounts invested, respectively, in mortgages, in public securities, in the stock of incorporated companies, (stating what companies) and also the amount invested in other securities, particularizing each item of investment; and the agent shall publish said statement, in some newspaper printed in the county wherein he transacts the business of his agency; and he shall also, on the first Monday of January, in every year, during the continuance of his agency, deposite a similar statement of the capital of the corporation, and the investment thereof, to be annually made out, signed and sworn to as before directed.

No contract shall be made on account of such company, unless, &c. 1826, 141, § 3.

SECT. 42. No person shall be allowed to act as agent for such foreign insurance company, in making any contract of insurance with any person in this state, unless the capital stock of the company, for which he acts, amounts to the sum of two hundred thousand dollars, actually paid in in money and invested, exclusively of any obligations of the stockholders of any description, nor unless said company shall be restricted, by its charter or otherwise, so that it cannot lawfully incur, in any one risk, a greater hazard than one tenth part of the amount of its capital.

Penalty on agents, for violating provisions of this chapter. 1826, 141, § 3.

SECT. 43. If any person shall undertake, as agent for any such foreign corporation, to make or renew, directly or indirectly, any contract of insurance within this state, and with any person resident therein, without having complied with the requisitions of the three

preceding sections, or in any way contrary to the true intent and meaning thereof, he shall forfeit for every such offence the sum of five hundred dollars.

SECT. 44. If, by the laws of any of the United States, any tax or excise shall be imposed on any person, acting within such state, as the agent of any insurance company incorporated in this state, or on the business done, or the amount insured, by such agent, then every person acting in this state, as the agent of any insurance company, incorporated in such other state, shall pay to the treasury of this state a tax of one half of one per cent. on the whole amount insured or procured to be insured by him in this state as such agent.

Tax on agents of such companies, in case, &c. 1832, 140, § 1.

SECT. 45. Every agent of an insurance company, incorporated in another state, wherein the like agencies are taxed as aforesaid, shall, on the first Mondays of April and October, in every year, during the continuance of his agency, make a return on oath, to the treasurer of this state, of the amount insured or procured to be insured by him in this state as such agent, during the then last half year, and shall at the same time pay to the treasurer the said tax of one half of one per cent. thereon.

Agents to make semi-annual returns to the treasurer, in case, &c. 1832, 140, § 1.

SECT. 46. If any such agent shall neglect to make such returns, as are required in the preceding section, or if he shall make the same falsely or fraudulently, he shall for every such offence forfeit the sum of one thousand dollars.

Penalty on agents for neglect or fraud. 1832, 140, § 1.

SECT. 47. Every agent of an insurance company, incorporated in another state, in which the like agencies are taxed as aforesaid, shall, before making or procuring to be made any contract of insurance, as aforesaid, give a bond to the treasurer of this state, with two or more sureties to be approved by him, in the sum of five thousand dollars at least, with condition to make the semi-annual returns before required, and to pay the said tax of one half of one per cent.

Agents to give bond to the treasurer, in case, &c. 1832, 140, § 2.

SECT. 48. If any such tax or excise, on the agents of insurance companies, shall be hereafter imposed in any other of the United States, any person, acting or proposing to act as agent in this state, for any insurance company incorporated in such other state, may proceed in his agency for the space of sixty days after the imposing of such tax or excise in such other state, and shall not be required to give such bond to the treasurer of this state, nor to pay the said tax, nor to make any return of the amount insured by him, until the expiration of the said sixty days.

—but not until the expiration of 60 days, &c. 1832, 140, § 2.

CHAPTER 38.

OF MANUFACTURING CORPORATIONS.

SECTION
1. Powers and liabilities of manufacturing corporations, chartered since February 23, 1830, and to be chartered.
2. Officers of such corporations.
3. President and directors, how to be chosen.
4. Clerk and treasurer to be chosen, and their duties.

SECTION
5. Agents, &c., how to be appointed.
6. By-laws.
7. Stockholders' meetings, votes, quorum, &c.
8. Capital, to remain as under existing laws, until, &c.
9. Stock of future companies to be divided into shares.
10. Shares, to be numbered, and certificates given.
11. Capital stock may be increased, provided, &c.
12. Shares, how to be transferred.
13. Assessments may be made on the shares, not exceeding, &c.
14. Shares may be sold to pay assessments.
15. Notice of such sales, and manner of transfer.
16. Stockholders, in what companies and for what debts individually liable.
17. Certificate of capital in such companies to be filed and recorded.
18. Same provision as to any increase of capital.
19. For neglect of duties in two preceding sections, officers individually liable.
20. Mode of reducing capital stock, and liability of directors, if not pursued.
21. If capital be withdrawn before payment of debts, stockholders liable.
22. Notice to be given, annually, of the state of corporate affairs, or stockholders to be liable.
23. If dividends be made and corporation insolvent, each director consenting thereto liable.
24. Notes of stockholders not receivable for stock; liability of each officer, consenting to a loan to stockholders.
25. Debts of the corporation, not to exceed, &c.—Liability of directors, in case, &c.
26. If former corporations adopt the provisions of this chapter, they shall have the benefit thereof.
27. Rights of former corporations, which have adopted, &c., continued.
28. If false certificates be made knowingly, officers liable.
29. When officers liable, in what mode suits may be brought.
30. When stockholders' persons and property may be taken on writs, &c., against corporations.
31. When party may have bill in equity against officers and stockholders.
32. Remedy of stockholders who pay company debts.
33. " of officers who pay company debts.
34. Executors, guardians, trustees, and pledgees of stock, not to be liable as stockholders.
35. Executors, &c., and pledgors, may vote as stockholders.
36. Corporations now existing may act under their charters, except, &c.—What charters revocable by legislature.
37. The provisions of this chapter may be repealed; saving rights, &c.

Powers and liabilities of manufacturing corporations, chartered since Feb. 23, 1830, and to be chartered. 8 Pick. 455.

SECTION 1. All corporations, that may hereafter be established within this state, for the purpose of carrying on any kind of manufacture, and all corporations of that description, which have been established since the twenty third day of February, in the year one thousand eight hundred and thirty, and also the officers of every such corporation, and the stockholders therein, may exercise the powers, and shall be governed by the provisions, and be subject to the liabilities, contained in this chapter.

Officers of such corporations. 13 Pick. 291. 1829, 53, § 1.

SECT. 2. The business of every such manufacturing company shall be managed and conducted by the president and directors thereof, and such other officers, agents and factors, as the company shall think proper to authorize for that purpose; and every such company shall also have a clerk and a treasurer.

President and directors, how to be chosen. 1829, 53, § 1.

SECT. 3. The directors shall be not less than three in number; and they shall be chosen annually by the stockholders, at such time and place, as shall be provided by the by-laws of the company, and shall hold their offices for one year, and until others are chosen and qualified in their stead; and one of the directors shall be chosen president, either by the directors, or by the company, as shall be directed by the by-laws.

SECT. 4. The clerk and treasurer shall also be chosen annually by the stockholders, in manner aforesaid, and shall hold their offices until others are chosen and qualified in their stead; the clerk shall be sworn to the faithful discharge of his duty, and shall record all the votes of the company in a book to be kept for that purpose, and perform such other duties as shall be assigned to him, and the treasurer shall give bond, in such sum, and with such sureties, as shall be required by the by-laws, for the faithful discharge of his duty.

Clerk and treasurer to be chosen, and their duties. 9 Pick. 80. 1829, 53, § 1.

SECT. 5. All other agents, factors and officers of the company, shall be chosen and appointed in such manner as shall be directed by the by-laws.

Agents, &c. how to be appointed. 1829, 53, § 1.

SECT. 6. Every such company may make by-laws, for their own regulation and government, with penalties for the breach thereof, not exceeding twenty dollars; provided, that such by-laws shall not be repugnant to the laws of the Commonwealth.

By-laws. 1829, 53, § 1.

SECT. 7. At all meetings of the company, absent stockholders may vote by proxy authorized in writing; and every company may determine, by its by-laws, what number of stockholders shall attend, either in person or by proxy, or what number of shares or amount of interest shall be represented at any meeting, in order to constitute a quorum; and if the quorum shall not be so determined by the company, a majority in interest of the stockholders shall constitute a quorum.

Stockholders' meetings. votes, quorum, &c. 16 Mass. 94. 1829, 53, § 15.

SECT. 8. The capital stock of every manufacturing company, incorporated since the said twenty third day of February, in the year one thousand eight hundred and thirty, the amount whereof has been fixed and limited by such company, according to law, shall remain so fixed; subject to be increased or reduced by the company, pursuant to the provisions of this chapter.

Capital, to remain as under existing laws, until, &c. 1829, 53, § 3.

SECT. 9. The amount of the capital stock, of every such company, that shall be hereafter incorporated, shall be fixed and limited by the company, and shall be divided into shares, at its first meeting, and a record thereof shall be made by the clerk.

Stock of future companies to be divided into shares. 6 Pick. 23. 1829, 53, § 3.

SECT. 10. The shares shall be numbered in progressive order, beginning at number one; and every stockholder shall have a certificate, under the seal of the corporation and signed by the treasurer, certifying his property in such shares, as shall be expressed in the certificate.

Shares, to be numbered and certificates given. 16 Mass. 94. 1829, 53, § 3.

SECT. 11. Every such company may, at any meeting called for that purpose, increase its capital stock, and the number of shares therein; provided, that the stock when so increased shall not exceed the amount authorized by law.

Capital stock may be increased, provided, &c. 1829, 53, § 3.

SECT. 12. Any shares may be transferred by the proprietor thereof, by a deed under his hand and seal, acknowledged before some justice of the peace, and recorded by the clerk of the corporation, in a book to be kept for that purpose; and the purchaser named in such deed, so recorded, shall, on producing the same to the treasurer, and delivering to him the former certificate, be entitled to a new certificate.

Shares, how to be transferred. 1829, 83, § 4.

SECT. 13. Every such company may, from time to time, at any legal meeting called for that purpose, assess upon each share such sums of money, as the company shall think proper, not exceeding in

Assessments may be made on the shares, not exceeding, &c.

1829, 53, § 5.

the whole, the amount at which each share shall be originally limited; and such sums assessed shall be paid to the treasurer, at such times, and by such instalments, as the company shall direct.

Shares may be sold to pay assessments. 14 Mass. 286. 16 ib., 102. 1829, 53, § 5.

SECT. 14. If the proprietor of any share shall neglect to pay any sum duly assessed thereon, for the space of thirty days after the time appointed for the payment thereof, the treasurer of the company may sell, by public auction, a sufficient number of the shares of such delinquent proprietor, to pay all assessments then due from him, with all necessary and incidental charges.

Notice of such sales, and manner of transfer. 1829, 53, § 5.

SECT. 15. The treasurer shall give notice of the time and place appointed for such sale, and of the sum due on each share, by advertising the same, three weeks successively before the sale, in some newspaper printed in the county, where the manufactory is established, if any is printed therein, otherwise in some adjoining county; and a deed of the shares so sold, made by the treasurer, and acknowledged and recorded, as before provided in this chapter, shall transfer said shares to the purchaser, and he shall be entitled to a certificate therefor.

Stockholders, in what companies and for what debts individually liable. 1829, 53, § 6.

SECT. 16. All the members of every manufacturing company, that has been incorporated since the said twenty third day of February, in the year one thousand eight hundred and thirty, or that shall be hereafter incorporated, shall be jointly and severally liable for all debts and contracts made by such company, until the whole amount of the capital stock, fixed and limited by the company in manner aforesaid, shall have been paid in, and a certificate thereof shall have been made and recorded in the registry of deeds, as prescribed in the following section.

Certificate of capital in such companies to be filed and recorded. 1829, 53, § 6.

SECT. 17. The president and directors, with the treasurer and clerk, of each of the companies mentioned in the preceding section, within thirty days after the payment of the last instalment of the capital stock, so fixed and limited by the company, shall make a certificate, stating the amount of the capital so fixed and paid in; which certificate shall be signed and sworn to by the president, treasurer and clerk, and a majority of the directors; and they shall, within the said thirty days, record the same in the registry of deeds for the county wherein the manufactory is established.

Same provision as to any increase of capital. 1829, 53, § 6.

SECT. 18. If any of the said last mentioned companies shall increase their capital stock, as before provided in this chapter, the officers mentioned in the preceding section, within thirty days after the payment of the last instalment of such additional stock, shall make a certificate of the amount so added and paid in, and sign and swear to the same, and cause it to be recorded, in the manner provided in the preceding section.

For neglect of duties in two preceding sections, officers individually liable. 1829, 53, § 6.

SECT. 19. If any of the said officers shall refuse or neglect to perform the duties, required of them in the two preceding sections, they shall be jointly and severally liable for all debts of the company, contracted after the expiration of the said thirty days, and before such certificate shall be recorded as aforesaid.

Mode of reducing capital stock and liability of directors, if not pursued.

SECT. 20. Every such company may, by a vote, at any meeting called for that purpose, reduce its capital stock; and in such case a certified copy of the vote shall, within thirty days after the passing thereof, be recorded in the registry of deeds for the county wherein

the manufactory is established; and in default thereof, the directors of the company shall be jointly and severally liable for all debts of the company, contracted after said thirty days and before the recording of the copy of the vote as aforesaid. 1829, 53, § 10.

SECT. 21. If any part of the capital stock of such company shall be withdrawn and refunded to the stockholders, before the payment of all the debts of the company, contracted previously to the recording of the copy of a vote for that purpose, in the registry of deeds, as prescribed in the preceding section, all the stockholders of the company shall be jointly and severally liable for the payment of the said last mentioned debts. If capital be withdrawn before payment of debts, stockholders liable. 1829, 53, § 10.

SECT. 22. Every such company shall give notice, annually, in some newspaper printed in the county where the manufactory is established, and in case no paper is printed therein, then in some newspaper in an adjoining county, of the amount of all assessments, voted by the company and actually paid in, and the amount of all existing debts, which notice shall be signed by the president and a majority of the directors; and if any of the said companies shall fail so to do, all the stockholders of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such notice shall be given. Notice to be given annually, of the state of corporate affairs, or stockholders to be liable. 1829, 53, § 7.

SECT. 23. If the directors of any such company shall declare and pay any dividend, when the company is insolvent, or any dividend, the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be thereafter contracted, so long as they shall respectively continue in office; provided, that the amount, for which they shall all be so liable, shall not exceed the amount of such dividend, and that if any of the directors shall be absent, at the time of making the dividend, or shall object thereto, and shall file their objection in writing with the clerk of the company, they shall be exempted from the said liability. If dividends be made, and corporation insolvent, each director consenting thereto, liable. 1829, 53, § 9.

SECT. 24. No note or obligation, given by any stockholder, whether secured by any pledge or otherwise, shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan and interest, for all the debts of the company contracted before the repayment of the sum so loaned. Notes of stockholders, not receivable, for stock; liability of each officer, consenting to a loan to stockholders. 1829, 53, § 8.

SECT. 25. The whole amount of the debts, which any such company shall at any time owe, shall not exceed the amount of its capital stock actually paid in; and in case of any excess, the directors, under whose administration it shall happen, shall be jointly and severally liable to the extent of such excess, for all the debts of the company then existing, and for all that shall be contracted, so long as they shall respectively continue in office, and until the debts shall be reduced to the said amount of the capital stock; provided, that any of the directors, who shall be absent at the time of contracting any debt, contrary to the foregoing provisions, or who shall object thereto, may exempt themselves from the said liability, by forthwith giving notice of the fact to the stockholders, at a meeting which they may call for that purpose. Debts of corporation not to exceed, &c. and liability of directors, in case, &c. 1829, 53, § 8.

If former corporations adopt the provisions of this chapter, they shall have the benefit thereof. 1829, 53, § 13.

SECT. 26. If any manufacturing company, incorporated before the twenty third day of February, in the year one thousand eight hundred and thirty, shall, at any legal meeting called for that purpose, vote to adopt the provisions contained in this chapter, and shall also cause to be recorded in the registry of deeds, in the county where such manufactory may be established, a certificate signed by the president, treasurer, clerk and a majority of the directors, stating the amount of capital actually paid in, and if any part thereof has been divided or withdrawn, the amount so divided and withdrawn; stating also the amount of the debts and credits, and an estimate of the value of the real and personal estate, of said corporation, for the purpose of carrying on the business thereof, at the time of making such certificate; and if the said officers shall make oath, that they have carefully examined the records and accounts of said corporation, and faithfully estimated the value of the property and funds thereof, and that said certificate, by them signed, is true, according to their best knowledge and belief; then no stockholder in such company shall be liable for any debts of the said company, contracted after the recording of such certificate, except for the causes, and in the manner, herein before provided.

Rights of former corporations, which have adopted, &c. continued.

SECT. 27. All manufacturing companies, incorporated before the twenty third day of February, in the year one thousand eight hundred and thirty, which have heretofore, in pursuance of the statute of one thousand eight hundred and twenty nine, chapter fifty third, voted to adopt the provisions contained in the said last mentioned statute, and which have performed all things therein prescribed in that behalf, shall, together with their respective members and officers, be entitled to all the rights, privileges and immunities, and be subject to all the liabilities, to which they may be entitled or subject by the laws in force at the time when this chapter shall take effect.

If false certificates be made, knowingly, officers liable. 1829, 53, § 9.

SECT. 28. If any certificate made, or any public notice given, by the officers of any manufacturing company, in pursuance of the provisions of this chapter, shall be false in any material representation, all the officers, who shall have signed the same, knowing it to be false, shall be jointly and severally liable for all the debts of the company, contracted while they were stockholders or officers thereof.

When officers liable, in what mode suits may be brought. 1829, 53, § 11.

SECT. 29. When any of the officers of any manufacturing company shall be liable, by the provisions of this chapter, to pay the debts of such company, or any part thereof, any person, to whom they shall be so liable, may have an action on the case against any one or more of the said officers; and the declaration in such action shall state the claim against the company, and the ground on which the plaintiff expects to charge the defendants personally; and such action may be brought, notwithstanding the pendency of an action against the company, for the recovery of the same claim or demand; and both of the said actions may be prosecuted, until the plaintiff shall obtain the payment of his debt and the costs of both actions.

When stockholders' persons and property may be taken on writs, &c., against corporation. 16 Mass. 389. 17 ib. 64. 330. 1829, 53, § 11.

SECT. 30. When the stockholders of any manufacturing company shall be liable, by the provisions of this chapter, to pay the debts of such company, or any part thereof, their persons and property may be taken therefor, on any writ of attachment or execution issued against the company for such debt, in the same manner as on writs and executions issued against them for their individual debts.

SECT. 31. When any of the said officers or stockholders are liable, as mentioned in the two preceding sections, for the debts of any such company, the person to whom they are so liable may, instead of the proceedings mentioned in said two sections, have his remedy, against the said officers or stockholders, by a bill in equity in the supreme judicial court.

When party may have bill in equity against officers and stockholders. 1829, 53, § 11.

SECT. 32. Any stockholder, who shall, whether voluntarily or by compulsion, pay any debt of the company, for which he is made liable by the provisions of this chapter, may recover the amount so paid, in an action on the case against the company; in which action, the property of the company only shall be liable to be taken, and not the person or property of any stockholder of the company; or the person, who shall have so paid such debt of the company, may have a bill in equity in the supreme judicial court, for contribution, against any one or more of the stockholders, who were originally liable with him for the payment of the said debts, and may recover against each of them their just and equitable proportion thereof.

Remedy of stockholders, who pay company debts. 1829, 53, § 11.

SECT. 33. Any officer of a manufacturing company, who shall pay any debt of the company, for which he is made liable by the provisions of this chapter, may recover the amount so paid, in an action against the company for money paid for their use, in which action the property of the company only shall be liable to be taken, and not the person or property of any stockholder.

Remedy of officers, who pay company debts.

SECT. 34. No persons, holding stock in any manufacturing company, as executors, administrators, guardians, or trustees, and no persons, holding such stock as collateral security, shall be personally subject to any liabilities as stockholders of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly, and the estates and funds in the hands of such executors, administrators, guardians, and trustees, shall be liable in their hands, in like manner and to the same extent, as the deceased testator or intestate, or the ward, or person interested in such trust fund, would have been, if they had respectively been living and competent to act, and had held the same stock in their own names.

Executors, guardians, trustees, and pledgees of stock not to be liable as stockholders. 1829, 53, § 12.

SECT. 35. Every such executor, administrator, guardian, and trustee, shall represent the shares or stock in his hands, at all meetings of the company, and may vote accordingly as a stockholder; and every person, who shall pledge his stock as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a stockholder.

Executors, &c., and pledgors may vote as stockholders. 1829, 53, § 12.

SECT. 36. All manufacturing corporations, now existing, shall continue to exercise and enjoy their powers and privileges, according to their respective charters, and to the laws in force at the time when this chapter shall take effect as a law, and shall continue subject to all the liabilities, to which they may be subject at that time; excepting so far as the said powers, privileges and liabilities shall be modified or controlled by the provisions of this chapter; and the repeal of the laws, heretofore enacted concerning such corporations, shall not affect any rights that may have vested under those laws, nor any liabilities heretofore incurred by the said corporations, or by the stockholders or officers thereof; and the charter of any corporation,

Corporations now existing may act under their charters, except, &c.

What charters revocable by legislature. 1829, 53, § 17.

that shall be established under the provisions of this chapter, or that shall adopt the said provisions, in the manner herein before prescribed, may be revoked by the legislature, for any cause, which they shall deem sufficient.

The provisions of this chapter may be repealed; saving rights. 1829, 53, § 17.

SECT. 37. The provisions contained in this chapter may be amended or repealed, at the pleasure of the legislature; but such amendment or repeal shall not take away or impair any remedy, given against any such corporation, its members or officers, for any liability which shall have been previously incurred.

CHAPTER 39.

OF TURNPIKE, RAIL ROAD, AND CANAL CORPORATIONS.

SECTION

OF TURNPIKE CORPORATIONS.

1. On application for a turnpike, a committee to be appointed by the legislature, to view, and they shall give notice.
2. Duty of commissioners in laying out turnpikes.
3. Corporations, to pay damages.
4. " may own land of their turnpikes.
5. Width of turnpikes.
6. When a turnpike shall intersect highways, how to be constructed.
7. Turnpike roads, not to be begun till damages are paid.
8. Corporations may enter lands, to make surveys.
9. If road is not made in five years, the charter void.
10. Shares to be personal estate—How transferred.
11. When shareholders neglect to pay assessments, shares may be sold.
12. Notice of sale, and mode of transfer.
13. Corporation, to exhibit accounts to the governor, &c.
14. The legislature may dissolve any turnpike corporation, in case, &c.
15. If turnpike is discontinued, land shall revest.
16. Commissioners may lay out turnpikes, if towns consent.
17. Damages, how estimated, when turnpikes are laid out as highways.
18. In laying out turnpikes as highways, commissioners to proceed as in other cases.
19. Damages may be allowed to corporation, to be paid by towns, or by county and towns.
20. If towns do not pay, process to issue for such damages.
21. When a turnpike road is made a highway, rights, &c., of corporation cease.
22. When commissioners approve turnpike, corporation may take toll—Rates of toll.
23. Broad wheeled carts, to pay only half toll.
24. Corporations may commute tolls.
25. Exemptions from toll.
26. Duty of persons claiming to be exempt from toll.
27. Corporations shall put up boards containing rates of toll.
28. Petitions for removal of gates, and proceedings thereon.
29. Same subject.
30. Gates for full toll, to be ten miles distant, except, &c.
31. " not to be placed on county or town roads.
32. Penalty for passing, &c., gates, with intent to avoid paying toll.
33. " for turning out of road, to evade toll.
34. " for opening ways leading from, and again uniting with turnpikes.
35. Preceding section, not to affect county roads.
36. Penalty for using wheels not according to law, on turnpike roads.
37. " for giving false account of weight of loads, &c.
38. " for demanding or receiving illegal toll.
39. " for delaying travellers.

SECTION
40. If turnpike is out of repair, gates may be set open in certain cases.
41. Fines, to be applied to repairing the turnpike.
42. Corporations liable for defect of their turnpikes.
43. " not liable for loss by driving cattle or carts over bridges contrary to law.
44. Penalty for locking wheels without shoe under them.

RAIL ROADS.

45. Rail road corporations, to be governed by provisions of this chapter, except, &c.
46. All petitions for rail roads to be accompanied by report of engineer &c.
47. No petition to be acted upon, until notice, &c.
48. All rail roads to be within the limits notified.
49. Organization of the corporation, officers, &c.
50. Votes to each share, &c.
51. Meetings, how called.
52. Shares to be personal estate—How transferred.
53. Assessments, how and to what amount made, and how collected.
54. Of width of rail road, and of obtaining materials for constructing it.
55. Commissioners may authorize corporation to take materials, on paying damages.
56. Corporation, to pay all damages, to be ascertained as in case of highways.
57. Either party may have a jury.
58. Applications for damages, to be made within three years.
59. Time enlarged for claiming damages, if suits pending, &c.
60. Owners of land, may within three years, demand of corporation a plan of the land taken.
61. Security to be given by corporation for damages, &c., if required.
62. Corporation may tender damages—Party applying for a jury to pay costs, unless, &c.
63. In Boston, damages to be assessed by the mayor and aldermen.
64. " either party may apply to court of common pleas for a jury.
65. Existing rights, not to be affected by, &c.
66. Rail roads not to obstruct other roads in crossing.
67. Proceedings when rail road corporations wish to raise or lower turnpikes, &c.
68. If the parties do not agree as to alterations, either may appeal to commissioners.
69. Rail roads not to be obstructed by turnpikes, &c., subsequently laid out.
70. Commissioners may authorize rail road corporations to alter ways, &c.
71. Owners of private ways to apply for damages within one year.
72. Bridges, &c. at crossings, to be repaired by rail road corporation.
73. Proceedings when corporation wish to vary the direction of their rail road.
74. On petition, commissioners, &c., may originally locate, or may alter location of rail road.
75. Location of rail road to be filed with commissioners within one year.
76. Corporation to pay damages for all lands taken; and remedy of owners therefor.
77. Damages, &c., for obstructing carriages or injuring rail roads.
78. Bell to be attached to locomotive engines, and to be rung, &c.
79. Sign boards, &c., to be erected at the crossings of roads.
80. Gates, &c., shall also be erected, if necessary.
81. Penalty for neglecting to comply with the foregoing provisions, and liability for damages.
82. Directors to make report annually to legislature, under penalty—Books to be open to inspection of legislative committee.
83. Corporation may establish tolls, subject, &c.
84. State may purchase rail road, after twenty years.
85. Liability for driving cattle upon a railroad.
86. " for neglect in suffering cattle to go upon a rail road.

CANALS.

87. Petitions for canals, to be accompanied with plans, &c.
88. Conductors of boats, to exhibit to the collector of tolls a certificate of loading.
89. Penalty for neglecting to exhibit certificate, &c.
90. " for making false statements.
91. Collector of tolls may require loading of boat to be weighed.—Cost of weighing, by whom to be paid.
92. Proprietors of canals, to furnish blank certificates, gratis.

GENERAL PROVISIONS.

93. Husband and guardian may release damages for land of wife or ward.
94. Penalties, how recovered by corporation.

OF TURNPIKE CORPORATIONS.

On application for a turnpike, a committee to be appointed by the legislature to view; and they shall give notice. 7 Pick. 225. 1804, 125, § 1.

SECTION 1. When any application shall be made for a turnpike road, a committee shall first be appointed by the legislature, to view, at the expense of the petitioners, the route proposed by them; and the committee shall, before they proceed to view any proposed road, give public notice of the time and place of their meeting, by publishing the same in some newspaper printed in the county in which the road is proposed to be made; and if no newspaper is there printed, the said notice shall be given in such manner, as the committee shall think will cause the same to be generally known to all persons interested; and they shall, further, give notice in writing to one or more of the selectmen of each town, through which they propose to view, and of the time when they shall make their report to the legislature.

Duty of commissioners, in laying out turnpikes. 1804, 125, § 2.

SECT. 2. Whenever any grant is made for a turnpike road, and application is made to the county commissioners, in the county in which such road is situated, the said commissioners shall exercise the powers and perform the duties, provided by law in the laying out of highways.

Corporations, to pay damages. 1804, 125, § 2.

SECT. 3. Every turnpike corporation shall pay all sums, that may be assessed according to law, for damages occasioned by laying out such turnpike road; saving always to either party, so far as respects the damages only, the right of trial by jury, according to the provisions of the twenty fourth chapter, respecting the recovery of damages for laying out highways.

—may own land of their turnpikes. 1804, 125, § 2.

SECT. 4. Any turnpike corporation may purchase and hold the lands over which they shall make their road.

Width of turnpikes. 3 Pick. 330. 1804, 125, § 2.

SECT. 5. No turnpike road hereafter granted shall be less than four rods wide; and the travelled part thereof shall not be less than twenty four feet wide in any part.

When a turnpike shall intersect highways, how constructed. 1824, 125, § 7.

SECT. 6. Where any turnpike road hereafter established shall intersect any then existing public highway or townway, the proprietors of such road shall so construct the same, that it shall be convenient for travellers to pass from such way to said turnpike road.

Turnpikes not to be begun, till damages are paid. 1807, 113, § 1.

SECT. 7. No turnpike corporation, hereafter established, shall throw open any fences or enclosures upon lands over which their road passes, or remove any buildings, or cut down any trees thereon standing, or make such road, or in any way injure the property of any owner or possessor of such land, until the damages done by the passing of the road over the land shall have been first duly ascertained, and shall have been paid, or tendered, to the persons entitled to receive the same; and in case any person, entitled to damages, shall not be found within the state, the amount of his damages so ascertained may be deposited for his use, with the clerk of the county commissioners.

Corporation may enter lands, to make surveys, &c. 1807, 113, § 2.

SECT. 8. Nothing contained in the preceding section shall be construed to prevent any turnpike corporation, or their agents or servants, from entering upon any lands, over which their road may pass, for the purpose of surveying and laying out the same.

If road is not made in 5 years, the charter void. 1804, 125, § 11.

SECT. 9. If any turnpike corporation shall neglect to complete their road within five years from the date of their act of incorporation, the same shall be void.

Shares to be

SECT. 10. The shares in all turnpike corporations shall be per-

sonal estate; and the mode of transferring the said shares shall be by deed, acknowledged before any justice of the peace, and recorded by the clerk of the corporation, in a book kept by him for that purpose.

personal estate. How transferred. 9 Pick. 80. 1804, 125, § 8.

SECT. 11. When any proprietor of shares, in any turnpike corporation established since the sixteenth day of March, in the year one thousand eight hundred and five, or that shall be hereafter established, shall neglect or refuse to pay any assessment duly made, for sixty days after the time appointed for payment thereof, the treasurer of such corporation may sell, by public auction, a sufficient number of the shares of such delinquent proprietor, to pay the said assessment and all necessary charges.

When shareholders neglect to pay assessments, shares may be sold. 6 Mass. 40. 7 ib. 102. 8 ib. 138. 10 ib. 327. 384. 1804, 125, § 10.

SECT. 12. Before making sale of such shares, the treasurer shall give notice of the time and place appointed for the sale, and of the sums due on each share, by advertising the same, three weeks successively before the sale, in some newspaper printed in the county, where such road or any part thereof is situated, if any newspaper is there printed, otherwise in a newspaper of some adjoining county; and a deed of the shares so sold, made by the treasurer and acknowledged and recorded in the books of the corporation, shall transfer such shares to the purchaser, and he shall be entitled to a certificate thereof.

Notice of sale and mode of transfer. 1804, 125, § 10.

SECT. 13. Every turnpike corporation, established since the sixteenth day of March, in the year one thousand eight hundred and five, or that shall be hereafter established, shall, annually, in the month of January, exhibit to the governor and council a true account of the income or dividends, arising from their tolls, together with their necessary disbursements for the year; and the books of such corporation shall at all times be subject to the inspection of the governor and council, and the legislature; and every such corporation hereafter established shall, within six months from the time of erecting their gates, deposite in the office of the secretary of the Commonwealth an account of the expenses thereof.

Corporation, to exhibit accounts to the governor, &c. 1804, 125, § 9.

SECT. 14. The legislature may dissolve any such corporation, established since the said sixteenth day of March, or that shall be hereafter established, at any time after the expiration of twenty years from the date of their charter; or such corporation may be dissolved by the legislature, at any time before the expiration of said term of twenty years, when it shall appear, that the income of such road shall have compensated the corporation for all the money they may have expended, in purchasing lands for the road, and in making, repairing, and taking care of the same, together with twelve per cent. a year; and thereupon the property of such road shall be vested in the Commonwealth.

The legislature may dissolve any turnpike corporation, in case, &c. 1804, 125, § 11.

SECT. 15. When any turnpike road shall be discontinued in whole or in part, the land, over which the part so discontinued was laid, shall revest in the persons, their heirs and assigns, who were owners thereof, at the time such land was taken, or purchased, for the purpose of making said turnpike road; any conveyance of said land by deed to said corporation notwithstanding.

If turnpike is discontinued, land shall revest. 1804, 125, § 15.

SECT. 16. Whenever any turnpike corporation shall make application to the commissioners in any county, to permit them to relin-

Commissioners may lay out turnpikes as

highways, if towns consent. 1827, 77, § 14.

quish their franchise, as to the whole or any part of the turnpike road, which they are bound to support in such county, requesting that the same may be laid out as a common highway; or whenever the said commissioners shall, on application made by any person, determine that the common convenience and necessity require such turnpike road to be laid out as a common highway; they may, with the assent of said turnpike corporation, and of the several towns, within whose limits such road may be, lay out the same, or any part thereof, as a common highway, and may make alterations therein.

Damages, how estimated, when turnpikes are laid out as highways. 1827, 77, § 14.

SECT. 17. In the assessment of damages, in the case provided for in the preceding section, there shall be allowed, to any persons injured thereby, such damages as they would justly be entitled to receive, beyond the damages that would have been sustained, by the same persons, by the continuance of the same as a turnpike road, and no more; taking into consideration any advantage, which might accrue in consequence of making the same a highway.

In laying out turnpikes as highways, commissioners to proceed as in other cases. 1833, 147, § 4.

SECT. 18. All proceedings of the commissioners, in the laying out of any turnpike road as a highway, shall be in conformity with the provisions of the twenty fourth chapter, respecting the laying out of highways.

Damages may be allowed to corporation, to be paid by towns, or by county and towns. 1833, 147, § 2.

SECT. 19. The commissioners, upon taking any turnpike road for a highway, may allow such damages as they shall think reasonable, to the corporation owning the same, to be paid out of the county treasury; and they may order a part of said damages, not exceeding one half thereof, to be refunded to the county treasury, by the towns through which the said road may pass; which part of said damages shall be so refunded at such times as the said commissioners may direct, having regard, in the proportion to be paid by said towns, to the length of way in each town, and the advantages to be derived to such town therefrom.

If towns do not pay, process to issue for such damages. 1833, 147, § 2.

SECT. 20. If any towns, being ordered by the commissioners to refund as aforesaid, shall neglect or refuse to pay their said proportion of such damages, the same proceedings may be had to enforce payment of the same, as are now provided by law in the case of expenses of making highways by the commissioners, where towns neglect to make the same.

When a turnpike road is made a highway, rights, &c. of corporation cease. 1833, 147, § 3.

SECT. 21. Whenever a turnpike road, or any part thereof, shall be established as a highway, all the rights, privileges, duties and obligations of the turnpike corporations, so far as they relate to that part of the road, shall cease.

When commissioners approve turnpikes, corporation may take toll.

SECT. 22. All turnpike corporations, whenever their roads shall be sufficiently made, and approved by the commissioners within the county where said road shall be, may erect gates in such places as the said commissioners shall direct, and may demand of each traveller or passenger, at each of said gates at which they are allowed to receive whole toll, and at all other gates in the same proportion, the following rates of toll, namely; for each coach, chariot, phaeton, or other four wheeled spring carriage, drawn by two horses, twenty five cents, and if drawn by more than two horses, two cents for each additional horse; for every cart or wagon drawn by two horses, ten cents, and if drawn by more than two horses, two cents for each additional horse; for every cart or wagon drawn by two oxen, ten

Rates of toll. 1804, 125, § 4. 1814, 176. 1817, 140.

cents, and if by more than two oxen, twelve and a half cents; for every cart or wagon drawn by more than four oxen or horses, two cents for each additional ox or horse; for every curricle, fifteen cents; for every chaise, chair, sulkey or other two wheeled carriage for pleasure, drawn by one horse, twelve and a half cents; for every cart, wagon or truck drawn by one horse, six cents and one quarter of a cent; for each wagon or carriage, with four wheels, drawn by one horse only, according to the following rates of toll; that is to say, for every such carriage, the body or seats of which shall be placed on springs, and covered with cloth, canvass, or leather, and used for the conveyance of persons and personal baggage only, twelve and a half cents; for every such carriage without springs, six cents; and for all other carriages of four wheels drawn by one horse, for the conveyance of persons and personal baggage, that rate of toll which is, or shall be, the nearest to the mean sum, in cents, between the two rates of toll above specified, as the same are or shall be established at each of such gates respectively; for every man and horse, four cents; for every sleigh or sled drawn by two oxen or horses, eight cents; and if drawn by more than two oxen or horses, one cent for each additional ox or horse; for every sleigh or sled drawn by one horse, four cents; for all horses, mules or neat cattle led or driven, besides those in teams or carriages, one cent each; for all sheep or swine, at the rate of three cents by the dozen.

Broad wheeled carts to pay only half toll. 1804, 125, § 4.

SECT. 23. All carts or wagons, having wheels the felloes of which shall be six inches broad or more, shall be subject to pay only half the toll, to which other carts or wagons are subject.

Corporations may commute tolls. 3 Greenl. 191. 1804, 125, § 4.

SECT. 24. Any turnpike corporations may commute the rates of toll with any person.

Exemptions from toll. 4 Pick. 341. 1804, 125, § 5.

SECT. 25. No toll shall be demanded or received of any person passing on foot upon any occasion, or passing with his horse or carriage to or from his usual place of public worship, or passing on military duty, either on foot or on horseback, or in a carriage; nor from any persons residing in the town, where the gate may be placed, unless they are going or returning from beyond the limits of said town; nor from any persons going to or returning from any grist mill, or on the common and ordinary business or concerns of the family.

Duty of persons claiming to be exempt from toll. 1813, 160, § 1.

SECT. 26. Every person, being about to pass any turnpike gate, and claiming to be exempted by law from the payment of toll, shall, if required by the toll gatherer thereof, first declare to him his name and place of abode; and if he shall, for the purpose of avoiding the payment of toll, wilfully give a false statement to the toll gatherer of his name or place of abode, and thereby pass the gate toll free, he shall forfeit, to the use of such corporation, for every such offence, the sum of ten dollars.

Corporations shall put up boards containing rates of toll. 3 Pick. 342. 1804, 125, § 4.

SECT. 27. All turnpike corporations shall erect and keep exposed to view, in some conspicuous place at every gate where the toll is collected, a sign board, with all the rates of toll fairly and legibly written or printed, in letters of a large size; and, unless said corporation shall so erect and keep such sign board, they shall not be entitled to demand any toll at the said gate.

Petitions for removal of gates,

SECT. 28. Whenever the directors of any turnpike corporation shall think proper to remove any gate of their turnpike road, they

and proceedings thereon. 1804, 125, § 13

may petition the commissioners, in the county where such gate may be erected, for permission to remove the same; and thereupon the said commissioners may proceed to hear and determine upon the expediency of such removal, in the manner provided in the following section.

Same subject. 1804, 125, § 13.

SECT. 29. The said commissioners shall, at the expense of the corporation, on whose behalf the application is made, give reasonable notice to all persons interested, of the time and place of meeting, for the purpose of attending to the business of the application aforesaid, by advertising the same in some newspaper, fourteen days at least before the time appointed for such meeting, and shall, if they think it expedient, also view the premises, either by themselves, or by a committee whom they may appoint for that purpose; and after hearing all parties interested, they shall determine whether the said gate shall be removed as prayed for, and may order the same to be removed accordingly.

Gates for full toll, to be ten miles distant, except, &c. 1804, 125, § 3.

SECT. 30. No turnpike gate, where full toll is to be taken, shall be erected within ten miles of any other turnpike gate, on the same road, except in cases expressly authorized by the legislature.

Gates, not to be placed on county or town roads. 2 Mass. 143. 1804, 125, § 3.

SECT. 31. No gate shall be erected by any turnpike corporation on any county or town road previously established.

Penalty for passing, &c., gates, with intent to avoid paying toll. 4 Pick. 341. 1804, 125, § 5. 1824, 144.

SECT. 32. If any person, not exempted by law from paying toll, shall pass or attempt to pass any toll gate, lawfully established, without first paying the legal toll, and with intent to avoid paying the same, he shall forfeit a sum not exceeding fifty dollars.

— for turning out of road to evade toll. 1804, 125, § 5. 1824, 144.

SECT. 33. If any person, with his horse, teams, or cattle, shall turn out of any road, on which such toll gate may be so established, with intent to avoid paying the toll, and again enter on said road, he shall forfeit treble the amount of toll, which would have been payable at such gate.

— for opening ways leading from, and again uniting with turnpike. 1813, 160, § 2.

SECT. 34. If any person shall open or make any road or passway, leading from any turnpike road, and shall re-unite said road or passway with such turnpike road, or with any road connected with the same, for the purpose of avoiding, or aiding others to avoid, any gate on such turnpike road, he shall forfeit to the use of the corporation, so intended to be injured, a sum not more than one thousand dollars.

Preceding section not to affect county roads. 1813, 160, § 2.

SECT. 35. Nothing contained in the preceding section shall be construed to extend to the opening or making of any county road.

Penalty for using wheels not according to law, on turnpike roads. 1813, 160, § 3.

SECT. 36. All loaded carts or wagons, passing on any turnpike road and carrying more than forty five hundred pounds, shall be drawn on wheels having each a felloe, not less than three and a half inches wide; and if any person shall pass on any turnpike road, with a cart or wagon loaded as aforesaid, and drawn on wheels having narrower felloes than aforesaid, he shall pay to such turnpike corporation three times the legal toll therefor.

— for giving false account of weight of loads, &c. 1813, 160, § 3.

SECT. 37. Every person, passing on any turnpike road and driving or having the care of a loaded cart or wagon, with wheels the felloes of which are less than three and a half inches wide, shall, upon the request of the toll gatherer, give a true account of the weight of the load, and also his name and place of abode; and if he shall re-

fuse to declare, or shall wilfully misrepresent, the weight of his load, or shall give a false account of his name or place of abode, with intent to defraud any turnpike corporation, he shall forfeit the sum of ten dollars for every such offence.

— for demanding or receiving illegal toll. 1804, 125, § 6.

SECT. 38. If any turnpike corporation, or their toll gatherer, or any other person in their employment, shall demand or receive of any person, passing on their road, more toll than is by law established, such corporation shall, for every such offence, forfeit a sum not exceeding one hundred dollars, to be recovered by the party of whom such toll was demanded, to his own use, in an action on the case.

— for delaying travellers. 1813, 160, § 6.

SECT. 39. If any turnpike corporation, or their toll gatherer, or others in their employ, shall unreasonably delay or hinder any traveller or passenger, from passing any of their gates or roads, such corporation shall forfeit a sum not exceeding twenty dollars, to be recovered by the person so delayed or hindered, and to his own use, in an action on the case.

If turnpike is out of repair gates may be set open in certain cases. 1804, 125, § 14.

SECT. 40. Whenever any turnpike road, granted since the sixteenth day of March, in the year one thousand eight hundred and five, shall be suffered to be out of repair, the commissioners may order the gates thereof to be set open, first giving notice, at least fourteen days previously to making such order, to the president or clerk of such corporation, that complaint is made of their road; and immediately upon making such order and leaving an attested copy thereof with the said president or clerk, the gates shall be set open, and no toll shall be demanded thereat, until the said commissioners shall otherwise order.

Fines, to be applied to repairing the turnpike. 1824, 121, § 2.

SECT. 41. All fines, which shall be imposed on any turnpike corporation, for neglecting to make or repair their road, shall be appropriated to making and repairing the same; and the court, imposing the fine, shall appoint a suitable agent to apply the same as aforesaid, who shall receive the same of the officer, having the warrant for collecting it, and shall make return of his doings therein to the said court, according to the order thereof; and the receipt of such agent, upon the said warrant, shall be a sufficient discharge to such officer.

Corporations, liable for defect of their turnpikes. 4 Pick. 341. 1804, 125, § 6.

SECT. 42. Whenever any person, liable to the payment of toll, shall sustain any injury, by reason of any turnpike road being insufficient or out of repair, the corporation owning said road shall be answerable for such injury, and also liable to indictment for such insufficiency and want of repair of their road.

— not liable for loss by driving cattle or carts over bridges contrary to law. 10 Pick. 35. 1813, 160, § 4.

SECT. 43. If any person, having the care of any drove of neat cattle or horses, and driving the same over any turnpike bridge, shall, at one and the same time, and without the consent of the toll gatherer, or other agent of the corporation owning such bridge, permit more than twenty neat cattle or horses to be upon any such bridge, the same being more than fifty feet in length from one abutment, pier, or trussel part to another, or if any person shall drive or transport over any such bridge, without the consent of the toll gatherer or other agent aforesaid, any loaded cart, wagon or other carriage, the weight whereof shall exceed forty five hundred pounds, exclusive of the team and carriage, and shall thereby break or injure such bridge, the corpora-

tion owning the same shall not be liable for any loss or injury, occasioned thereby to the owner of such cattle or other things, driven or transported as aforesaid.

Penalty for locking wheels without shoe under them. 1813, 160, § 5.

SECT. 44. If any person driving or having the care of any loaded cart or wagon passing on any turnpike road, shall lock, chain or fasten any of the wheels of such cart or wagon, without putting under such locked, chained or fastened wheel, an iron shoe, not less than six inches wide and twelve inches long, he shall for every offence forfeit a sum not exceeding twenty dollars.

RAIL ROADS.

Rail road corporations, to be governed by provisions of this chapter, except, &c.

SECT. 45. All rail road companies, that have been or that shall hereafter be incorporated, under the authority of this Commonwealth, shall have all the powers and privileges, and be subject to all the duties, liabilities and other provisions contained in this chapter respecting such corporations, so far as the same are consistent with their respective charters.

All petitions for rail roads to be accompanied by report of engineer, &c. 1833, 176.

SECT. 46. No petition for the establishment of any rail road corporation shall be acted upon, unless the same is accompanied and supported by the report of a skilful engineer, founded on actual examination of the route, and by other proper evidence, showing the character of the soil, the manner in which it is proposed to construct such rail road, the general profile of the surface of the country, through which it is proposed to be made, the feasibility of the route, and an estimate of the probable expense of constructing the same.

No petition to be acted upon, until notice, &c. 1833, 176.

SECT. 47. No such petition shall be acted upon, until notice of the pendency thereof shall have been published according to law, which notice shall designate the intended route with such certainty, as to give reasonable notice to all persons interested therein, that their rights may be affected by the granting of said petition, and that they may have an opportunity to appear and object thereto; but the provisions of this and the preceding sections shall not prevent the legislature from requiring surveys, plans, and further estimates in any case, when they shall judge proper.

All rail roads to be within the limits notified.

SECT. 48. Every act of incorporation for a rail road company shall confine the road within the limits, indicated by the notice required in the preceding section, shall specify the several towns through which the same may pass, and shall otherwise designate the route, on which the road may be authorized to be made, with as much certainty as the nature of each case will admit.

Organization of the corporation, officers, &c. 1831, 72.

SECT. 49. The immediate government and direction of the affairs of every such corporation shall be vested in a board of not less than five directors, who shall be chosen by the members of the corporation in the manner hereinafter provided, and shall hold their offices until others shall be duly elected in their places; and the said directors shall elect one of their own number to be president of the board, who shall also be president of the corporation; and they may also choose a clerk, who shall be sworn to the faithful discharge of his duty, and a treasurer, who shall give bonds to the corporation, in such sum as shall be required by the by-laws, for the faithful discharge of his trust.

Votes to each

SECT. 50. At all meetings of the corporation, each member shall

be entitled to one vote for each share held by him; provided, that he shall not be entitled to any vote for any shares beyond one tenth part of the whole number of shares of the stock of such corporation.

share, &c.

SECT. 51. All meetings shall be called and notified in such manner, as shall be provided in the by-laws of such corporation.

Meetings, how called.

SECT. 52. The shares in the capital stock of any rail road corporation shall be deemed personal estate, and they may be transferred by any conveyance in writing, recorded either by the treasurer in books to be kept in his office, or by an officer duly authorized by the directors, in books to be kept at such other place as they may appoint; and when recorded in any such other place, they shall, within ten days thereafter, be also recorded in the said books kept by the treasurer; and no conveyance of any such shares shall be valid, against any other persons than the grantors or their representatives, unless so recorded; and on the making of such transfer, a new certificate shall be granted.

Shares to be personal estate. How transferred. 1833, 187, § 8.

SECT. 53. The president and directors of every such corporation may, from time to time, make such equal assessments on all the shares in said corporation, as they may deem expedient and necessary for the purposes of the corporation, and may direct the same to be paid to the treasurer, who shall give notice thereof to the stockholders; and if any stockholder shall neglect to pay his assessments, for the space of thirty days, after notice from the treasurer, the directors may order the treasurer, after giving notice of the sale, to sell such shares by public auction, to the highest bidder, and the same shall accordingly be transferred to the purchaser; and if the shares of any delinquent stockholder shall not sell for a sum, sufficient to pay his assessment, with interest and charges of sale, he shall be held liable to the corporation for any deficiency; and if such shares shall sell for more than the assessment, so due, with interest and charges of sale, he shall be entitled to the surplus remaining after such sale; provided, that no assessment shall be laid upon any shares in such corporation, to a greater amount than the sum, at which the shares shall be fixed by the charter of such corporation, or by any vote or agreement of the stockholders.

Assessments, how and to what amount, made; and how collected.

SECT. 54. Every rail road corporation may lay out its road, not exceeding five rods wide; and for the purpose of cuttings, embankments, and procuring stone and gravel, may take as much more land, within the limits of its charter, in the manner provided in this chapter, as may be necessary for the proper construction and security of the road.

Of width of rail road, and of obtaining materials for constructing it.

SECT. 55. Every rail road corporation may purchase or otherwise take any land or materials, necessary for the purpose of making or securing their rail road; and if they shall not be able to obtain such land or materials, by an agreement with the owner thereof, they shall pay therefor such damages, as shall be estimated and determined by the commissioners; and no land or materials, without the limits of said road, shall be so taken, without the permission of the owner thereof, unless the commissioners, on the application of such corporation, and after notice to the said owner, shall first prescribe the limits, within which land or materials shall be taken for the purpose aforesaid.

Commissioners may authorize corporation to take materials on paying damages. 1835, 148, § 3.

Corporation to pay all damages, to be ascertained as in case of highways. 1833, 187, § 1.

SECT. 56. Every rail road corporation shall be liable to pay all damages, that shall be occasioned by laying out and making and maintaining their road, or by taking any land or materials, as provided in the preceding section; and such damages shall be estimated by the commissioners, in the manner provided in the case of laying out highways; and when it is intended to take any land or materials, for the purpose aforesaid, the corporation as well as the said owner may apply to the commissioners to estimate the said damages, before the actual taking and appropriation of such land or materials by the corporation.

Either party may have a jury. 1833, 187, § 1. 1834, 173.

SECT. 57. Either party, if dissatisfied with any estimate made by the commissioners, may apply for a jury to assess the damages, either at the same meeting, at which such estimate shall be completed and returned, or at the next regular meeting thereafter; and the like proceedings shall be had thereon, as are provided in the twenty fourth chapter, for the recovery of damages for laying out highways.

Applications for damages, to be made within 3 years. 1833, 187, § 1.

SECT. 58. No application to the commissioners, to estimate damages for land or property hereafter to be taken, shall, except as provided in the following section, be sustained unless made within three years from the time of taking the same.

Time enlarged for claiming damages, if suits pending, &c. 1835, 148, § 7.

SECT. 59. In all cases, where suits are now pending or shall hereafter be brought, wherein the right of any rail road corporation, to lay out and construct their road on any particular location, is or shall be drawn in question, the time limited in the preceding sections, for applications to the commissioners, for the ascertaining of damages caused by the taking of land or other property in and upon such location, shall be so far extended, that such application may be made at any time within one year after the final determination of such suits upon the merits; provided, that such suits, if not now pending, shall either be brought within one year from the time of the taking aforesaid, or shall be brought for the purpose of trying the same right, which was drawn in question in some former suit now pending or brought as aforesaid, and which failed either for the want of jurisdiction, or defect of form, or other like cause, not deciding the merits of the controversy, and shall be brought within six months after such determination of a former suit.

Owners of land, may within 3 years demand of the corporation a plan of the land taken. 1833, 187, § 2.

SECT. 60. After any rail road corporation shall, by virtue of their charter, have taken any lands or other property, for the purpose of their rail road, the owner of any such land or other property may, at any time within three years from the time of taking the same, demand in writing, of the treasurer or principal agent of the corporation, a plan or a description in writing of the land or other property so taken; and said corporation, within thirty days from the time of such demand, shall deliver to him such description or plan; and all the rights of said corporation to enter upon or use said land or other property, except for making surveys, shall be suspended until they shall have so delivered such description or plan.

Security to be given by corporation for damages, &c. if required. 1833, 187, § 3. 1835, 148, § 1.

SECT. 61. In case of such application being made to the commissioners, either by any such owner or by any rail road corporation, for an estimate of damages, the said commissioners shall, if requested by said owner, require the said rail road corporation to give security to the satisfaction of said commissioners, for the payment of all such

damages and costs, as shall be awarded by the said commissioners or by a jury, for the land or other property so taken; and all the right or authority of said corporation to enter upon or use said land or other property, except for making surveys shall be suspended until they shall give such security.

Corporation may tender damages.

SECT. 62. After the commissioners shall have made their estimate as aforesaid, the said rail road corporation may tender, to the owner of the land or other property, the amount of damages so estimated, in full satisfaction thereof; and if the said owner shall refuse to receive the same, with costs to be taxed to that period, and shall apply for a jury as aforesaid, he shall pay all costs caused by such application, arising after such tender, unless upon the final hearing he shall recover a greater amount of damages than the sum tendered; and if the said corporation shall apply for a jury, and upon a final hearing, the damages, as estimated by said commissioners, shall not be reduced, the said corporation shall pay all costs caused by such application.

Party applying for a jury to pay costs, unless, &c. 1833, 187, § 4.

In Boston, damages to be assessed by the mayor and aldermen. 1834, 137, § 1.

SECT. 63. If any rail road corporation shall, by virtue of their charter, take any land or other property, within the city of Boston, without the consent of the owner of such land or other property, the mayor and aldermen of said city shall, except as provided in the following section, have all the power of commissioners in the like cases; and the like proceedings shall be had, before the said mayor and aldermen, for the purpose of ascertaining, securing and obtaining payment of damages, and subject to the same limitations, as in case of an application to the said commissioners.

Either party may apply to C. C. Pleas for a jury. 1834, 137, § 1.

SECT. 64. Either party, if dissatisfied with the estimate of damages thus made by said mayor and aldermen, may apply for a jury to the court of common pleas, next to be held within the county of Suffolk, after the said estimate is made known to the parties; and thereupon the same proceedings shall be had, as in case of estimating and enforcing payment of damages for laying out ways within the said city.

Existing rights, not to be affected, &c. 1834, 137, § 3.

SECT. 65. Nothing contained in the two preceding sections shall be construed to impair any right of action existing on the twenty eighth day of March, in the year one thousand eight hundred and thirty four, or to confer on any rail road corporation then existing any right or authority not granted before that day.

Rail roads not to obstruct other roads in crossing.

SECT. 66. If any rail road shall be so laid out as to cross any turnpike road or other way, it shall be so made as not to obstruct such turnpike road or way.

Proceedings, when rail road corporations wish to raise or lower turnpikes &c. 1833, 187, § 5.

SECT. 67. Every rail road corporation, which has been or may be established, may raise or lower any turnpike or way, for the purpose of having their rail road pass over or under the same; but before proceeding to make any alteration in such turnpike or way, said rail road corporation shall, in writing, notify the president or clerk of the corporation owning such turnpike, or the selectmen of the town in which such way is situated; and said turnpike corporation or said selectmen, respectively, within thirty days after receiving such notice, shall, in writing, notify said rail road corporation of the alterations, if any, which they may require to have made therein for the purpose aforesaid.

If the parties do not agree as to

SECT. 68. If the parties shall not agree what alterations are ne-

alterations, either may appeal to commissioners. 1833, 187, § 5.

cessary, the said rail road corporation, as well as the said proprietors of the turnpike, and said selectmen, may apply to the commissioners in the county where the said portion of turnpike, or way is situated, at their next regular meeting after the expiration of said thirty days, to determine whether any and what alterations shall be made, and their decision shall be final; and in case said corporation shall unreasonably neglect to make such alteration as the said commissioners shall determine to be proper, the said proprietors or selectmen shall have the same remedies as are prescribed for the recovery of damages caused by making such rail road.

Rail roads not to be obstructed by turnpikes, &c. subsequently laid out.

SECT. 69. If, after the laying out and making of any rail road already granted, or which may be hereafter granted, any turnpike road or other way shall be so laid out as to cross said rail road, the said turnpike road or way may be so made as to pass under or over said rail road, and said turnpike or way shall in all cases be so made as not to obstruct or injure such rail road.

Commissioners may authorize rail road corporations to alter ways, &c. 1833, 187, § 6.

SECT. 70. If any rail road corporation, which has been, or may be established, shall think proper to alter the course of any highway or townway, where it is crossed by their rail road, for the purpose of facilitating the crossing of the same, they may alter the same accordingly, in such manner as shall be directed by the commissioners in the county where such way is situated; provided, the said commissioners, after due notice to the selectmen of the town, where such way is situated, shall be of opinion that such alteration will not essentially injure said way.

Owners of private ways to apply for damages within one year. 1833, 187, § 5.

SECT. 71. No application for damages shall be sustained against such corporation, by the owners of any private way, by reason of any obstruction thereto, occasioned by said rail road crossing the same, unless such application shall be made within one year from the time when the way shall have been so obstructed.

Bridges, &c. at crossings, to be repaired by rail road corporation.

SECT. 72. Every rail road corporation shall maintain and keep in repair all bridges with their abutments, which such corporation shall construct over or under any turnpike road, canal, highway, or other way.

Proceedings, when corporation wish to vary the direction of their rail road 1833, 187, § 7.

SECT. 73. Any rail road corporation, after having taken land for any portion of their road, may, if they shall find it expedient, vary the direction of the road in the place where such land is situated; provided, they shall not thereby locate their road, or any part thereof, without the limits prescribed by their act of incorporation; and they shall, before the time required by law for completing their road, file the location of the different parts of the road, where such variations are made, with the commissioners of the respective counties, where said parts of the road are situated, or with the mayor and aldermen of the city of Boston, as the case may be; and provided also, that the time, allowed by law for completing the whole road, shall not be extended in consequence of such variation.

On petition, commissioners, &c. may originally locate, or may alter location of rail road.

SECT. 74. On the petition of any rail road corporation, the commissioners may, after notice and a hearing in the case, authorize an original location of a rail road to be made, or an existing location to be altered, in any part thereof, without the limits prescribed by the charter of such corporation; provided, that if such location or alteration is prayed for in a road, which lies in two or more counties, the court

Repealed March 12, 1845

of common pleas, in either of said counties, may hear and adjudge thereon, in like manner as the commissioners might do in the like case, in their respective counties.

Location of rail road to be filed with commissioners within one year.

Location

SECT. 75. Every rail road corporation shall, in all cases, file the location of their road within one year, with the commissioners of each county through which the same passes, defining the courses, distances, and boundaries of such portion thereof, as lies within each county, respectively.

Corporation to pay damages for all lands taken; and remedy of owners therefor. 1833, 187, § 7.

SECT. 76. Every rail road corporation shall be liable, as well to the owners of the lands first taken, as to the owners of those taken for making such variations, for all damages occasioned by taking the same; and the said owners shall have the same remedies, for securing and recovering payment of said damages, as are provided in other cases under this chapter.

Damages, &c. for obstructing carriages or injuring rail roads.

SECT. 77. If any person shall wilfully and maliciously obstruct the passing of any carriage on any rail road, or in any way injure such road or any thing appertaining thereto, or any materials or implements for the construction or use thereof, such person, and all, who shall be aiding or abetting in such trespass, shall forfeit to the use of the corporation, for every such offence, treble the amount of the damages, which shall appear on the trial to have been sustained thereby, and may further be punished by a fine not exceeding one thousand dollars, or may be imprisoned for a term not exceeding one year.

Bell to be attached to locomotive engines, and to be rung, &c. 1835, 148, § 4.

SECT. 78. Every rail road corporation shall cause a bell, of at least thirty five pounds in weight, to be placed on each locomotive engine passing upon their road; and the said bell shall be rung, at the distance of at least eighty rods, from the place where said rail road crosses any turnpike, highway or townway, upon the same level with the rail road, and shall be kept ringing until the engine has crossed such turnpike or way.

Sign boards to be erected at the crossings of roads. 1835, 148, § 4.

SECT. 79. Every rail road corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each turnpike, highway or town way, where it is crossed by the rail road, upon the same level therewith; the said posts and boards to be of such height, as shall be easily seen by travellers, without obstructing the travel; and on each side of said boards, the following inscription shall be printed, in capital letters of at least the size of nine inches each,—RAIL ROAD CROSSING—LOOK OUT FOR THE ENGINE WHILE THE BELL RINGS.

Gates, &c. shall also be erected if necessary. 1835, 148, § 4.

SECT. 80. If the selectmen of any town, wherein any turnpike, highway or townway, so crossed by any rail road, is situated, shall be of opinion, that the provisions contained in the two preceding sections are not a sufficient security to the public, in any particular case, and that it is necessary for such security, that gates should be erected across the rail road, and that an agent should be stationed to open and close said gates, whenever any engine passes, the said selectmen may in writing request said rail road corporation to erect such gates and station an agent as aforesaid; and if said corporation shall neglect or refuse so to do, the said selectmen may apply to the commissioners, to decide upon the reasonableness of such request; and if said commissioners, after due notice, and hearing the parties, shall

decide that the erection of such gates, and providing such agent, are necessary for the security of the public, said rail road corporation shall comply with said decision, and shall pay the costs of the application; and if the said commissioners shall be of opinion, that the establishment of said gates and agent is not required as aforesaid, the said selectmen shall be liable to pay all the costs of their application.

Penalty for neglecting to comply with the foregoing provisions, and liability for damages. 1835, 148, § 5.

SECT. 81. If any rail road corporation shall unreasonably neglect or refuse to comply with the requisitions, contained in the three preceding sections, they shall forfeit, for every such neglect or refusal, a sum not exceeding one thousand dollars; and if any agent stationed as aforesaid shall neglect to open or close said gates, for the safe passing of the engine on the rail road, or the traveller on the turnpike, highway or townway, he shall, for every such neglect, forfeit a sum not exceeding one hundred dollars; and the said rail road corporation shall also be liable for all damages, sustained by any person by reason of such neglect of any of their agents, to be recovered in an action on the case, by the person sustaining such damages.

Directors to make report annually to legislature, under penalty.

Books to be open to inspection of legislative committee.

SECT. 82. The directors of every such corporation shall, from year to year, make report to the legislature, under oath, of their acts and doings, receipts and expenditures, under the provisions of their charter, the first of which reports shall be made within one year after the organizing of the corporation, and the others shall be made in the month of January in every succeeding year; and their books shall at all times be open to the inspection of any committee of the legislature appointed for that purpose; and if such corporation shall unreasonably refuse or neglect to make such reports, they shall, for every such refusal or neglect, forfeit a sum not exceeding five thousand dollars.

Corporation may establish tolls, subject, &c.

SECT. 83. Every such corporation may establish, for their sole, benefit, a toll upon all passengers and property, conveyed or transported on their rail road, at such rates as may be determined by the directors of the corporation; and may, from time to time, regulate such conveyance and transportation, the weight of loads, and all other things in relation to the use of such road, as the directors shall determine; provided, that the legislature may, from time to time, as they shall deem expedient, alter or reduce such rates of toll, according to the provisions, if any, contained in the charters of such corporations; but the said tolls shall not, without the consent of the corporation, be so reduced as to produce, with said profits, less than ten per cent. per annum.

State may purchase rail road after twenty years.

SECT. 84. The Commonwealth may, at any time during the continuance of the charter of any rail road corporation, after the expiration of twenty years from the opening of said rail road for use, purchase of the corporation the said rail road, and all the franchise, property, rights and privileges of the corporation, by paying them therefor, such a sum as will reimburse them the amount of capital paid in, with a net profit thereon of ten per cent. per annum, from the time of the payment thereof by the stockholders, to the time of such purchase.

Liability for driving cattle upon a rail road.

SECT. 85. If any person shall, after any rail road is opened for use, ride, drive or lead any horse or other beast upon such road, without the consent of the proprietors thereof, or of their agent, he shall, for every such offence, forfeit a sum not exceeding one hundred

dollars, and shall also be liable for all damages thereby sustained by any person, to be recovered in an action on the case, by the person sustaining such damages; provided, that nothing contained in this section shall be construed to prevent the passing across any such rail road, in places where the same is crossed by any turnpike road, rail road or way, upon the same level with such rail road.

— for neglect in suffering cattle to go upon a rail road.

SECT. 86. If any horse or other beast shall be found going at large, within the limits of any rail road, after the same is opened for use, the person, through whose fault or negligence such horse or other beast shall be so found, shall, for every such offence, forfeit a sum not exceeding twenty dollars, for every horse or other beast so found going at large, and shall also be liable for any damages thereby sustained by any person, to be recovered in an action on the case, by the person sustaining such damages.

CANALS.

Petitions for canals to be accompanied with plans, &c. 1833, 176.

SECT. 87. All petitions for any canal corporation shall be accompanied with reports, estimates, and all other proper documents, corresponding, so far as the nature of the case may require, to those reports and other documents which are to accompany petitions for rail road corporations, as are [*is*] before provided in this chapter.

Conductors of canal boats, to exhibit to the collector of tolls a certificate of loading. 1834, 154, § 1.

SECT. 88. The master or conductor of every boat, laden with goods, wares, or merchandize of any description, and which shall enter the waters of any canal, to be carried on said canal, shall exhibit to the collector of tolls, a certificate, signed by such master or conductor, wherein shall be set forth the name of the owner of the said boat, the name of the place to which such boat is destined, and the quantity or weight of the respective articles laden on board; therein distinguishing each article, as to quantity or weight, according to the amount of toll which the same is liable to pay.

Penalty for neglecting to exhibit certificate, &c. 1834, 154, § 2.

SECT. 89. If any conductor or master of any such boat shall neglect or refuse to exhibit such certificate, he shall forfeit, to the proprietors of such canal, the sum of one hundred dollars; and if he shall knowingly, and with intent to defraud said proprietors, make or deliver any false certificate of the kind or quantity of goods, wares or merchandize, laden on board such boat, he shall forfeit the sum of one hundred dollars.

— for making false statements. 1834, 154, § 2.

SECT. 90. If any owner of a boat, or the agent for such owner, or any other person, shall knowingly, and with intent to defraud the proprietors of any canal, make, or cause to be made, any false statement of the quantity or quality of goods, wares or merchandize, laden, or to be laden, on board of any boat used on such canal, every such owner, agent, or other person, respectively, shall forfeit the sum of one hundred dollars.

Collector of tolls may require loading of boat to be weighed. 1834, 154, § 3

SECT. 91. Whenever the collector of tolls on any canal shall think proper to have the loading of any boat weighed, in order to ascertain the amount of toll payable for such loading, he may detain such boat, and may cause the goods, wares and merchandize, laden on board, to be weighed; and if it shall be thereupon found, that the loading of such boat is greater than the quantity stated in the certificate, the master or conductor of such boat, in addition to the penalty hereinbefore provided, shall pay the costs and charges of unloading,

Cost of weighing, by whom to be paid. 1834, 154, § 3.

weighing, and reloading the goods, wares or merchandize, brought in said boat; but if it be found that the quantity is not greater than is stated in the said certificate, the proprietors of the canal shall pay all such costs and charges, and reasonable damages for the detention of the master or conductor, and the persons employed in such boat, to be recovered in an action of the case against said proprietors.

Proprietors of canals, to furnish blank certificates gratis. 1834, 154, § 4.

SECT. 92. The proprietors of canals shall cause to be prepared the proper blank forms of certificates of loading; and the masters and conductors of boats shall be entitled to use them without any expense.

GENERAL REGULATIONS.

Husband and guardian may release damages for land of wife and ward.

SECT. 93. When the lands or other property or estate of any married woman, or person under guardianship, shall be taken for the use of any turnpike, rail road, or canal corporation, the husband of such married woman, and the guardian of such person, may release all damages in the premises, in like manner as they might do, if the same were held by them in their own right, respectively.

Penalties, how recovered by corporation.

SECT. 94. All penalties and forfeitures, accruing to any corporation under the provisions of this chapter, may be recovered in an action on the case, in the name of the treasurer thereof.

CHAPTER 40.

OF AQUEDUCT CORPORATIONS.

SECTION
1. Proprietors of aqueducts, how incorporated.
2. Their corporate name.
3. Organization, meetings, and choice of clerk.
4. Shares and transfers, to be entered in proprietors' book.
5. Shares, to be personal estate.—How transferred.
6. Directors and other officers to be chosen.
7. Assessments, how made and collected.
8. Corporation may hold real estate.
9. " may dig up highways, &c., provided, &c.
10. Liability of corporators, after dissolution of the company.
11. If no corporate property, individuals liable for debts.
12. Upon dissolution, the corporators to be tenants in common of the real estate.
13. Shares may be attached, &c.
14. Penalty for injuring aqueducts.
15. Towns, to have use of the water in case of fires.

Proprietors of aqueducts, how incorporated. 1798, 59, § 1.

SECTION 1. Any persons, who have already associated, or shall hereafter, by an agreement in writing, associate to become proprietors of any aqueduct, for the purpose of conveying fresh water into or within any town, or of any funds for establishing such aqueduct, may apply, in writing, to some justice of the peace for the county, in which the said aqueduct or any portion thereof may be situated, or is proposed to be made, stating in such written application the name and style of their association, and the objects of their proposed meeting, and requesting such justice to issue his warrant to some one of the

persons applying, directing him to call such meeting; and such justice may thereupon issue his warrant accordingly, stating therein the time, place and objects of the said meeting; and the proprietor, to whom the warrant is directed, shall notify such meeting, by posting up the substance of the said warrant, with his notice annexed thereto, seven days at least before the said meeting, in some public place in the town, in which the said aqueduct may be, or is proposed to be made.

Corporate name, &c. 1798, 59, § 2.

SECT. 2. The proprietors aforesaid, duly assembled in pursuance of such warrant, and their successors, shall be a corporation by the name and style, which they shall have adopted.

Organization, meetings, and choice of clerk. 1798, 59, § 3.

SECT. 3. The said proprietors may, at any legal meeting, agree upon the method of calling future meetings of the corporation, and they may choose a clerk, who shall be under oath, and shall fairly and truly record, in books to be provided and kept by him for that purpose, all by-laws, votes and other proceedings of such corporation; which books shall, at all times, be subject to the inspection of any person, appointed for that purpose, by the legislature.

Shares and transfers, to be entered in proprietors' books. 1798, 59, §§ 3. 6.

SECT. 4. The clerk, at or immediately after the first meeting, shall enter, in the books aforesaid, the names of the several proprietors, and the shares owned by each of them; and when any share shall afterwards be transferred, the transfer shall be entered by said clerk in the said books, within three months after it shall be made, and in such form and for such fees, as the directors shall order; and no person shall be deemed a proprietor, whose share or interest shall not be so entered.

Shares to be personal estate. How transferred. 1798, 59, § 6.

SECT. 5. The shares in such corporation shall be deemed personal estate, and shall be transferrable by such mode of conveyance, in writing, as the corporation shall determine.

Directors and other officers to be chosen. 1798, 59, § 3.

SECT. 6. The proprietors may choose any number of directors and other officers, to manage the business of said corporation; and the directors shall choose one of their number to be the president of the corporation.

Assessments, how made and collected. 1798, 59, § 3.

SECT. 7. The directors may make such assessments, on each share in such aqueduct, as they shall find necessary; and on the default of any proprietor, to pay such assessment, for thirty days, after notice thereof, they may sell by public auction so many of his shares, as will be sufficient to pay the same with necessary charges; the sale of such shares being first advertised in some newspaper printed in the county, three weeks successively, or notifications thereof being posted up, thirty days at least before the sale, in some public places in the town wherein such aqueduct may be, or is proposed to be made; and the surplus moneys, if any there be, arising from such sale, shall be paid to the owner of the shares so sold.

Corporation may hold real estate. 1798, 59, § 6.

SECT. 8. Every such corporation may purchase and hold any real estate, necessary for the purpose of their association, not exceeding thirty thousand dollars in value.

—may dig up highways, &c. provided, &c. 1798, 59, § 7.

SECT. 9. Any such corporation may, with the assent of the selectmen of any town, or mayor and aldermen of any city, in writing, dig up and open any street or way, for the purpose of placing such pipes, as may be necessary in constructing such aqueduct, or for repairing or extending the same; provided the same be done in such

manner as not to prevent the convenient passing of teams and carriages.

Liability of corporators after dissolution of the company. 1798, 59, § 9.

SECT. 10. All contracts, made by or with such corporation, shall, after its dissolution, remain in force, and the last share holders shall have a corporate capacity, until all contracts and agreements, made by or with the corporation, before such dissolution, shall be performed; and such share holders shall continue liable and capable, in and by the same name, as before such dissolution, to sue and be sued, and may prosecute and defend in all suits respecting such contracts and agreements; provided, that every such suit shall be commenced within six years next after such dissolution, or within the like time, after the right of action shall have accrued.

If no corporate property, individuals liable for debts. 1798, 59, § 9.

SECT. 11. If no corporate property can be found to satisfy any judgment, which may be recovered against said share holders, after such dissolution, and the judgment shall not be satisfied within six months after the same shall have been recovered, the judgment creditor may satisfy the same out of the private estate of such share holders, or any of them, in the same manner as if the judgment had been against them in their private capacity.

Upon dissolution, the corporators to be tenants in common of the real estate. 1798, 59, § 9.

SECT. 12. If any such corporation shall, at its dissolution, be seized of any real estate, the several persons, who are then proprietors, shall become tenants in common thereof, in proportion to the shares or interests, which they shall then respectively hold in the stock of the corporation.

Shares may be attached, &c. 1798, 59, § 9.

SECT. 13. All shares in such aqueducts shall be liable to be attached on mesne process and taken in execution, for the debts of the owner thereof, in the manner provided in the ninetieth and ninety seventh chapters, for the attachment of shares in joint stock companies, and for taking the same in execution.

Penalty for injuring aqueducts. 1798, 59, § 10.

SECT. 14. If any person shall maliciously injure any such aqueduct, or any of its appurtenances, he shall forfeit a sum not exceeding one hundred dollars, to the use of the town, in which such offence shall have been committed; and he shall also be liable to pay treble the amount of the damages, sustained by the corporation, to be recovered by them in an action on the case.

Towns, to have use of the water in case of fire. 1798, 59, § 11.

SECT. 15. Any town, in which such aqueduct is situated, may put conductors into the pipes thereof, for the purpose of drawing therefrom, free of expense, as much water as may be necessary, when any building shall be on fire in such town; provided, that such conductors shall be so secured, that water shall not be drawn therefrom, unless for the purpose of extinguishing fires.

CHAPTER 41.

OF LIBRARY CORPORATIONS, AND LYCEUMS.

SECTION

SOCIAL LIBRARIES.

1. Proprietors of libraries may constitute themselves a corporation.
2. Choice of officers.
3. Powers and liabilities of such corporation.

SECTION
4. Treasurer to give bond.
5. Assessments, by-laws, transfers, &c.
6. Corporation may hold real and personal estate.

SECTION
TOWN AND COUNTY LYCEUMS.
7. Incorporation, &c., of town and county lyceums.

SOCIAL LIBRARIES.

SECTION 1. Any seven or more proprietors of a library may form themselves into a corporation, under such corporate name as they shall adopt, for the purpose of preserving, enlarging, and using such library; and for that purpose, any justice of the peace may, on the application of five or more of such proprietors, issue his warrant to one of them, directing him to call a meeting of the proprietors, at the time and place and for the purposes expressed in the warrant; and said meeting shall be called, by posting up the substance of the warrant in some public place, in the town where the said library is kept, seven days at least before the time of the meeting.

Proprietors of libraries may constitute themselves a corporation. 1805, 72, § 1.

SECT. 2. Any seven or more of the proprietors of such library, met in pursuance of such notice, may choose a president, a clerk, who shall be sworn to the faithful discharge of his duty, a librarian, collector, treasurer, and such other officers as they may find necessary; and they may also determine upon the mode of calling future meetings.

Choice of officers, &c. 1805, 72, § 2.

SECT. 3. When such proprietors shall be organized as a corporation, in the manner before provided, they shall have all the powers and privileges, and be subject to all the duties and liabilities, of a corporation organized according to the provisions of the forty fourth chapter, so far as the said provisions shall be applicable in such case, and not inconsistent with this chapter.

Powers and liabilities of such corporation.

SECT. 4. The treasurer shall give bond, with sufficient sureties, to the satisfaction of the proprietors, for the faithful discharge of his duties.

Treasurer to give bond. 1805, 72, § 2.

SECT. 5. The said proprietors may raise such money, by assessments on the several shares, as they shall judge necessary for the purposes of preserving, enlarging and using the library; and the shares may be transferred according to the provisions of the forty fourth chapter.

Assessments, by-laws, transfers, &c. 1805, 72, § 2.

SECT. 6. The said proprietors may hold real and personal estate, to any amount not exceeding five thousand dollars, in addition to the value of their books.

Corporation may hold real and personal estate. 1805, 72, § 1.

TOWN AND COUNTY LYCEUMS.

SECT. 7. Any twenty or more persons, in any town or county within this state, who shall, by writing, associate for the purpose of mutual improvement and the promotion of common education, may become a corporation by the name of "The Lyceum of the town of" (here insert the name of the town,) or "The Lyceum of the county of" (here insert the name of the county,) as the case may be, by calling their first meeting and being organized in like manner, as is provided in this chapter, in the case of social libraries; and every lyceum, upon becoming a corporation as aforesaid, shall have, during the pleasure of the legislature, all the like rights, powers and privi-

Incorporation, &c. of town and county lyceums. 1828, 158.

leges as the proprietors of such libraries, and may hold real and personal estate not exceeding ten thousand dollars.

CHAPTER 42.

OF AGRICULTURAL CORPORATIONS.

SECTION
1. Incorporated agricultural societies may be entitled to an annual sum from the treasury, by, &c.
2. When unincorporated societies shall be entitled to a charter.
3. Previous duty of societies claiming allowance from the treasury.
4. Premiums to be offered by societies, &c.
5. Surplus money, to be put at interest.
6. Premiums for raising trees for ship timber.
7. To what societies the preceding provisions extend.
8. Cattle shows regulated.
9. Penalty for violating regulations.
10. Extent of foregoing provisions.
11. Marshals to be appointed, to execute regulations.

Agricultural societies may be entitled to annual sum from the treasury, by, &c. 1818, 114, § 1.

SECTION 1. Every incorporated agricultural society, which shall have raised or may hereafter raise, by contribution of individuals, and put out at interest, on public or private security, the sum of one thousand dollars, as a capital stock appropriated for the uses of such society, shall be entitled to receive, in the month of October, annually, out of the treasury of the Commonwealth, the sum of two hundred dollars, and in that proportion annually, for any greater sum so contributed and put at interest, as a capital stock; provided, that no agricultural society shall receive from the treasury more than six hundred dollars in any one year.

When unincorporated societies shall be entitled to a charter. 1818, 114, § 2.

SECT. 2. Any agricultural society, formed within any county or counties, wherein there is no incorporated society for the same purpose, and which shall raise and put out at interest, as a capital stock, not less than one thousand dollars, for the uses of such society, shall receive, on application to the legislature, an act of incorporation, in the usual form, and with the customary rights and powers; and after such incorporation, the society shall have all the privileges, secured to other agricultural societies, on complying with the terms and provisions herein contained; provided, that no agricultural society shall have the benefits of this section, unless the same be formed in a county, or in an association of counties, including a population of not less than twenty five thousand inhabitants.

Previous duty of societies claiming allowance from the treasury. 1818, 114, § 3.

SECT. 3. Every agricultural society, which shall claim the said allowance out of the public treasury, shall, in the month of October, annually, file in the office of the secretary of state a certificate signed by the president and treasurer of such society, specifying under oath the sum actually contributed, and put at interest, and then held by them well secured as a capital stock; and a warrant shall be drawn for the sum to which such society may be entitled.

Premiums to be offered by societies, &c.

SECT. 4. Every agricultural society, which shall receive the said allowance from the public treasury, shall offer annually, by way of

premiums, or shall apply otherwise, at their discretion, for the encouragement or improvement of agriculture or manufactures, a sum not less than the amount annually received, as aforesaid, out of the public treasury; and they shall also transmit to the office of the secretary, in the month of January, annually, a statement of their proceedings in relation to the expenditure of such moneys, specifying the nature of the encouragement proposed by the society, and the objects for which their premiums have been offered, and to whom they were awarded; and shall accompany the same with such general observations, concerning the state of agriculture and manufactures, in the state, as they may deem important or useful. 1818, 114, § 4.

SECT. 5. All moneys offered for premiums, which shall not be awarded or paid, shall be put out at interest, and added to the capital stock of each agricultural society. Surplus money, to be put out at interest. 1818, 114, § 4.

SECT. 6. Every agricultural society, which shall receive the said public allowance, shall offer, annually, such premiums and encouragement, for the raising and preserving of oaks, and other forest trees, as to them shall seem proper, and best adapted to perpetuate, within the state, an adequate supply of ship timber. Premiums for raising trees for ship timber. 1818, 114, § 5.

SECT. 7. The foregoing provisions shall not extend to any agricultural society, which has been, or hereafter may be, incorporated for any territory less than a county. To what societies the preceding provisions extend. 1818, 114, § 6.

SECT. 8. All incorporated agricultural societies may, by their officers, define and fix bounds of sufficient extent, for the erection of their cattle pens and yards, and for convenient passage ways to and about the same, on the days of their cattle shows and exhibitions, and also for their ploughing matches, and trials of working oxen; within which bounds, no persons shall be permitted to enter or pass, unless in conformity with the regulations of the officers of said societies, respectively. Cattle shows regulated. 1820, 49, § 1.

SECT. 9. If any person shall, contrary to the regulations of the said officers, and after notice thereof, enter or pass within the bounds so fixed, he shall forfeit a sum not exceeding five dollars, to be recovered in an action on the case, for the use of the society, by the treasurer thereof. Penalty for violating regulations. 1820, 49, § 1.

SECT. 10. The foregoing provisions shall not authorize such societies to occupy, or include within the bounds which they shall fix for the purposes aforesaid, the land of any person, without his consent, nor to occupy any turnpike or public highway, in such a manner as to obstruct the public travel. Extent of foregoing provisions. 1820, 49, § 1.

SECT. 11. The officers of every such society may appoint a sufficient number of suitable persons, inhabitants of the county, to act as marshals, at cattle shows and exhibitions, and they shall have and exercise all the powers of constables, in relation to the preservation of the public peace, and the service and execution of criminal process, within the towns, respectively, where such shows and exhibitions may be held; and any such criminal process may be directed to them accordingly; and they shall exercise their said office, from twelve o'clock at noon of the day preceding the commencement of such shows and exhibitions, until twelve o'clock at noon of the day succeeding the termination thereof, and no longer. Marshals, to be appointed to execute regulations. 1820, 49, § 2.

CHAPTER 43.

OF PROPRIETORS OF LANDS, WHARVES, GENERAL FIELDS, AND OTHER REAL ESTATE LYING IN COMMON.

SECTION
1. Proprietors of lands, &c., in common, may be incorporated for certain purposes.
2. A justice may call a meeting for that purpose.
3. Notice, &c., of first meeting.
4. Proprietors when assembled may organize, &c.
5. When their powers may be exercised.
6. In what manner they may vote.
7. Proprietors may raise money, &c.
8. Assessments, how collected.
9. Sale of shares to pay assessments, how notified.
10. Owners of shares sold may redeem.
11. Proprietors may make by-laws.
12. " may sue and be sued, &c.
13. Powers of moderator of proprietors' meetings.
14. Clerk, to be sworn—His duty.
15. Treasurer's duty and powers.
16. Tenure of offices.
17. After dissolution of the corporation, records to be deposited, &c.
18. Certain corporate powers and liabilities to remain after division of property.
19. After division of property, meetings may be held.

OF GENERAL FIELDS.

20. Proprietors of general fields may hold meetings, &c.
21. A justice may issue a warrant for such meetings.
22. Meetings, how notified.
23. Number of votes allowed, and how given.
24. Choice of clerk, assessors, &c.
25. Proprietors may raise money; remedy for over assessments.
26. Clerk, to issue warrant for collecting assessments, &c.
27. Proprietors may make regulations, as to pasturing, &c.
28. Apportionment of fence, &c.
29. Proprietors, not obliged to maintain fence, in case, &c.
30. Expense of apportioning fence, &c.
31. Proceedings when any part of fence assigned shall be deficient.
32. Party neglecting to repair, liable to double damages, &c.
33. Liability to repair in case of sudden destruction, &c., of fences.
34. Proprietors, may choose field drivers.
35. " trespassing, &c., to be liable as strangers.
36. Any proprietor may enclose his own land.
37. Proprietor injured by beasts of stranger, entitled to damages.
38. Every proprietor shall run lines once in two years, if, &c.
39. Court of common pleas may order proprietors to fence land as a general field.
40. Such order not to be made, unless, &c.
41. After such order, proprietors to have powers as if field were established by consent.
42. Proprietors may discontinue general fields.
43. Division may be made of a general field, on petition, &c.

Proprietors of lands, &c. in common may be incorporated for certain purposes.

SECTION 1. When any lands, wharves, or other real estate, are held in common by five or more proprietors, they may form themselves into a corporation, in the manner and for the purposes hereinafter mentioned.

A justice may call a meeting for that purpose. 1783, 39, § 1.

SECT. 2. Upon the application of any five or more of such proprietors to any justice of the peace, he shall issue his warrant to one of the applicants, directing him to call a meeting of all the said proprietors, and expressing in the warrant the time, place and occasion of the meeting, and the purpose for which it is called.

Notice, &c. of the first meeting.

SECT. 3. The meeting shall be called by posting up a notice, containing the substance of the warrant, and signed by the person to

whom the warrant is directed; which notice shall, fourteen days at least before the meeting, be posted up in one or more public places in the town, where the real estate lies, and be published in a newspaper printed in the county where the estate lies, if there be any, and if not, in a newspaper printed in some adjoining county. 1783, 39, § 1.

SECT. 4. The said proprietors, when assembled pursuant to such notice, may proceed to organize themselves as a corporation, under the provisions of this chapter, provided a majority in interest of all the proprietors, whether present or absent, shall agree and vote to do so; and they may thereupon choose a clerk, treasurer, collector, and such committees, and other officers as they shall think necessary for the management of their affairs, and may agree upon and direct the manner of calling future meetings. Proprietors when assembled may organize, &c. 1783, 39, § 1.

SECT. 5. At the said first meeting, or at any adjournment thereof, and also at any meeting, that shall be afterwards called, according to the orders or by-laws of the proprietors, they may exercise all or any of the powers, granted to them in this chapter; but no business shall be acted on at any meeting, unless it is expressed in the notice for such meeting. When their powers may be exercised. 1783, 39, § 1.

SECT. 6. At all meetings of the proprietors, each one shall be entitled to vote, according to the number of his shares, or the amount of his interest, when the same is known, and when not known, they shall all vote equally; and absent proprietors may vote by proxy authorized in writing. In what manner they may vote. 1783, 39, § 8.

SECT. 7. The said proprietors may, by vote at any legal meeting, adopt such measures, as they shall think proper, for managing, improving or dividing their common property, and for carrying on their business; and for this purpose, they may raise money, by assessments on the proprietors, in proportion to their respective rights and interests in the said property. Proprietors may raise money, &c. 1783, 39. § 5. 7 Greenl. 404. 5 Greenl. 164. 2 Mass. 475. 10 Mass. 5.

SECT. 8. If any proprietor shall neglect to pay the sum so assessed on him, for the space of six months, after demand thereof by the collector or other proper officer, or after a notice of such assessment, posted and published in the manner before prescribed for giving notice of the first meeting, the committee of the proprietors, or other officers, authorized by them for that purpose, may sell by public auction so much of the right or share of such delinquent proprietor, as shall be sufficient to pay the sum so due from him, with all the reasonable charges of the sale, and shall give to the purchaser a deed of the part so sold. Assessments, how collected. 4 Greenl. 237. 1783, 39, § 5.

SECT. 9. No such sale shall be made, until notice shall be given of the time and place appointed therefor, by posting and publishing the same in the manner before provided for giving notice of the first meeting; such notice of the sale to be posted and published, thirty days at least, before the time appointed therefor. Sale of shares, to pay assessments, how notified. 1783, 39, § 5.

SECT. 10. The proprietor of the share or part so sold may redeem the same, at any time within one year after the sale, by paying to the purchaser or his assigns the sum for which it was sold, with interest at the rate of twelve per cent. a year, from the time of the sale. Owner of shares sold may redeem. 1783, 39, § 5.

SECT. 11. The proprietors may make by-laws for the orderly conducting of their business, with penalties for the breach thereof, Proprietors may make by-laws.

1783, 39, § 1.

not exceeding three dollars for any one offence; provided, that such by-laws shall not be repugnant to the laws of the Commonwealth, and that such of them, as have penalties annexed, shall be approved by the commissioners in the county where the real estate lies.

— may sue and be sued, &c. 1783, 39, § 4. 1824, 74.

SECT. 12. The said proprietors may sue and be sued, as a corporate body, for any matters concerning their common property, and may appear in such actions, and prosecute and defend the same by their agent or attorney authorized at any legal meeting; and any action brought by them, for any trespass on their common property, may be pleaded in abatement or in bar of any action for the same trespass, brought by the said proprietors, or any of them, in their individual capacity.

Powers of moderator of proprietors' meetings. 1783, 39, §§ 2 and 9.

SECT. 13. The moderator, presiding at any meeting of the proprietors, shall have the same power to regulate the business thereof, that is given to the moderator of a town meeting, excepting the power of confining any person, or of causing him to be carried out of the meeting; and all persons, who shall resist or disobey the orders of the moderator, shall be subject to the same pecuniary penalties, that are provided for the like offences at a town meeting.

Clerk, to be sworn. His duty. 1783, 39, § 1.

SECT. 14. The clerk of the proprietors shall be sworn to the faithful discharge of his duty, and he shall record all votes, orders and proceedings of the proprietors, in books to be kept for that purpose, and shall keep the same in his custody, until they shall be delivered to the clerk of the town, as hereinafter provided.

Treasurer's duty and powers. 1783, 39, § 7.

SECT. 15. The treasurer of the proprietors shall demand and receive all moneys in any way due or belonging to them; and he shall also sue for and recover in his own name, but for their use, all fines and penalties, incurred under any of the foregoing provisions; and he shall pay out all moneys in his hands, according to the order of the proprietors, and shall render his accounts thereof, from time to time, when required by them.

Tenure of offices. 1783, 39, § 7.

SECT. 16. All officers chosen by the proprietors shall hold their offices until others are chosen and qualified in their stead.

After dissolution of the corporation, records to be deposited, &c. 1783, 39, § 9. 1790, 40, § 2.

SECT. 17. After the final division of all the common property of such proprietors, they may cause their records to be deposited with the clerk of the town, in which the land or any part of it may lie; and such town clerk and his successors may make and certify any copies from such records, in like manner as the clerk of the proprietors might have done.

Certain corporate powers and liabilities to remain after division of property. 1790, 40, § 1.

SECT. 18. Such a final division of the common property shall not dissolve the corporation, until the expiration of ten years thereafter; but the persons who were members and proprietors, at the time of such division, and their respective heirs, shall retain their corporate powers, for the purpose of collecting all taxes, debts and effects due or belonging to the corporation, and shall be liable to pay all debts due from the corporation.

After division of property, meetings may be held, &c. 1790, 40, § 1.

SECT. 19. The proprietors may, after such division of their property, call and hold meetings, and may vote and raise money by assessments, as before provided, for the payment of their debts and all other charges and demands against them, and may do all such other lawful acts, as may be necessary for closing their business; pro-

vided, that they shall not continue to act as a corporation, for more than ten years after the final division of their common property.

OF GENERAL FIELDS.

SECT. 20. When several distinct lots or pieces of land are enclosed and fenced in one common field, or when all the proprietors of such lands shall agree to enclose them in that manner, the said proprietors, provided they be not less than five in number, may hold regular meetings, from time to time, for the purpose of managing their common concerns, in the manner hereinafter provided.

Proprietors of general fields may hold meetings, &c. 1785, 53, § 1.

SECT. 21. Upon the application of any two or more of the said proprietors to any justice of the peace, he shall issue his warrant to one of the applicants, directing him to call a meeting of the said proprietors, and expressing in the warrant the time and place of the meeting, and the purpose for which it is called.

A justice may issue a warrant for such meetings. 1785, 53, § 1.

SECT. 22. The meeting shall be called, either in the manner before prescribed in this chapter, for calling meetings of tenants in common, or by personal notice, to be served on each proprietor, fourteen days at least, before the time appointed for the meeting.

Meetings, how notified. 1785, 53, § 1.

SECT. 23. At all meetings of the said proprietors, each one may vote, according to the relative amount or value of his interest, when known; and when not known, they shall all vote equally; and absent proprietors may vote by proxy authorized in writing.

Number of votes allowed, and how given. 1785, 53, § 10.

SECT. 24. The said proprietors may, from time to time, choose a clerk, and three or more assessors, and a collector, and such other officers as they shall find necessary; all of whom shall continue in office, until removed by the proprietors, or until others are chosen and qualified in their stead; and the clerk and assessors shall be sworn to the faithful discharge of their duty.

Choice of clerk, assessors, &c. 1785, 53, § 3.

SECT. 25. The proprietors may raise money, from time to time, for defraying their common charges, and for managing their affairs; which money shall be assessed upon the several proprietors, in proportion to their respective interests, by the assessors; and any proprietor, who shall think himself overrated in such assessment, may apply for relief to the county commissioners, who shall hear and determine the case, and whose judgment thereon shall be final.

Proprietors may raise money. Remedy for over assessment. 1785, 53, § 3.

SECT. 26. The clerk of the proprietors shall issue his warrant to the collector, requiring him to collect all sums so assessed, and to pay over the same to the clerk or other proper officer, according to the orders of the proprietors; and the collector shall collect the said sums, in the same manner as collectors of towns are authorized to collect town taxes.

Clerk to issue warrant for collecting assessments, &c. 1785, 53, § 3.

SECT. 27. The proprietors may adopt such rules, as to pasturing the lands, and other matters in which they have a common interest, as they shall think just and equitable, and most for the general good; but in all other respects, each proprietor may manage and cultivate his own land as he shall think best.

Proprietors may make regulations as to pasturing, &c. 1785, 53, § 1.

SECT. 28. The whole fence enclosing such general field shall, so far as it may be found convenient, be apportioned among the proprietors, according to the number of acres held and cultivated, or otherwise used, by each one; and the part, to be maintained by each proprietor, shall be set out and assigned to him, by any two or more

Apportionment of fence, &c. 1785, 53, § 1.

fence viewers, unless the proprietors shall agree on an apportionment of the fence among themselves; and in all cases, the proportion of fence, so assigned to each proprietor, shall be recorded by the clerk in the books of the proprietors, and, where there is no such clerk, the said record shall be made by the clerk of the town, in which such general field is situated.

Proprietors not obliged to maintain fence, in case, &c. 1785, 53. § 12.

SECT. 29. If any proprietor of land in such general field shall decline to cultivate his land, or to use it for pasturing, for the growth of wood, or otherwise, he shall not be required to maintain any part of the fence, nor to pay any tax or assessment on account of his land, so long as he shall decline to cultivate or use it as aforesaid.

Expense of apportioning fence, &c. 1785, 53, §§ 1 and 2.

SECT. 30. The expense of apportioning the fence, and also of making and maintaining such part thereof, as cannot be conveniently and justly assigned to any one proprietor, shall be borne by all the proprietors, who are liable to be taxed, in proportion to their respective interests; and the part assigned to each proprietor shall be made and maintained by himself, so long as he shall use his part of the said general field for pasturing, planting, mowing or otherwise.

Proceedings when any part of fence assigned shall be deficient. 1794, 38, § 1.

SECT. 31. If the part of the fence, assigned to any proprietor, shall become deficient, and if he shall not repair it within three days after notice of such deficiency, given to him by a fence viewer of the town, it may be repaired by any other of the said proprietors; and such repairs may be examined by any two or more fence viewers, and if adjudged by them to be sufficient, they shall ascertain and determine the cost of the repairs, and make a statement thereof, and of the amount of their fees, in writing, under their hands.

Party neglecting to repair, liable to double damages, &c. 1794, 38, § 1.

SECT. 32. The person making such repairs may demand, of the proprietor who was bound to make the same, or of the tenant holding under him, double the cost of the repairs and of the fees of the fence viewers, ascertained as aforesaid; and if the same is not paid within one month, after notice and demand thereof, he may recover the same in an action on the case.

Liability to repair, in case of sudden destruction, &c., of fences. 1794, 38, § 2.

SECT. 33. If any part of the fence shall be suddenly blown down, or carried away by any flood or tempest, at a time when the crops of grain or grass in the field shall be thereby exposed to immediate destruction or injury, the proprietor, to whom that part of the fence was assigned, shall be bound to repair the same, within twenty four hours after notice thereof given to him by a fence viewer; and if he shall fail so to do, the fence may be repaired by any other proprietor, and such proprietor may recover double the cost of the repairs and fees, in the same manner as is provided in the preceding section.

Proprietors may choose field drivers. 1785, 53, § 4.

SECT. 34. The proprietors may choose one or more field drivers, who shall have and exercise the same powers, with respect to the general fields, that are exercised by field drivers chosen by a town.

Proprietors trespassing, &c. to be liable, as strangers. 1785, 53, § 5.

SECT. 35. If any proprietor shall put into the general field any horses, cattle, or other beasts, contrary to the regulations of the proprietors, either by putting in more than the number allowed him, or before the day fixed for that purpose, or by keeping them therein longer than the time limited, he shall be considered a trespasser, and his beasts may be impounded as taken doing damage, in like manner as if he owned no land in the general field.

SECT. 36. Every proprietor of land in such general field may enclose his own land, at his own expense; and so long as he shall keep it enclosed with a sufficient fence, he may cultivate and use it, as he shall think fit; but he shall nevertheless maintain his proportion of the fence enclosing the general field.

Any proprietor may enclose his own land. 1796, 13.

SECT. 37. If any proprietor shall be injured in his lands, by the beasts of any stranger, he shall have the same remedy therefor, as if his land had been enclosed and used separately.

Proprietor injured by beasts of stranger entitled to damages. 1785, 53, § 6.

SECT. 38. Every proprietor of land lying unfenced in a general field shall, once in every two years, if requested by the owner of the adjoining land, run lines with such owner, between their lots, and make and keep up the boundaries between them, by sufficient bound stones, at their joint expense; and if he shall fail so to do, after seven days notice by the adjoining owner, he shall forfeit two dollars, to be recovered by such adjoining owner to his own use, in an action on the case.

Every proprietor shall run lines once in two years, if, &c. 1785, 53, § 7.

SECT. 39. When any five or more distinct lots or pieces of land shall be so situated, as to render it for the interest of the proprietors, to enclose them in one common field, the court of common pleas, for the county in which the land or any part of it shall lie, may order the land to be so enclosed, if upon a hearing of the parties it shall appear to the court to be for their common benefit.

Court of common pleas may order proprietors to fence land as a general field. 1818, 11.

SECT. 40. No such order shall be made, unless upon the application of the greater part in interest of the proprietors, and after due notice to all other persons interested, and a full hearing thereon.

Such order not to be made, unless, &c. 1818, 11.

SECT. 41. After a common or general field shall be so established by an order of the court, the further proceedings in relation thereto shall be the same, as are provided when a field is so enclosed by the consent of all the proprietors; and the proprietors shall be entitled to all the privileges, and subject to all the duties, before provided in this chapter, with respect to the proprietors of fields enclosed by consent.

After such order, proprietors to have powers as if field were established by consent. 1818, 11.

SECT. 42. When the greater part in interest of the proprietors of any common field, whether established by consent, or by an order of court, shall think it best to discontinue it, they may do so at any legal meeting warned for that purpose; provided, that the discontinuance shall not take place, until the expiration of six months after the vote for that purpose.

Proprietors may discontinue general fields. 1785, 53, § 8.

SECT. 43. Any three or more proprietors of lots, in a general field lying within one general fence or enclosure, may, by a petition in writing to the proprietors of such field, at any meeting of said proprietors legally warned for that purpose, request to have their said lots, either alone or jointly with any other lots in such field, divided from the remainder of the field, in order to be enclosed in one common fence, and to be occupied by them as an entire field, separately from the other proprietors of the general field; and if the majority of proprietors in interest, who may be present at such meeting, shall withhold or refuse their assent to such division, the court of common pleas may, upon the like application, appoint five disinterested and suitable persons, within the county where such general field is situated, to be a committee to make such division thereof, if the said commit-

Division may be made of a general field, by petition, &c. 1785, 53, § 13.

tee shall deem it expedient, and to assign to each field its proportion of the partition fence, which shall become necessary by reason of such division, to be kept up and maintained by the proprietors of the said general fields, respectively; and the said committee shall, as soon as may be after their appointment, make return of their doings under their hands to the said court; and after the acceptance thereof by the said court, the fields so divided shall be deemed separate general fields, and the proprietors of the field so set off, and the remaining proprietors of the original field, respectively, shall be distinct and separate proprietary bodies, having all the like powers and privileges, and subject to all the like duties and liabilities, as the proprietors of the original general field before such division was made; provided, that no order for such division shall be made, nor any committee appointed as aforesaid, until the other proprietors shall have had notice of the petition for such division; which notice shall be given by serving the clerk of the proprietors with a copy of the petition, thirty days at least, before such order or appointment shall be made.

CHAPTER 44.

GENERAL PROVISIONS RESPECTING CORPORATIONS.

SECTION
1. General powers of corporations.
2. Same subject.
3. First meeting, how notified.
4. In case of death, &c., of officers, a justice may call a meeting.
5. At such meeting, officers may be elected, &c.
6. Lands may be held and conveyed.
7. Corporations to continue three years after charter expires, to close their concerns.
8. When corporations expire, &c., receivers to be appointed to settle their affairs.
9. Equity jurisdiction over receivers given to supreme judicial court.
10. The receivers, to pay debts, &c., and distribute the surplus.
11. Franchises, &c., how attached on mesne process.
12. " &c., may be sold on execution.
13. Mode of selling the franchises, &c.
14. Sale may be adjourned.
15. Who shall be deemed the highest bidder.
16. Officer's return, to transfer the right of toll, &c.
17. The purchaser, &c. of a franchise, to have the same remedies as corporations, for damages sustained.
18. Liabilities of corporation, to continue.
19. Corporation may redeem the franchise sold.
20. Warrants of distress against corporations, for damages, &c.
21. In what county the proceedings shall be.
22. Remedy in equity given against officers and members, when liable.
23. Certain acts of incorporation, to be subject to alteration or repeal.

General powers of corporations. 10 Mass. 91. 1833, 83, § 1.

SECTION 1. All corporations shall, where no other provision is specially made, be capable, in their corporate name, to sue and be sued, appear, prosecute and defend to final judgment and execution, in any courts or elsewhere; to have a common seal, which they may alter at pleasure; to elect, in such manner as they shall determine to

be proper, all necessary officers, and to fix their compensation and define their duties and obligations; and to make by-laws and regulations, consistent with the laws of the Commonwealth, for their own government, and for the due and orderly conducting of their affairs, and the management of their property.

Same subject. 1833, 83, § 1.

SECT. 2. All corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting all meetings; the number of members that shall constitute a quorum; the number of shares that shall entitle the members to one or more votes; the mode of voting by proxy; the mode of selling shares for the non-payment of assessments; and the tenure of office of the several officers; and they may annex suitable penalties to such by-laws, not exceeding, in any case, the sum of twenty dollars, for any one offence; provided, that no such by-law shall be made by any corporation, repugnant to any provisions of its charter.

First meeting, how notified. 16 Mass. 94. 1833, 83, § 2.

SECT. 3. The first meeting of all corporations shall, unless otherwise provided for, in their acts of incorporation, be called by a notice signed by any one or more of the persons named in the act of incorporation, and setting forth the time, place and purposes of the meeting; and such notice shall, seven days at least before the meeting, be delivered to each member, or published in some newspaper of the county, where the corporation may be established, or if there be no newspaper in the county, then in some newspaper of an adjoining county; provided, that the notice of the first meeting of incorporated religious societies may be affixed to the door, or some other conspicuous part, of their meeting house.

In case of death, &c. of officers, a justice may call a meeting. 1833, 49.

SECT. 4. Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace, in the county where such corporation is established, may, on a written application of three or more of the members thereof, issue a warrant to either of said members, directing him to call a meeting of the corporation, by giving such notice as had been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting, until a clerk shall be duly chosen and qualified, if there shall be no officer present, legally authorized to preside thereat.

At such meeting, officers may be elected, &c. 1833, 49.

SECT. 5. Such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business, as might by law be transacted at regular meetings of the corporation.

Lands may be held and conveyed.

SECT. 6. Every such corporation may hold lands to an amount authorized by law, and may convey the same.

Corporations to continue three years after charter expires, to close their concerns. 16 Mass. 245. 1 Greenl. 79. 1819, 43.

SECT. 7. All corporations, whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless be continued bodies corporate, for the term of three years after the time, when they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business, for which such corporations have been or may be, established.

When corporations expire, &c. receivers to be appointed to settle their affairs. 1833, 145.

SECT. 8. When the charter of any corporation shall expire or be annulled, as provided in the preceding section, the supreme judicial court, on application of any creditor of such corporation, or of any stockholder or member thereof, at any time within the said three years, may appoint one or more persons, to be receivers or trustees of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the corporation; with power to prosecute and defend, in the name of the corporation or otherwise, all such suits as may be necessary or proper, for the purposes aforesaid; and to appoint an agent or agents under them, and to do all other acts, which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such receivers may be continued beyond the said three years, and as long as the court shall think necessary, for the purposes aforesaid.

Equity jurisdiction over receivers given to supreme judicial court. 1833, 145.

SECT. 9. The said court shall have jurisdiction in chancery of such application, and of all questions arising in the proceedings thereon; and may make such orders, injunctions and decrees therein, as justice and equity shall require.

The receivers to pay debts, &c. and distribute surplus. 1833, 145.

SECT. 10. The said receivers shall pay all debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors, who shall prove their debts in the manner, that shall be directed by any order or decree of the court for that purpose; and if there shall be any balance remaining after the payment of said debts, the receivers shall distribute and pay the same to and among those, who shall be justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

Franchise, &c. how attached on mesne process. 1810, 131, § 3.

SECT. 11. The franchise of any turnpike or other corporation, authorized to receive toll, and all the rights and privileges thereof, shall be liable to attachment on mesne process; and when such attachment or other service of mesne process shall be made on any such corporation, the officer serving the same shall leave an attested copy of the process and his return thereon with the clerk, treasurer, or some one of the directors of the corporation, fourteen days at least, before the day of the sitting of the court, to which the same may be returnable.

—may be sold on execution, &c. 1810, 131, § 1. 1824, 121, § 1.

SECT. 12. When any judgment shall be recovered against any turnpike or other corporation, authorized to receive toll, the franchise of such corporation, with all the rights and privileges thereof, so far as relates to the receiving of toll, and also all other corporate property, real and personal, may be taken on execution or warrant of distress, and sold by public auction.

Mode of selling the franchises, &c. 1810, 131, § 1. 1824, 121, § 1.

SECT. 13. The officer, having such execution or warrant of distress against any corporation, mentioned in the preceding section, shall, thirty days at least before the day of sale of any franchise or other corporate personal property, give notice of the time and place of sale, by posting up a notification thereof in any town, in which the clerk, treasurer, or any one of the directors of such corporation may dwell, and also by causing an advertisement of the sale, expressing the name of the creditor, the amount of the execution, and the time and place of sale, to be inserted three weeks successively in some news-

paper, published in any county, in which either of the aforesaid officers of such corporation may dwell, if any such there be; the last of which publications shall be at least four days before the day of sale.

Sale may be adjourned. 1810, 131, § 5.

SECT. 14. The officer, who may levy any execution or warrant of distress, as prescribed in the preceding section, may adjourn the sale, for any time not exceeding seven days, and so from time to time, until the sale shall be completed.

Who shall be deemed the highest bidder. 1810, 131, § 2.

SECT. 15. In the sale of the franchise of any corporation, the person, who shall satisfy the execution or warrant of distress, with all legal fees and expenses thereon, or who shall agree to take such franchise, for the shortest period of time, and to receive during that time all such toll, as the said corporation would by law be entitled to demand, shall be considered as the highest bidder.

Officer's return to transfer the right of toll, &c. 1810, 131, § 2.

SECT. 16. The officer's return, on such execution or warrant of distress, shall transfer to the purchaser all the privileges and immunities, which by law belonged to said corporation, so far as relates to the right of demanding toll; and the officer shall, immediately after such sale, deliver to the purchaser possession of all the toll houses and gates, belonging to such corporation, in whatever county the same may be situated; and the purchaser may thereupon demand and receive, to his own use, all the toll, which may accrue, within the time limited by the term of his purchase, in the same manner and under the same regulations, as such corporation was before authorized to demand and receive the same.

The purchaser of a franchise to have the same remedies as corporation for damages sustained. 1826, 116.

SECT. 17. Any person who may have purchased, or shall, under the provisions of this chapter, hereafter purchase the franchise of any turnpike or other corporation, and the assignee of such person, may recover, in an action on the case, any penalties imposed by law for an injury to the franchise or for any other cause, and which such corporation would have been entitled to recover, during the time limited in the said purchase of the franchise; and during that time, the corporation shall not be entitled to prosecute for such penalties.

Liabilities of corporation, to continue.

SECT. 18. The corporation, whose franchise shall have been sold as aforesaid, shall, in all other respects, retain the same powers and be bound to the discharge of the same duties, and liable to the same penalties and forfeitures, as before such sale.

Corporation may redeem the franchise sold. 1810, 131, § 2.

SECT. 19. Such corporation may, at any time within three months from the time of such sale, redeem the franchise, by paying or tendering to the purchaser thereof the sum, that he shall have paid therefor, with twelve per cent. interest thereon, but without any allowance for the toll, which he may have received; and upon such payment or tender, the said franchise, and all the rights and privileges thereof, shall revert and belong to said corporation, as if no such sale had been made.

Warrants of distress against corporations for damages, &c. 1810, 131, § 4.

SECT. 20. Whenever any damages have been, or may hereafter be assessed, in favor of any person, either by an order of county commissioners or by the verdict of a jury, for any injury sustained in his property, by the doings of any such turnpike or other corporation authorized to receive toll, and the said damages shall remain unpaid, for the space of thirty days after such order or verdict, such person may have a warrant of distress against such corporation, for the damages assessed, together with interest thereon, and his reasonable costs.

In what county the proceedings shall be. 1810, 131, § 6.

SECT. 21. All the proceedings aforesaid, respecting attachments and the levy of executions or warrants of distress, may be had in any county, in which either the creditor, or the president, or any director, the treasurer or clerk, of the corporation, may reside.

Remedy in equity given against officers and members, whenever liable.

SECT. 22. When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members are liable to contribute, for money paid by any other or others of them, on account of any such debts or acts, the money due may be recovered, by a bill in equity in the supreme judicial court; and the said court may make all such orders and decrees therein, as may be necessary to do justice between the parties.

Certain acts of incorporation, to be subject to alteration or repeal. 1830, 81.

SECT. 23. Every act of incorporation, passed since the eleventh day of March, in the year one thousand eight hundred and thirty one, or which shall be hereafter passed, shall at all times be subject to amendment, alteration, or repeal, at the pleasure of the legislature; provided, that no act of incorporation shall be repealed, unless for some violation of its charter, or other default, when such charter shall contain an express provision limiting the duration of the same.

TITLE XIV.

Of the internal police of the Commonwealth.

CHAPTER 45. Of the settlement of paupers.

CHAPTER 46. Of the support of paupers.

CHAPTER 47. Of the regulation of licensed houses.

CHAPTER 48. Of the State Lunatic Hospital; and the care of lunatics.

CHAPTER 49. Of the maintenance of bastard children.

CHAPTER 50. Of the observance of the Lord's day; and the prevention and punishment of immorality.

CHAPTER 51. Of the law of the road; and the regulation of public vehicles.

CHAPTER 52. Of timber floating on rivers, or carried upon adjoining lands.

CHAPTER 53. Of the preservation of certain useful birds and animals.

CHAPTER 54. Of the destruction of certain noxious animals.

CHAPTER 55. Of fisheries.

CHAPTER 56. Of lost goods and stray beasts.

CHAPTER 57. Of wrecks and shipwrecked goods.

CHAPTER 58. Of certain municipal regulations of police.

CHAPTER 45.

OF THE SETTLEMENT OF PAUPERS.

SECTION
1. Legal settlements, how acquired.—1. Married women to have the settlement of their husbands, if, &c.—2. Legitimate children to follow their father or mother, &c.—3. Illegitimate children, to have the settlement of their mother at the time, &c.—4. Living three years successively on a freehold estate, &c.—5. Being assessed five successive years for an estate of $200, &c.—6. Serving one year in certain town offices.—7. Settled and ordained ministers.—8. Persons admitted inhabitants by a vote of the town.—9. Settlement by incorporation of an unincorporated place.—10. Where settlement shall fall upon division or incorporation of a town.—11. Serving apprenticeship four years, &c.—12. Residence of ten years and paying taxes five years.
2. Provision for persons who have begun to acquire settlements under present laws.
3. Settlements to continue until new ones are acquired, &c.

SECTION 1. Legal settlements may be acquired in any town, so as to oblige such town to relieve and support the persons acquiring the same, in case they are poor and stand in need of relief, in the manner following, and not otherwise, namely:

Legal settlements, how acquired.

First. A married woman shall always follow and have the settlement of her husband, if he have any within the state; otherwise, her own at the time of marriage, if she then had any, shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her settlement, and the husband shall want relief, he shall receive it from the state, in the town where his wife shall have her settlement.

Married women to have the settlement of their husbands, if, &c. 9 Mass. 201. 12 Mass. 353. 1 Pick. 506. 1793, 34, § 2.

Second. Legitimate children shall follow and have the settlement of their father, if he have any within the state, until they gain a settlement of their own; but if he have none, they shall, in like manner, follow and have the settlement of their mother, if she have any.

Legitimate children to follow their father or mother, &c. 1793, 34, § 2.

Third. Illegitimate children shall follow and have the settlement of their mother, at the time of their birth, if she then have any within the state; but neither legitimate nor illegitimate children shall gain a settlement by birth, in the place where they may be born, if neither of their parents then have any settlement therein.

Illegitimate children to have the settlement of their mother at the time, &c. 13 Mass. 381. 1793, 34, § 2.

Fourth. Any person of the age of twenty one years, being a citizen of this or any other of the United States, having an estate of inheritance or freehold, in any town within the state, and living on the same three years successively, shall thereby gain a settlement in such town.

Living three years successively on a freehold estate, &c. 1793, 34, § 2. 1821, 94. 14 Mass. 384. 2 Pick. 29.

Fifth. Any person of the age of twenty one years, being a citizen of this or any other of the United States, having an estate, the principal of which shall be set at two hundred dollars, or the income at twelve dollars, in the valuation of estates made by assessors, and being assessed for the same, to state, county, or town taxes, for the space of five years successively, in the town where he dwells and has his home, shall thereby gain a settlement therein.

Being assessed five successive years, for an estate of $200, &c. 15 Mass. 160. 253. 11 Mass. 327. 1793, 34, § 2.

Sixth. Any person, being chosen and actually serving, one whole

Serving one year in certain

town offices. 12 Mass. 262. 1 Pick. 129. 1793, 34, § 2.

year, in the office of clerk, treasurer, selectman, overseer of the poor, assessor, constable or collector of taxes, in any town, shall thereby gain a settlement therein; and the year mentioned in this section shall be considered as including the time, between the choice of such officers at one annual meeting, and the choice at the next annual meeting, whether it be more or less than a calendar year.

Settled and ordained ministers. 1793, 34, § 2.

Seventh. Every settled ordained minister of the gospel shall be deemed to have acquired a legal settlement in the town, wherein he is or may be settled as a minister.

Persons admitted inhabitants by a vote of the town. 1793, 34, § 2.

Eighth. Any person, that shall be admitted an inhabitant by any town, at any legal meeting held under a warrant, which shall contain an article for that purpose, shall thereby acquire a legal settlement therein.

Settlement by incorporation of an unincorporated place. 1793, 34, § 2.

Ninth. Any citizen of this or any other of the United States, dwelling and having his home in any unincorporated place, at the time when the same shall be incorporated into a town, shall thereby acquire a legal settlement therein.

Where settlement shall fall, upon division or incorporation of a town. 1793, 34, § 2.

Tenth. Upon the division of any town, every person having a legal settlement therein, but being absent at the time of such division, and not having acquired a legal settlement elsewhere, shall have his legal settlement in that town, wherein his last dwelling place or home shall happen to fall upon such division; and when any new town shall be incorporated, composed of a part of one or more old incorporated towns, every person, legally settled in the town or towns, of which such new town is so composed, and who shall actually dwell and have his home within the bounds of such new town, at the time of its incorporation, shall thereby acquire a legal settlement in such new town; provided, that no person, residing in that part of any town, which, upon such division, shall be incorporated into a new town, having then no legal settlement therein, shall acquire any by force of such incorporation only; nor shall such incorporation prevent his acquiring a settlement therein, within the time and by the means, by which he would have gained it there, if no such division had been made.

Serving apprenticeship four years, &c. 1793, 34, § 2.

Eleventh. Any minor, who shall serve an apprenticeship to any lawful trade, for the space of four years, in any town, and actually set up such trade therein, within one year after the expiration of said term, being then twenty one years old, and shall continue to carry on the same, for the space of five years therein, shall thereby gain a settlement in such town; but such person being hired as a journeyman shall not be considered as setting up a trade.

Residence of ten years and paying taxes five years. 2 Pick. 535. 5 Mass. 430. 10 Mass. 394. 1793, 34, § 2.

Twelfth. Any person of the age of twenty one years, being a citizen of this or any other of the United States, who shall hereafter reside in any town within this state, for the space of ten years together, and pay all state, county or town taxes, duly assessed on his poll or estate, for any five years within said time, shall thereby gain a settlement in such town.

Provisions for persons who have already begun to acquire settlements under present laws.

SECT. 2. No person, who has begun to acquire a settlement, by the laws in force at and before the time when the provisions of this chapter shall take effect, in any of the ways in which any time is prescribed for a residence, or for the continuance or succession of any other act or acts, shall be prevented or delayed by the provisions of

this chapter; but he shall acquire a settlement, by a continuance or succession of the same residence or other act or acts, in the same time and manner, as if the former laws had continued in force.

SECT. 3. Every legal settlement shall continue, till it shall be lost or defeated, by acquiring a new one within this state; and upon acquiring such new settlement, all former settlements shall be defeated and lost.

Settlements, to continue until new ones are acquired, &c. 1793, 34, § 2.

CHAPTER 46.

OF THE SUPPORT OF PAUPERS.

SECTION

1. Towns shall support their poor.
2. Powers and duties of overseers of the poor.
3. Further powers of overseers.
4. Towns may provide almshouses.
5. Certain kindred of poor persons, if able, shall support them.
6. Court of common pleas may assess such kindred.
7. " of common pleas may also assess for future expenses.
8. Costs in such proceedings, how taxed.
9. The court may order with whom of such kindred the pauper shall live.
10. Proceedings on complaints made to court of common pleas.
11. Other kindred than those named in the complaint may be summoned.
12. Court may make new orders from time to time.
13. Overseers, to provide for immediate relief of strangers, &c., and their remedy.
14. When a recovery shall establish the fact of settlement.
15. Towns removing a pauper within thirty days, to pay one dollar a week only.
16. Overseers shall support, and in case of decease, bury indigent strangers—Remedy therefor.
17. Foreign paupers may be conveyed from the state to the place where they belong.
18. Towns liable to their own inhabitants, after notice, &c.
19. Paupers may be removed to places of settlement.
20. Process in cases of removals—If a removal is not made or objected to by the town notified, then, &c.
21. Effect of notifications, &c. to towns, sent by mail.
22. What minor children may be bound out by overseers.
23. Provision for paupers in unincorporated places, and for their minor children.
24. Penalty for leaving paupers in towns to which they do not belong, with intent, &c.
25. Penalty on shipmasters for landing convicts, &c., from other states.
26. Overseers or persons by them authorized, may prosecute, &c., under this chapter.

FOREIGN PASSENGERS, WHO MAY BECOME CHARGEABLE AS PAUPERS.

27. When alien passengers are brought in, the shipmaster, owners, &c., to give bond—When selectmen, &c. may dispense with bond.
28. Penalty for landing aliens contrary to the preceding section.
29. " " " in place to which the vessel is not bound, with intent, &c.

STATE PAUPERS.

30. Who shall not be considered state paupers.
31. Accounts for supporting state paupers, when made and how vouched.
32. Rates of charge for state paupers.
33. Particulars of account for state paupers, and how certified.

SECTION 1. Every town shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they shall stand

Towns shall support their poor.

1793, 59, § 1.

in need thereof, and may raise moneys therefor, and for their employment, in the same way, that moneys for other town charges are raised.

Powers and duties of overseers of the poor. 1793, 59, § 2.

SECT. 2. The overseers of the poor shall have the care and oversight of all such poor and indigent persons, so long as they remain at the charge of their respective towns, and shall see that they are suitably relieved, supported and employed, at the charge of such town, either in the workhouse, or almshouse, provided by the town, or in such other manner as the town shall direct, or otherwise, at the discretion of said overseers.

Further powers of overseers. 1828, 142, § 2.

SECT. 3. The overseers of the poor shall have the same power and authority over persons who may be placed under their care, which directors or masters of workhouses have over persons committed thereto, by force of the provisions concerning workhouses, contained in the sixteenth chapter.

Towns may provide almshouses. 1828, 142, § 3.

SECT. 4. Any town may erect or provide an almshouse, for the reception and employment of their poor; or any two or more towns may, at their joint charge and for their common benefit, erect or provide such a house, in like manner as they are authorized to join in providing a workhouse, by the sixteenth chapter.

Certain kindred of poor persons, if able, shall support them. 1793, 59, § 3.

SECT. 5. The kindred of any such poor person, if any he shall have, in the line or degree of father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, living within this state, and of sufficient ability, shall be bound to support such pauper, in proportion to their respective ability.

Court of common pleas may assess such kindred. 1793, 59, § 3.

SECT. 6 The court of common pleas in the county, where any one of such kindred to be charged shall reside, upon complaint made by any town, or by any kindred, who shall have been at any expense, for the relief and support of such pauper, may, on due hearing, either upon the appearance or default of the kindred supposed to be chargeable, assess and apportion, upon such of the kindred as they shall find to be of sufficient ability, and in proportion thereto, such sum as they shall judge reasonable, for or towards the support of the pauper, to the time of such assessment, and may enforce payment thereof, by an execution in common form; provided, that such assessment shall not extend to any expense for relief, afforded more than six months previous to the filing of the complaint.

Court of common pleas may also assess for future expenses. 1793, 59.

SECT. 7. The said court may further assess and apportion, upon the said kindred, such weekly sum, as they shall judge sufficient for the future support of the pauper, to be paid quarter yearly, until the further order of court; and upon application, from time to time, of the town, or kindred to whom the same shall have been ordered to be paid, the clerk of said court shall issue and may renew an execution, for the arrears of any preceding quarter.

Costs in such proceedings, how taxed. 1834, 103.

SECT. 8. When the court shall adjudge two or more of the kindred of any pauper to be of sufficient ability to contribute to his support, they shall tax no more costs against any one respondent, than shall have been occasioned by his default or separate defence.

The court may order with whom of such kindred, the pauper shall live. 1793, 59, § 3.

SECT. 9. The said court may further order, with whom of such kindred, that may desire it, such pauper shall live and be relieved, and such time with one, and such time with another, as they shall judge proper, having regard to the comfort of the pauper, as well as the convenience of the kindred.

SECT. 10. The complaint to be made by any town, or kindred of a pauper, as provided in this chapter, shall be filed in the clerk's office of the court of common pleas, and a summons shall be thereupon issued, requiring the kindred therein named to appear and answer thereto; which summons shall be directed to any officer, who is qualified to serve civil process between the same parties, and shall be served like an original summons, fourteen days at least before the sitting of the court to which it is returnable.

Proceedings on complaints made to C. C. Pleas. 1793, 59, § 3.

SECT. 11. Upon a suggestion that there are other kindred of ability, not summoned in the original process, such other kindred may be summoned, and after due notice, whether they appear or are defaulted, the court may proceed against them, in the same manner as if they had been summoned upon the original complaint.

Other kindred than those named in the complaint may be summoned. 1793, 59, § 3.

SECT. 12. The said court may take further order, from time to time, in the premises, upon application of any party interested, and may alter such assessment and apportionment, according to the circumstances; and upon all such complaints, they may award costs to either party, as justice shall require.

Court may make new orders from time to time. 1793, 59, § 3.

SECT. 13. The said overseers, in their respective towns, shall also provide for the immediate comfort and relief of all persons, residing or found therein, not belonging thereto, but having lawful settlements in other towns, when they fall into distress and stand in need of immediate relief, and until they shall be removed to the places of their lawful settlements; the expenses whereof, incurred within three months next before notice given to the town to be charged, as also of their removal or of their burial, in case of their decease, may be sued for and recovered, by the town incurring the same, against the town which is liable therefor, in an action at law; provided, that such action for damages be instituted within two years after the cause of action shall have arisen, but not otherwise.

Overseers, to provide for immediate relief of strangers, &c. and their remedy. 2 Pick. 341. 1793, 59, § 9.

SECT. 14. A recovery in such civil action shall bar the town, against which it shall be had, from disputing the settlement of such pauper with the town so recovering, in any future action brought for the support of such pauper.

When a recovery shall establish the fact of settlement. 1793, 59, § 9.

SECT. 15. When any person shall be supported in any town, other than that in which he has his settlement, the town that is liable for his support shall not, in any case, be required to pay therefor more than at the rate of one dollar a week; provided the town that is liable for the support of the pauper shall cause him to be removed, within thirty days from the time of receiving legal notice that such support has been furnished.

Towns, removing a pauper within 30 days, to pay $1, a week only. 4 Pick. 45. 7 Pick. 155. 1821, 94, § 3.

SECT. 16. The overseers of the poor of each town shall also relieve, support, and employ all poor persons, residing or found in their towns, having no lawful settlements within this state, and in case of their decease, shall decently bury them; the expense whereof may be recovered of their kindred, if they have any chargeable by law for their support, in the manner herein before provided; otherwise, it shall be paid out of the treasury of the Commonwealth, as hereinafter provided.

Overseers shall support, and, in case of decease, bury indigent strangers. Remedy therefor. 1793, 59, § 13.

SECT. 17. Upon complaint of the said overseers of any town, any justice of the peace may, by warrant directed to, and to be executed by, any constable, or any other person therein designated, cause

Foreign paupers may be conveyed from the state to the

place where they belong. 1793, 59, § 13.

such pauper to be sent and conveyed, at the expense of the state, by land or water, to any other state, or to any place beyond sea, where he belongs, if the justice thinks proper, and if he may be conveniently removed; but if he cannot be so removed, he may be sent to, and relieved and employed in, the house of correction or workhouse, at the public expense.

Towns, liable to their own inhabitants after notice. 1793, 59, § 13.

SECT. 18. Every town shall be held to pay any expense, which shall be necessarily incurred, for the relief of a pauper, by any person, who is not liable by law for his support, after notice and request made to the overseers of the said town, and until provision shall be made by them.

Paupers may be removed to places of settlement. 1793, 59, § 12.

SECT. 19. The said overseers may, in all cases, send a written notification, stating the facts relating to any person actually become chargeable to their town, to one or more of the overseers of the place, where his settlement is supposed to be, and requesting them to remove him, which they may do by a written order, directed to any person therein designated, who is hereby authorized to execute the same.

Process in case of removals. If a removal is not made nor objected to by the town notified, then, &c. 1793, 59, § 12.

SECT. 20. If such removal is not effected by the last mentioned overseers, within two months after receiving such notice, they shall, within said two months, send a written answer, stating therein their objections to the removal of the pauper, signed by one or more of them, to one or more of the overseers, requesting such removal; and if they shall fail so to do, the overseers, who requested the removal of the pauper, may cause him to be removed to the said place of his supposed settlement, by a written order directed to any person therein designated, who is hereby authorized to execute the same; and the overseers of the town, to which the pauper is so sent, shall be obliged to receive and provide for him, and their town shall be liable for the expenses of his support and removal, to be recovered by an action by the town incurring the same, and shall be barred from contesting the question of settlement with the plaintiffs in such action.

Effect of notifications, &c. to towns, sent by mail. 1828, 142, § 1.

SECT. 21. The notification and answer, mentioned in the two preceding sections, may be sent by mail; and such notification or answer, directed to the overseers of the poor of the town, intended to be notified or answered, (the postage being paid and indorsed thereon,) shall be deemed a sufficient notice and answer, and shall be considered as delivered to the overseers, to whom it is directed, at the time when it is received in the post office of the town, to which it is directed, and in which the said overseers reside.

What minor children may be bound out by overseers. 1793, 59, §§ 4 and 5.

SECT. 22. The said overseers may bind out the minor children of any poor person, who has become chargeable to their town, as having a lawful settlement therein, or who is supported there in whole or in part at the charge of the state, and also other minor children, who are poor and chargeable to the town, in the manner provided in the eightieth chapter.

Provisions for paupers in unincorporated places, and for their minor children. 1793, 59, § 7.

SECT. 23. All poor persons, standing in need of relief, who live without the bounds of any incorporated town, shall be under the care of the overseers of the poor, appointed in the adjoining town, wherein the inhabitants of such unincorporated place are usually taxed; and the said overseers may bind out the children of such poor persons, as if they were inhabitants of the town in which such overseers are appointed.

SECT. 24. If any person shall bring into and leave any poor and indigent person in any town of this state, wherein such pauper is not lawfully settled, knowing him to be poor and indigent, and with intent to charge such town with his support, he shall forfeit a sum not exceeding one hundred dollars for any such offence.

Penalty for leaving paupers in towns, to which they do not belong, with intent, &c. 2 Greenl. 5. 1 Pick. 465. 16 Mass. 393. 1793, 59, § 15.

SECT. 25. If any master or other person, having charge of any vessel, shall therein bring into, and land, or suffer to be landed in, any place within this state, any person, before that time convicted, in any other state or in any foreign country, of any infamous crime, or any for which he hath been sentenced to transportation, knowing of such conviction, or having reason to suspect it, or any person of a notoriously dissolute, infamous and abandoned life and character, knowing him to be such, he shall, for every such offence, forfeit a sum not exceeding five hundred dollars.

Penalties on shipmasters for landing convicts, &c. from other states. 1793, 59, § 16.

SECT. 26. In all actions and prosecutions, founded on the provisions of this chapter, the overseers of the poor of any town or any person, by writing under their hands appointed, shall and may appear, prosecute or defend the same to final judgment and execution, in behalf of such town.

Overseers or persons by them authorized, may prosecute, &c. under this chapter. 1793, 59, § 14.

FOREIGN PASSENGERS WHO MAY BECOME CHARGEABLE AS PAUPERS.

SECT. 27. When any vessel shall arrive at any port or harbor within this state, from any port or place without the same, with alien passengers on board, who may become chargeable as paupers, the master or commanding officer of such vessel shall, before the said passengers or any of them leave such ship or vessel, deposite, with the mayor and aldermen of the city, or with the selectmen of the town, where such alien passengers are to be landed, a complete list of their names, and shall add thereto the name of the port or place, at which such alien passengers were taken on board; and the said master or commanding officer of such vessel shall, forthwith, together with one or more of the owners of such vessel, if any such owner be resident in such city or town, enter into a bond, with sufficient sureties, to the said city or to the inhabitants of said town, (as the case may be,) in a penal sum not exceeding two hundred dollars, for every alien passenger; with condition to indemnify and save harmless the said city, or town (as the case may be) and also the Commonwealth, from all expense, which may arise in maintaining, supporting or otherwise providing for such alien passengers, during the full term of three years then next to come; provided always, that such mayor and aldermen, or selectmen, may dispense with the giving of such bond, in all cases in which it shall appear to them, that no charge or payment or liability as aforesaid is to be apprehended, on account of any such alien passenger or passengers, within the said term of three years; and provided also, that such bond may, at the election of such mayor and aldermen, or selectmen, be dispensed with, in every case, in relation to any alien passenger, if the said master, commanding officer, or owner of such vessel, shall, before the landing of such passenger, pay into the city or town treasury (as the case may be) the sum of five dollars for every alien passenger, whom he may intend to land.

When alien passengers are brought in, the shipmaster, owners, &c. to give bond.

When selectmen, &c. may dispense with bond. 1830, 150, § 1.

SECT. 28. If any master or commanding officer of any vessel

Penalty for landing aliens,

contrary to the preceding section.

shall land or permit to be landed any alien passenger, contrary to the provisions of the preceding section, the master or commanding officer of such vessel, and the owner or consignee thereof, shall forfeit the sum of two hundred dollars, for every alien passenger so landed; provided always, that the provisions aforesaid shall not be construed to extend to seamen, sent from foreign places by consuls or vice-consuls of the United States.

Penalty for landing aliens in place to which the vessel is not bound, with intent, &c. 1830, 150, § 4.

SECT. 29. If any master or commanding officer of any vessel shall land any alien passenger, at any place within this state, other than that to which such vessel shall be destined, with intent to avoid the requirements aforesaid, such master or commanding officer shall forfeit the sum of one hundred dollars for every alien passenger so landed.

STATE PAUPERS.

Who shall not be considered state paupers. 1823, 21. § 1. 1830, 120, § 3.

SECT. 30. No male person over the age of twelve years, while of competent health to labor, shall be considered a state pauper, and entitled to support as such.

Accounts for supporting state paupers, when made, and how vouched. 1830, 120, § 1.

SECT. 31. All claims against the Commonwealth, presented for allowance by any city, town, or keeper of any house of correction, for the support of state paupers, shall be so made as to include all claims for such charges, up to the first day of January annually; and no charge, which shall not be presented within the month of January, shall hereafter be allowed for the support of any such pauper; and the selectmen, or overseers of the poor, of any town, or the keeper of any house of correction, and the directors of the house of industry in the city of Boston, respectively, shall certify that the whole amount charged in their account has been expended, for the support of the persons named in the same, for the time therein specified.

Rates of charge for state paupers. 1830, 120, § 2. 1835, 127.

SECT. 32. All accounts against the Commonwealth, for the support of paupers, as aforesaid, shall be made out and charged at a fixed price by the day, and the allowance shall not exceed in any case seven cents a day, for the support of paupers over twelve years of age, and four cents a day, for the support of paupers under that age, and five dollars for the funeral expenses of each pauper over twelve years of age, and two dollars and fifty cents, for the funeral expenses of each pauper under that age.

Particulars of account for state paupers, and how certified. 1830, 120, § 3.

SECT. 33. All accounts made out against the Commonwealth, for the support of state paupers, shall show the name of each pauper, his age and place of nativity, and the time when he first came into this state, the time when he became chargeable, and when he ceased to be so, or in case of his death, the time of his death, or if he still continues chargeable, the time to which such charge is made, and the number of days for which each of said paupers has been chargeable; and in all cases, where said charge is for the support of any pauper, not already mentioned on the list of state paupers, said account shall be accompanied by a certificate of the overseers of the poor of the towns, and in Boston, a certificate of the directors of the house of industry of that city, stating that neither of said paupers has a legal settlement in this state, and also that he has no kindred within this state obliged by law to support him; and in all such certificates, the said overseers, and the directors of the house of industry in the city

of Boston, respectively, shall state that they made the same on the best evidence they could obtain, and that no part of the account is for the support of any person over the age of twelve years, while of competent health to labor.

CHAPTER 47.

OF THE REGULATION OF LICENSED HOUSES.

SECTION
1. Penalty for presuming to be an innholder, &c. without license.
2. " for selling without license.
3. " for presuming to be a retailer without license.
4. " for retailer's selling liquor to be used in his shop, &c.
5. Innholders, to be provided to entertain travellers, &c.
6. Rights and duties of common victuallers.
7. Innholders, &c., to put up signs.
8. Penalty on innholders for refusing to receive travellers, &c.
9. Innholders, not to suffer gaming, &c.
10. Penalty on persons gaming in public houses, &c.
11. Innholders shall not suffer drinking to excess; nor minors, except, &c., to drink at all, in their premises.
12. " to forfeit all sums for liquor, trusted.
13. Victuallers, not to keep open their shops on Sundays, &c.
14. The selectmen, &c., shall forbid innholders, &c., selling to spendthrifts.
15. Such prohibitions, to be renewed, if no reform effected—Penalty for transgressing such prohibition.
16. Same subject.
17. Innholders' and retailers' licenses may be granted by commissioners, and the mayor and aldermen, &c.—Licenses shall specify place, and protect no other
18. Victuallers' licenses in Boston.
19. All licenses to expire on first of April.
20. Fees for licenses.
21. Licenses to sell wine, &c., may be granted without fee.
22. Clerks of commissioners to transmit lists of licensed persons to selectmen.
23. Persons applying shall produce a certificate of selectmen.
24. Applications for license may be made by any party orally, &c.
25. Provisions, in case selectmen refuse certificate.
26. Fines, &c.. how to be recovered.
27. Punishment, if fines are not paid.
28. In Boston, the police court to have jurisdiction, in case, &c.
29. Punishment on a third conviction.

SECTION 1. No person shall presume to be an innholder, common victualler, or seller of wine, brandy, rum, or any other spiritous liquor, to be used in or about his house or other buildings, unless he is first licensed as an innholder, or common victualler, according to the provisions of this chapter, on pain of forfeiting one hundred dollars.

Penalty for presuming to be an innholder, &c., without license. 6 Greenl. 412. 1832, 166, §§ 1 & 3.

SECT. 2. If any person shall sell any wine or spiritous liquor, or any mixed liquor, part of which is spiritous, to be used in or about his house or other buildings, without being duly licensed as an innholder, or common victualler, he shall forfeit for each offence twenty dollars.

— for selling without license. 1832, 166, §§ 1 & 3.

SECT. 3. No person shall presume to be a retailer or seller of wine, brandy, rum, or other spiritous liquors, in a less quantity than twenty eight gallons, and that delivered and carried away all at one

— for presuming to be a retailer without license. 1832, 166, § 2.

time, unless he is [at] first licensed as a retailer of wine and spirits, as is provided in this chapter, on pain of forfeiting twenty dollars for each offence.

— for retailer's selling liquor, to be used in his shop, &c. 1832, 166, § 2.

SECT. 4. If any person, licensed to be a retailer as aforesaid, shall sell any of the above liquors, either mixed or unmixed, to be used in or about his house or shop, he shall forfeit for each offence twenty dollars.

Innholders, to be provided to entertain travellers, &c. 1832, 166, § 10.

SECT. 5. Every innholder shall at all times be furnished with suitable provisions and lodging, for strangers and travellers, and with stable room, hay and provender, for their horses and cattle; and if he shall not be at all times so provided, the county commissioners may revoke his license.

Right and duties of common victuallers. 1832, 166, § 4.

SECT. 6. Every common victualler shall have all the rights and privileges, and be subject to all the duties and obligations of innholders, excepting that he shall not be required to furnish lodging for travellers, nor stable room, hay and provender, for horses and cattle.

Innholders, &c. to put up signs. 1832, 166, § 10.

SECT. 7. Every innholder and common victualler shall, at all times, have a board or sign affixed to his house, shop, cellar or store, or in some conspicuous place near the same, with his name at large thereon, and the employment for which he is licensed, on pain of forfeiting twenty dollars.

Penalties on innholders for refusing to receive travellers, &c. 1832, 166, § 10.

SECT. 8. If any innholder shall, when requested, refuse to receive and make suitable provisions for strangers and travellers, and their horses and cattle, he shall, upon conviction thereof, before the court of common pleas, be punished by a fine not exceeding fifty dollars, and shall also, by order of the said court, be deprived of his license; and the court shall order the sheriff or his deputy forthwith to cause his sign to be taken down.

Innholders, not to suffer gaming, &c. 3 Pick. 281. 300. 1832, 166, § 11.

SECT. 9. No innholder, or common victualler shall have or keep in or about his house, or other buildings, yards and gardens, or dependencies, any dice, cards, bowls, billiards, quoits, or other implements used in gaming; nor shall suffer any person, resorting thither, to use or exercise any of said games, or any other unlawful game or sport, within his said premises, on pain of forfeiting ten dollars for every such offence.

Penalty on persons gaming in public houses, &c. 1832, 166, § 11.

SECT. 10. Every person, convicted of using or exercising any of the games aforesaid, in or about any such house or building of an innholder or common victualler, shall forfeit ten dollars.

Innholders shall not suffer drinking to excess; nor minors, except, &c., to drink at all, in their premises. 1832, 166, § 12.

SECT. 11. No innholder or common victualler shall suffer any person to drink to drunkenness or excess in his premises, nor suffer any minor or servant, travellers excepted, to have any strong drink there, on pain of forfeiting five dollars for each offence.

Innholders to forfeit all sums for liquors, trusted. 1832, 166, § 13.

SECT. 12. If any innholder or common victualler shall trust or give credit to any person for liquor, he shall lose and forfeit all the sums so trusted or credited, and all actions brought for such debts shall be utterly barred; and the defendant in such action may plead the matter specially, or may give it in evidence under the general issue.

Victuallers, not to keep open their shops on Sundays, &c. 1832, 166, § 5.

SECT. 13. If any common victualler shall keep open his house, cellar, shop, store or place of business, on any part of the Lord's day, or evening, or at a later hour than ten of the clock in the evening of any other day of the week, and entertain any person therein,

by selling him any spiritous or strong liquor, he shall forfeit for each offence ten dollars.

SECT. 14. When any person shall, by excessive drinking of spiritous liquors, so misspend, waste or lessen his estate, as thereby either to expose himself or his family to want or indigent circumstances, or the town to which he belongs to expense, for the maintenance of him or his family, or shall so habitually indulge himself in the use of spiritous liquors, as thereby greatly to injure his health or endanger the loss thereof, the selectmen of the town, in which such spendthrift lives, shall, in writing under their hands, forbid all licensed innholders, common victuallers and retailers of the same town, to sell to him any spiritous or strong liquors aforesaid, for the space of one year; and they may in like manner forbid the selling of any such liquors to the said spendthrift, by the said licensed persons of any other town to which the spendthrift may resort for the same; and the city clerk of the city of Boston shall, under the direction of the mayor and aldermen thereof, issue a like prohibition, as to any such spendthrift living in the said city.

The selectmen, &c., shall forbid innholders, &c., selling to spendthrifts. 1832, 166, § 14.

SECT. 15. The said mayor and aldermen, and said selectmen, shall, in the same manner, from year to year, renew such prohibition, as to all such persons as have not in their opinion reformed within the year; and if any innholder, common victualler, or retailer shall, during any such prohibition, sell to any such prohibited person, any such spiritous liquor, he shall forfeit for each offence twenty dollars.

Such prohibition, to be renewed, if no reform effected.

Penalty for transgressing such prohibition. 1832, 166, § 14.

SECT. 16. When the said mayor and aldermen, or selectmen, in execution of the foregoing provisions, shall have prohibited the sale of spiritous liquors to any such spendthrift, if any person shall, with a knowledge of said prohibition, give, sell, purchase, or procure for and in behalf of such prohibited person, or for his use, any such spiritous liquors, he shall forfeit for each offence twenty dollars.

Same subject. 1832, 166, § 14.

SECT. 17. The commissioners in the several counties may license, for the towns in their respective counties, as many persons to be innholders, or retailers therein, as they shall think the public good may require; and the mayor and aldermen of the city of Boston may, in like manner, license innholders and retailers, in the said city; and the court of common pleas in the county of Suffolk may, in like manner, license innholders and retailers in the town of Chelsea; and every license, either to an innholder or retailer, shall contain a specification of the street, lane, alley, or other place, and the number of the building, or some other particular description thereof, where such licensed person shall exercise his employment; and the license shall not protect any such person from the penalties, provided in this chapter, for exercising his employment in any other place, than that which is specified in the license.

Innholders' and retailers' licenses may be granted by commissioners, and the mayor and aldermen, &c. 3 Pick. 281.

Licenses shall specify place, and protect no other. 1832, 166, § 6. 1833, 122.

SECT. 18. The mayor and aldermen of the city of Boston may license, for the said city, as many persons to be common victuallers, as they shall think the public good may require; and every such license shall contain such a specification or description, as is mentioned in the preceding section, of the street, or other place, and of the building, where the licensed person shall exercise his employment; and the

Victuallers' licenses, in Boston. 1832, 166, §§ 4 and 6.

license shall not protect him from the penalties, provided in this chapter, for exercising it in any other place.

All licenses to expire on first of April. 1832, 166, § 7.

SECT. 19. All licenses to any innholder, retailer, or common victualler, shall expire on the first day of April, in each year; but any license may be granted or renewed, at any time during the preceding month of March, to take effect from the said first day of April; and after that day, they may be granted for the remainder of the year, whenever the officers authorized to grant the same shall deem it expedient.

Fee for licenses. 1832, 166, § 7.

SECT. 20. Every person, who shall be licensed as before provided in this chapter, shall pay therefor to the clerk of the city of Boston, the clerk of the court of common pleas for the county of Suffolk, or to the clerk of the commissioners of the respective counties so licensing said person, one dollar, which shall be paid by said clerks to the treasurers of their respective counties, for the use of said counties; and such person shall also pay twenty cents to the use of the said clerks respectively; and no other fee or excise whatever shall be taken from any person, applying for or receiving a license, under the provisions of this chapter.

Licenses to sell wine, &c., may be granted without fee. 1832, 166, § 8.

SECT. 21. Any license to an innholder, retailer, or common victualler, may be so framed as to authorize the licensed person to sell wine, beer, ale, cider, or any other fermented liquor, and not to authorize him to sell brandy, rum, or any other spiritous liquor; and no excise or fee shall be required for such a license.

Clerks of commissioners to transmit lists of licensed persons to selectmen. 1832, 166, § 9.

SECT. 22. The clerk of the commissioners in the several counties shall seasonably, before the time for granting licenses in each year, transmit to the selectmen of every town within the county, a list of the persons in such town, who were licensed as innholders or retailers the preceding year.

Persons applying shall produce a certificate of selectmen. 1832, 166, § 9.

SECT. 23. No license shall be granted or renewed to any person, unless he shall produce a certificate from the selectmen of the town, for which he applies to be licensed, in substance as follows, to wit: We, the subscribers, a majority of the selectmen of the town of ————, do hereby certify, that —— —— has applied to us to be recommended as (here expressing the employment, and a particular description of the place for which the license is applied for,) in the said town, and that, after mature consideration had thereon, at a meeting held for that purpose, at which we were each of us present, we are of opinion, that the public good requires that the petition of said —— —— be granted, he being, to the best of our knowledge and belief, a person of good moral character.

Applications for license may be made by any party orally, &c.

SECT. 24. Any person, producing such certificate of the selectmen, shall be heard, and his application decided upon, either on a motion made orally by himself or his counsel, or upon a petition in writing, as he shall elect.

Provisions, in case selectmen refuse certificate. 1832, 166, § 9.

SECT. 25. If the selectmen of any town shall unreasonably neglect or refuse to make and deliver such a certificate, either for the original granting or the renewal of a license, the person aggrieved thereby may apply for a license to the commissioners, first giving twenty four hours notice to a majority of the said selectmen of his intended application, so that they may appear, if they see fit, to object thereto; and if, on such application, it shall appear that the said se-

lectmen did unreasonably neglect or refuse to give the said certificate, and that the public good requires that the license should be granted, the commissioners may grant the same.

SECT. 26. All the fines, imposed by this chapter, may be recovered by indictment, to the use of the county where the offence is committed; and when the fine does not exceed twenty dollars, the offence may be prosecuted before a justice of the peace, subject to the right of appeal to the court of common pleas, as in other cases.

Fines, &c. how to be recovered. 1832, 166, § 15.

SECT. 27. When any person shall be convicted under the provisions of this chapter, and shall fail to pay the fine awarded against him, he may be imprisoned in the common jail, for a time not exceeding ninety days, at the discretion of the court or justice, before whom the trial may be had.

Punishment, if fines are not paid. 1832, 166, § 15.

SECT. 28. All prosecutions, under the provisions of this chapter, for offences committed in the city of Boston, (excepting where the fine exceeds twenty dollars) may be heard and determined in the police court, subject to the right of appeal to the municipal court; but the said police court shall not have power, in any such case, to sentence any person to imprisonment, except as provided in the preceding section.

In Boston, the police court to have jurisdiction, in case, &c. 1832, 166, § 15.

SECT. 29. Any person, licensed under the provisions of this chapter, who shall have been twice before convicted of a breach of any of the said provisions, shall, thereupon, in addition to the penalties before provided, be liable to a further punishment, by imprisonment in the common jail, for a time not exceeding ninety days, at the discretion of the court before whom the trial may be had.

Punishment on a third conviction. 1832, 166, § 15.

CHAPTER 48.

OF THE STATE LUNATIC HOSPITAL; AND THE CARE OF LUNATICS

SECTION
1. Government of the hospital, vested in five trustees—How appointed.
2. Powers and duties of the trustees.
3. Trustees, to appoint certain officers, fix salaries, subject, &c.
4. " may receive grants, devises, &c., in trust.
5. Visitations of the hospital.
6. Judges of probate, except in Suffolk, and judges of supreme judicial court, and of court of common pleas, may commit lunatics—Courts shall certify where lunatic resided, when, &c.
7. Persons applying on behalf of lunatics, to give notice to selectmen, &c.
8. Town paupers, and other poor persons, at what rates to be admitted.
9. Expenses for supporting lunatics, by whom to be paid, and how recovered.
10. Remedy of towns, if lunatic had a settlement in some other town in this state.
11. Who liable for expense of supporting foreigners, and how recovered.
12. Jailers, &c., not to make private contracts for support of town paupers in county buildings.
13. Trustees, &c., may furnish clothing, &c., to paupers when discharged.
14. Lunatics, how discharged or removed.
15. Trustees may remove lunatics, when necessary to accommodate others.
16. Remedies for Boston, Nantucket, and any county.
17. When the year shall begin, for the purposes of this chapter.

Government of the hospital, vested in five trustees.

How appointed. 1834, 150, § 1. 1835, 4.

SECTION 1. The government of the state lunatic hospital at Worcester shall be vested in a board of five trustees, to be annually appointed and commissioned by the governor, with the advice and consent of the council; but the trustee, who is first named in the commission, shall not be appointed for the succeeding year; and the trustees, who are in office when this chapter takes effect as a law, shall continue to exercise their powers, according to the tenor of their commissions, until others are appointed.

Powers and duties of the trustees. 1834, 150, §§ 1 and 4.

SECT. 2. The said trustees shall take charge of the general interests of the institution, and see that its affairs are conducted, according to the requirements of the legislature and the by-laws and regulations, which the trustees shall establish, for the internal government and economy of the institution; and they shall be reimbursed all expenses incurred in the discharge of their official duties.

Trustees to appoint certain officers, fix salaries, subject, &c. 1834, 150, § 1.

SECT. 3. The trustees shall appoint a superintendent, who shall always be a physician, and shall constantly reside at the hospital, and a treasurer, who shall give bonds for the faithful discharge of his duties; and they shall also appoint, or make provision in the by-laws for appointing, such other officers, as in their opinion may be necessary for conducting efficiently and economically the business of the institution; and all appointments made by them shall be made in such manner, and with such restrictions, and for such terms of time, as the by-laws may prescribe; and the salaries of all the officers of the institution shall be determined by the trustees, subject to the approval of the governor and council; the trustees shall also establish by-laws and regulations, with suitable penalties, for the internal government and economy of the institution.

Trustees may receive grants, devises, &c. in trust. 1834, 150, § 10.

SECT. 4. The trustees may take and hold, in trust for the Commonwealth, any grant or devise of lands, and any donation or bequest of money, or other personal property, to be applied to the maintenance of insane persons, and the general use of the said institution.

Visitations of the hospital. 1834, 150, § 2.

SECT. 5. There shall be thorough visitations of the hospital, monthly, by one or more of the trustees, and semi-annually by a majority of them, and annually by the whole board; and at each visitation, a written account of the state of the institution shall be drawn up, which shall be presented at the annual meeting, to be held in the month of December; and at the said annual meeting, a full and detailed report shall be made, to be laid before the governor and council, during the first week of the then next session of the legislature, for the use of the government, exhibiting a particular statement of the condition of the hospital and of all its concerns; and at the same time, the treasurer shall present to the governor and council his annual report on the finances of the institution; both of which reports shall be made up to the thirtieth day of November inclusive.

Judges of probate, except in Suffolk, and judges of S. J. C. and of C. C. P. may commit lunatics.

SECT. 6. The judges of probate in the several counties, except Suffolk, and in that county, the judge of the municipal court, may commit to the hospital any lunatic, who in their opinion is so furiously mad, as to render it manifestly dangerous to the peace and safety of the community, that he should be at large; and all lunatics, ordered to be confined by any court, according to the provisions of the one hundred and thirty sixth, and the one hundred and thirty seventh chapters, shall be committed to the said hospital; and no tribunal,

other than the judicial officers mentioned in this chapter, shall have authority to commit any lunatic to said hospital; and in all cases, the judges of probate and the judge of the municipal court, respectively, shall certify in what town the lunatic resided, at the time of his commitment, and the judges of the supreme judicial court and court of common pleas, respectively, shall certify in what town he resided, at the time of the arrest, in pursuance of which he was held to answer before those courts; and such certificate shall, for the purposes of this chapter, be conclusive evidence of his residence.

Courts shall certify where lunatic resided, when, &c. 1834 150, §§ 3 & 6. 1816, 28.

SECT. 7. Any person, who shall apply for the commitment of any lunatic, under the provisions of the preceding section, shall first give notice, in writing, to any one or more of the selectmen of the town, or to the mayor of the city, where such lunatic resides, of his intention to make such application; and satisfactory evidence, that such notice has been given, shall be produced to the said judges, respectively, at the time of making such application.

Persons applying on behalf of lunatics, to give notice to selectmen, &c. 1834, 150, § 3.

SECT. 8. Any lunatic, who is supported as a town pauper, may, with the consent of the trustees, be committed to the hospital, by the overseers of the poor of his town, and shall be kept for a sum, which shall not in any case exceed the actual expense of his support; and the trustees may also, in their discretion, receive into the hospital, for a less sum, any poor persons suffering under recent insanity, whether supported or not by any town or city.

Town paupers and other poor persons, at what rates to be admitted. 1834, 150, § 5.

SECT. 9. The expenses of the hospital, for the support of all lunatics committed by any of the judicial officers mentioned in this chapter, or by virtue of a proclamation of the governor, or by a resolve of the legislature, or by two justices of the peace and of the quorum, shall be paid by the town, in which such lunatics had their settlement, at the time of their commitment, unless in cases where other sufficient security, to the satisfaction of the trustees, shall have been taken for such support; and if any town or city shall neglect or refuse to pay whatever sum may be charged and due, according to the by-laws of the hospital, on account of the support of any such patient at the hospital, or for the removal of any patient, whom the trustees are authorized by law to remove, for the space of thirty days after the same shall have been demanded, by the treasurer, in writing, of the selectmen of the town, or of the mayor and aldermen of the city liable therefor, the same may be recovered, for the use of the hospital, in an action to be brought in the name of the treasurer against such delinquent town, in which action the declaration may be in a general indebitatus assumpsit, and judgment shall be rendered for such sum as shall be found due, with interest from the time of the demand thereof made as aforesaid.

Expenses for supporting lunatics, by whom to be paid; and how recovered. 1834, 150, § 7. 1835, 129, § 2.

SECT. 10. Every town, which shall pay any expenses for the support or removal of any lunatic, under the provisions of the preceding section, shall have the like rights and remedies, to recover such sums with interest and costs, as if such expenses had been incurred in the ordinary support of the lunatic.

Remedy of towns, if lunatic had a settlement in some other town in this state. 1834, 150, § 7.

SECT. 11. Whenever any lunatic, not having a legal settlement in this state, shall be supported at the hospital, he shall be personally liable for all expenses incurred by him at said hospital, to be recovered by an action in the name of the treasurer thereof, as provided in

Who liable for expense of supporting foreigners, and how recovered. 1835, 129, § 4.

the ninth section ; and the district attorneys, or other prosecuting officers of the Commonwealth, shall institute any suits in their respective districts, whenever they shall be thereto requested by the trustees.

Jailers, &c. not to make private contracts for support of town paupers, &c. in county buildings. 1834, 150, § 8.

SECT. 12. No keeper of any jail or house of correction shall make any contract for supporting, within the county buildings, any lunatic, who is supported as a town pauper, without first obtaining the approbation, in writing, of the commissioners ; and for every offence against this provision, such keeper shall forfeit a sum not less than one hundred dollars.

Trustees may furnish clothing, &c. to paupers when discharged. 1834, 150, § 9.

SECT. 13. No pauper shall be discharged from the hospital without suitable clothing ; and the said trustees may furnish the same at their discretion, together with such a sum of money, not exceeding twenty dollars, as they may think necessary.

Lunatics, how discharged or removed. 1832, 150, § 6.

SECT. 14. Any two of the trustees, or either of the justices of the supreme judicial court or of the court of common pleas, at any term held within and for the county of Worcester, may, on application in writing for that purpose, discharge from confinement, after the cause of such confinement shall have ceased, any lunatic committed to the hospital ; and the trustees may also remove any idiot or other patient to the town, where the judge or court committing him shall certify that he resided, whenever, in the opinion of the trustees, he shall cease to be dangerous, within the intent of the law, and shall not be susceptible of mental improvement, by remedial treatment at the hospital ; provided, that such town, after reasonable notice, in writing, from the trustees, shall not remove such idiot or other patient.

Trustees may remove lunatics, when necessary to accommodate others. 1835, 129, § 3.

SECT. 15. If, at any time, the lunatics in the hospital shall be so numerous, that they cannot all be suitably accommodated therein, and in the opinion of the trustees, it shall be proper that some of them should be removed therefrom, the trustees may remove, to the jails or houses of correction in the respective counties, from which such lunatics were sent, so many of them as may be necessary, in order to afford suitable accommodation for the remainder of them ; and the keepers of the jails and houses of correction in the said counties shall receive the lunatics so removed ; and a certificate, under the hands of three or more of the trustees, shall be their sufficient warrant therefor ; and in making selections among the lunatics for such removal, the trustees shall, in all cases, when other circumstances are equal, select foreigners before citizens, and among citizens, they shall select those, who, in their opinion, are least susceptible of improvement at the hospital ; and the lunatics so removed shall be subject to the order and direction of the commissioners of said counties, respectively.

Remedies for Boston, Nantucket, and any county. 1834, 150.

SECT. 16. For reimbursing any expenses, incurred by the city of Boston, the town of Nantucket, or by any county, for the support of any lunatic, removed as is provided in the preceding section, the said city, town and county, respectively, if such lunatic had any legal settlement in this state, shall have the like remedy against the town or city, where his settlement is, as towns have against each other, to recover the expenses of supporting paupers, and subject to the like conditions and limitations ; and if the said lunatic has not a legal settlement in this state, the said city of Boston, town of Nantucket, and

counties, respectively, may recover the said expenses, in an action for money laid out and expended, in the names of their respective treasurers, against the said lunatic, his executors and administrators; and if he shall have no estate to satisfy the execution in such suit, and shall not have a legal settlement in this state, the said city, town and counties, respectively, shall be indemnified by the Commonwealth.

SECT. 17. For the purposes of the provisions contained in this chapter, except where otherwise provided, the year shall be considered to commence on the first Wednesday in February.

When the year shall begin, for the purposes of this chapter. 1834, 150, § 11.

CHAPTER 49.

OF THE MAINTENANCE OF BASTARD CHILDREN.

SECTION
1. Complaint to be made to a justice by any woman, who, &c.
2. For what reasons the cause shall be continued, &c.
3. Certain evidence made necessary, and the mother to be a competent witness, except, &c.
4. Trial by jury; and order of court thereon.
5. Party charged as the father may take the poor debtor's oath.
6. The mother and the town, to have a remedy against the property of such father.

SECTION 1. When any woman who has been delivered of a bastard child, or is pregnant with a child, which, if born alive, may be a bastard, shall make a complaint to any justice of the peace, and shall desire to institute a prosecution against the person, whom she accuses of being the father of the child, the said justice shall take her accusation and examination, in writing, under oath, respecting the person accused, the time when and place where the complainant was begotten with child, and such other circumstances as the said justice shall judge necessary, for the discovery of the truth of such accusation; and the said justice may issue his warrant against the party accused, and, after hearing him in his defence, may require him to give bond, with sufficient sureties, to appear and answer to the said complaint, at the next court of common pleas, and to abide the order of court thereon, and may order him to be committed, until such bond shall be given; and on the trial of the issue before the court, the examination taken as aforesaid shall be given in evidence.

Complaint to be made to a justice, by any woman, who, &c. 2 Mass. 441. 7 ib. 340. 396. 6 Greenl. 460. 3 ib. 433. 1 ib. 304. 3 N. Hamp. R. 135. 1785, 66, § 2.

SECT. 2. If, at the said next court, the complainant shall not have been delivered, or shall not be able personally to attend, or if there shall be any other sufficient reason therefor, the court may order a continuance of the cause, from term to term, as they shall judge necessary, and the bond shall remain in force until final judgment; provided, that if the sureties in the bond shall, at any term of said court, object to being any longer held liable, or if the court shall, for any cause, deem it proper, the court may order a new bond to be taken; and the defendant shall stand committed, until he give such new bond.

For what reasons the cause shall be continued, &c. 12 Pick. 196. 1785, 66, § 2.

Certain evidence made necessary, and the mother to be a competent witness, except, &c.
5 Pick. 63.
8 Pick. 560.
8 Greenl. 163.
1785, 66, § 2.

SECT. 3. When any woman, having been delivered of a bastard child, or being pregnant with a child, which, if born alive, may be a bastard, shall, upon examination on oath before a justice of the peace, as provided in the first section, accuse any man of being the father thereof, and being put upon the discovery of the truth, respecting the same accusation, in the time of her travail, shall thereupon accuse the same man of being the father of the child of which she is about to be delivered, and shall continue constant in such accusation, and shall prosecute him as the father of such child, before the court of common pleas, as provided in this chapter, the man shall be held to answer to the complaint, and she shall be admitted as a competent witness on the trial of the cause; provided, that if she shall have been convicted of any crime, which would by law render her incompetent in any other cause, her testimony shall not be received before the said court.

Trial by the jury; and order of court thereon.
2 Mass. 156.
5 Mass. 517.
14 Mass. 386.
2 Greenl. 165.
1785, 66, § 2.

SECT. 4. Upon the trial of the cause, the issue to the jury shall be, whether the defendant is guilty or not guilty, and if the jury shall find him guilty, he shall be adjudged by the court to be the father of such child, and shall stand charged with the maintenance thereof, with the assistance of the mother, in such manner as the court shall order, and he shall give bond, with sufficient sureties, to perform the said order, and also to indemnify and save harmless, against all charges of maintenance, any town which might be chargeable with the maintenance of such child; and he may be committed to prison, until he shall give such bond; but if on such trial, he shall be found not guilty, the court shall order that he be discharged; and the verdict in either case shall be final.

Party charged as the father may take poor debtor's oath.
1825, 173.

SECT. 5. Any man, who shall have been imprisoned ninety days, for having failed to comply with any order of the court, as provided in this chapter, shall have the benefit of the laws for the relief of poor prisoners committed on execution for debt; provided, he shall procure the like notification of his intention to take the oath prescribed to poor debtors, to be served on the complainant, and also upon the town clerk of the town, where the child, of which he is the reputed father, has its legal settlement, if there be such town in this state; the said notification to be served on the complainant and on the town, thirty days at least before the time appointed for taking the oath aforesaid; provided, that if at the time when such notification shall be issued, the complainant be dead, service thereof on such town only shall be necessary to entitle the defendant to the benefit aforesaid.

The mother and the town, to have a remedy against the property of such father.
1825, 173.

SECT. 6. The mother of such child and the said town, respectively, may, at all times, after the liberation of such prisoner or taking said oath, recover, by action of debt, any sum of money, which ought to have been paid to them respectively by him, in pursuance of such order of court.

CHAPTER 50.

OF THE OBSERVANCE OF THE LORD'S DAY; AND THE PREVENTION AND PUNISHMENT OF IMMORALITY.

SECTION

OBSERVANCE OF THE LORD'S DAY.

1. Prohibition of labor, &c., on the Lord's day.
2. Travelling, &c., forbidden.
3. Innholders, &c., not to entertain any other than travellers, &c.
4. Lord's day, what time to include, for certain purposes.
5. Prohibitions as to Saturday and Sunday evenings, &c.
6. Innholders, &c., not to entertain people on Saturday or Sunday evenings, except, &c.
7. Writs, &c., not to be served on the Lord's day.
8. Penalty for indecent behavior in houses of public worship.
9. Tythingmen, sheriffs, &c., to inform of all offences against this chapter.
10. Provision for persons who observe Saturday as the Sabbath.
11. Penalties, how recovered.

GAMING.

12. Persons losing money by gaming may recover it back. Qui tam action, &c.
13. Plaintiff and defendant may testify, in case, &c.
14. Penalty for winning at any game, &c. five dollars or more.
15. All notes, &c., given for gaming, to be void.
16. Penalty for gaming, and for keeping implements of gaming in licensed houses.
17. " for keeping billiard tables in houses not licensed.
18. " for playing at such tables.
19 Common gaming houses, to be entered, and parties arrested.

OBSERVANCE OF THE LORD'S DAY.

SECTION 1. No person shall keep open his shop, ware house, or work house, or shall do any manner of labor, business, or work, except only works of necessity and charity, or be present at any dancing, or any public diversion, show, or entertainment, or take part in any sport, game, or play on the Lord's day; and every person so offending shall be punished by a fine not exceeding ten dollars for every offence.

Prohibition of labor, &c., on the Lord's day. 1791, 58, § 1. 1796, 89, § 1.

SECT. 2. No person shall travel on the Lord's day, except from necessity or charity; and every person so offending shall be punished by a fine not exceeding ten dollars for every offence.

Travelling, &c. forbidden. 6 Mass. 76. 13 Mass. 324. 1791, 58, § 2. 1796, 89, § 1.

SECT. 3. No innholder, retailer of spiritous liquors, or other person, keeping a house of public entertainment, shall entertain any persons, not being travellers, strangers or lodgers, in his house on the Lord's day, or shall suffer any such persons, on said day, to abide or remain in his house, or in the yards, orchards or fields appertaining to the same, drinking, or spending their time idly or at play, or in doing any secular business; and every person so offending shall be punished by a fine not exceeding five dollars, for each person so entertained, or suffered so to abide and remain; and upon any conviction after the first, such offender shall be punished by a fine not exceeding ten dollars; and if convicted three times, he shall be afterwards incapable of holding a license; and every person, so abiding or drinking, shall be punished by a fine not exceeding five dollars.

Innholders, &c. not to entertain any other than travellers, &c. 2 Pick. 139. 1791, 58, § 3. 1796, 89, § 1.

Lord's day, what time to include, for certain purposes. 1791, 58, § 4.

SECT. 4. For the purposes of the provisions of the three preceding sections, the Lord's day shall be understood to include the time between the midnight preceding and the sunsetting of the said day.

Prohibitions as to Saturday and Sunday evenings, &c. 1791, 58, § 5. 1796, 89, § 1.

SECT. 5. No person shall be present at any game, sport, play or public diversion, except concerts of sacred music, upon the evening next preceding or following the Lord's day; and every person so offending shall be punished by a fine not exceeding five dollars for each offence.

Innholders, &c. not to entertain people, on Saturday or Sunday evenings, except, &c. 1791, 58, § 5. 1796, 89, § 1.

SECT. 6. No retailer, innholder, or other person, licensed to keep a public house, shall entertain or suffer to remain or be in his house, yard, or other places appurtenant, any persons, not being travellers, strangers, or lodgers in such house, drinking and spending their time there, on the evening preceding or following the Lord's day; and every such retailer, innholder, or other person so offending, shall be punished by a fine not exceeding five dollars for each offence.

Writs, &c., not to be served on the Lord's day 1791, 58, § 9.

SECT. 7. No person shall serve or execute any civil process, from midnight preceding to midnight following the Lord's day; but such service shall be void, and the person, serving or executing such process, shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

Penalty for indecent behavior in houses of public worship. 1791, 50, § 7.

SECT. 8. If any person shall, on the Lord's day, within the walls of any house of public worship, behave rudely or indecently, he shall be punished by a fine not exceeding ten dollars.

Tythingmen, sheriffs, &c., to inform of all offences against this chapter. 1791, 58, §§ 10, & 12.

SECT. 9. All tythingmen, sheriffs, grand jurors and constables, shall inquire into, and inform of all offences against the preceding provisions of this chapter, and shall cause the same to be carried into effect.

Provision for persons, who observe Saturday as the Sabbath. 3 S. & R. 48.

SECT. 10. No person, who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to the penalties of this chapter, for performing secular business or labor on the Lord's day, or first day of the week, provided he disturbs no other person.

Penalties, how recovered. 13 Mass. 324. 1791, 58, § 13. 1815. 136.

SECT. 11. All the penalties, incurred under any of the preceding provisions of this chapter, may be recovered by indictment or by complaint before a justice of the peace; provided, that all prosecutions therefor shall be instituted within six months after the offence shall have been committed.

GAMING.

Persons losing money by gaming, may recover it back. 17 Mass. 560. 3 Pick. 446.

SECT. 12. If any person shall, by playing at cards, dice, or other game, or by betting on the sides or hands of such as are gaming, lose, to any person so playing or betting, any sum of money, or any goods whatever, and shall pay or deliver the same or any part thereof to the winner, the person, so losing and paying or delivering the same, may sue for and recover such money, in an action for money had and received to the use of the plaintiff, and such goods in an action of trover, or he may bring a special action on the case therefor; and if the person, so losing said money or goods, shall not,

within three months after such loss, without covin or collusion, prosecute with effect for such money or goods, it shall be lawful for any other person, to sue for and recover treble the value of such money or goods, with full costs of suit, in an action of debt, under the provisions of this chapter, the one moiety to the use of the person so prosecuting, and the other moiety to the use of the Commonwealth.

Qui tam action given, in case, &c. 1785, 58, § 2.

SECT. 13. In any suit to be brought, as provided in the preceding section, by the person so losing any such money or goods, against the person winning the same, when it shall appear from the declaration, that the said money or goods came to the hands of the defendant by gaming, if the plaintiff, when required by the court before whom the cause is tried, shall make oath, that the said money or goods were lost by gaming with the defendant, as alleged in the declaration, judgment shall be rendered that the plaintiff recover damages to the amount of the said money or goods, unless the defendant will make oath that he did not obtain the same, or any part thereof, by gaming; and if he shall so discharge himself on oath, he shall recover of the plaintiff his costs; provided, that the plaintiff may, at his election, maintain and prosecute his action, according to the usual course of proceedings, in such actions at common law.

Plaintiff and defendant may testify, in case, &c. 1785, 58, § 4.

SECT. 14. Every person, who shall, on an indictment, be convicted of winning, at any one time or sitting, by gaming or by betting on the sides or hands of such as are gaming, any money or goods, to the value of five dollars or more, and of receiving the same, or any security therefor, shall forfeit to the use of the town, where the offence shall have been committed, double the value of the money or goods so won and received; provided, that such indictment shall be found within eighteen months after the committing of the offence.

Penalty for winning, at any game, &c. $5 or more. 1785, 58, § 3.

SECT. 15. All notes, bills, bonds, mortgages or other securities or conveyances whatever, in which the whole or any part of the consideration shall be for any money or goods won by gaming or playing at cards, dice, or any other game whatever, or by betting on the sides or hands of any persons gaming, or for reimbursing or repaying any money, knowingly lent or advanced for any gaming or betting, or lent and advanced at the time and place of such gaming or betting, to any person so gaming or betting, shall be void and of no effect, as between the parties to the same, and as to all persons, except such as shall hold or claim under them, in good faith and without notice of the illegality of the consideration of such contract or conveyance; and whenever any mortgage or other conveyance of lands shall be adjudged void, under the provisions of this section, such lands shall enure to the sole use and benefit of such person, as would be then entitled thereto, if the mortgagor or grantor were naturally dead; and all grants or conveyances, for preventing such lands from coming to or devolving upon the person, to whose use and benefit the said lands would so enure, shall be deemed fraudulent and of no effect.

All notes, &c. given for gaming, to be void. 1785, 58, § 1.

SECT. 16. If any person shall be convicted of gaming in any house, shop, cellar or store, yards, gardens or dependencies of any licensed innholder, or common victualler, or if any such innholder or victualler shall keep, or suffer to be kept, any implements of gaming, in his said house, place of business, or dependencies thereof, or

Penalty for gaming, and for keeping implements of gaming in licensed houses. 3 Pick. 281.

1785, 58, § 5. 1798, 20, § 1. 1832, 166, § 11.

shall suffer any persons to game therein, every person, so gaming or keeping such implements, or suffering such gaming, shall be punished in the manner provided in such case in the forty seventh chapter.

Penalty for keeping billiard tables in houses not licensed. 1798, 20, § 2.

SECT. 17. If any person, not licensed as an innholder, victualler, or retailer of spiritous liquors, shall keep, or suffer to be kept, in any house, building, yard, garden or dependency thereof, by him actually used or occupied, any tables, for the purpose of playing at billiards, for hire, gain, or reward, or shall, for hire, gain or reward, suffer any person to resort to the same, for the purpose of playing at billiards, cards, or dice, or any other unlawful game, every person so offending shall, for every such offence, forfeit a sum not exceeding one hundred dollars, to the use of the town where the offence shall have been committed, and shall further recognize, with sufficient sureties, in a reasonable sum, for his good behavior, and especially that he will not be guilty of any offence, against the provisions of this chapter, for the space of three years then next ensuing.

Penalty for playing at such tables. 1798, 20, § 3.

SECT. 18. If any person shall play at billiards, at any such table kept or used, as mentioned in the preceding section, he shall forfeit to the use of the town, where the offence shall have been committed, the sum of ten dollars, to be recovered on complaint before any justice of the peace.

Common gaming houses, to be entered, and parties arrested. 1834, 172.

SECT. 19. If any person shall make oath before any justice of the peace or any police court, that he suspects, or has probable cause to suspect, that any house or other building is unlawfully used, as and for a common gaming house, for the purpose of gaming for money or other property, and that idle and dissolute persons resort to the same for that purpose, such justice or police court, whether the names of the persons last mentioned are known to the complainant or not, shall issue a warrant, commanding the sheriff or his deputy, or any constable, to enter into such house or building, and there to arrest all persons, who shall be there found playing for money, or otherwise, and also the keepers of the same, and to take into their custody all the implements of gaming as aforesaid, and to keep the said persons and implements, so that they may be forthcoming before such justice or police court, to be dealt with according to law.

CHAPTER 51.

OF THE LAW OF THE ROAD, AND THE REGULATION OF PUBLIC VEHICLES.

SECTION

LAW OF THE ROAD.

1. Travellers, to take the right hand side of roads, &c.
2. Bells to be used with sleighs.
3. Penalties; and how to be recovered.

PUBLIC VEHICLES.

4. Drivers of stage coaches, &c., not to leave their horses, without, &c.

LAW OF THE ROAD.

Travellers, to take the right

SECTION 1. Whenever any persons shall meet each other on any bridge or road, travelling with carriages, wagons, carts, sleds,

sleighs or other vehicles, each person shall seasonably drive his carriage or other vehicle to the right of the middle of the travelled part of such bridge or road, so that the respective carriages or other vehicles aforesaid may pass each other without interference.

hand side of roads, &c. 1 Pick. 345. 4 Pick. 125. 1820, 65, § 1.

SECT. 2. No person shall travel on any bridge or road, with any sleigh or sled drawn by one or more horses, unless there shall be at least three bells attached to some part of the harness thereof.

Bells to be used with sleighs. 1820, 65, § 2.

SECT. 3. Every person, offending against the provisions of the two preceding sections, shall for each offence forfeit a sum not exceeding twenty dollars, to be recovered on complaint before any justice of the peace, in the county where the offence shall have been committed; and he shall further be liable to any party for all damages sustained by reason of such offence; provided, that every such complaint shall be made within three months after the offence shall have been committed, and that every such action for damages shall be commenced within twelve months, after the cause of action shall have accrued.

Penalties, and how to be recovered. 1820, 65, § 4.

PUBLIC VEHICLES.

SECT. 4. If any driver of a stage coach, or other vehicle, for the conveyance of passengers for hire, shall, when any passenger is within or upon such coach or vehicle, leave the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment not exceeding two months or by a fine not exceeding fifty dollars.

Drivers of stage coaches, &c. not to leave their horses, without, &c. 1826, 140, § 1.

CHAPTER 52.

OF TIMBER FLOATING ON RIVERS, OR CARRIED UPON ADJOINING LANDS.

SECTION
1. Timber carried away by floods, may be taken by owners, on paying, &c.
2. Penalty for cutting out or altering marks on timber of owners who are known.
3. Penalty for defacing or altering marks on timber of unknown owners.
4. When the possession of timber, the marks being cut out, shall be presumptive evidence of guilt.

SECTION 1. When any log, mast, spar, or other timber shall be carried by floods into any lands adjoining any rivers, streams or ponds, the owner of such logs, or other timber, may, at any time within eighteen months, remove the same from said land, on paying or tendering to the owner or occupant of the land, such reasonable damages as may be caused by such removal; and if the owner of such logs or other timber shall not take the same from such lands, within the said eighteen months, or otherwise agree with the owner or occupant of such lands, then the said logs and other timber shall be deemed the property of such owner or occupant.

Timber carried away by floods, may be taken by owners, on paying, &c. 1793, 42, § 4.

Penalty for cutting out or altering marks on timber of owners who are known. 1793, 42, § 1.

SECT. 2. If any person shall unlawfully cut out, alter, or destroy any mark of the owner, made on any logs or other timber, put into any river, stream or pond, he shall forfeit a sum not exceeding ten dollars for each log or other timber, the mark of which he shall have so altered, cut out or destroyed; and he shall be further liable in damages to the owner thereof, for treble the value of the same, to be recovered, together with the said forfeiture, in an action of trespass.

Penalty for defacing or altering marks on timber of unknown owners. 1793, 42, § 2.

SECT. 3. If any person shall unlawfully cut out, alter or destroy any marks of any such logs or other timber, the owner whereof is not known, every person so offending shall forfeit a sum not exceeding ten dollars for every log or other piece of timber, the mark whereof he shall have so cut out, altered or destroyed, to be recovered to the use of any person who shall sue for the same.

When the possession of timber, the marks being cut out, shall be presumptive evidence of guilt. 1793, 42, § 6.

SECT. 4. In any suit under the two preceding sections, if the logs or other timber shall be found in the possession of the defendant, with the marks cut out, altered or destroyed, it shall be considered as presumptive evidence of his guilt, and the burthen of proof shall be upon him to discharge himself.

CHAPTER 53.

OF THE PRESERVATION OF CERTAIN USEFUL BIRDS AND OTHER ANIMALS.

SECTION
1. Certain birds, not to be killed, &c., except at certain seasons.
2. Penalty for shooting, &c., such birds on lands of other persons.
3. " for killing birds on salt marshes, except at certain seasons.
4. The preceding sections, not to be in force in towns, which vote to suspend their operation.
5. Penalty for killing plover, &c., except at certain seasons.
6. " for killing with unusual implements.
7. " for hunting deer at certain seasons.

Certain birds not to be killed, &c., except at certain seasons. 1817, 103, § 1. 1830, 69.

SECTION 1. If any person shall, between the first day of March and the first day of September, take, kill or destroy any of the birds, called partridges, or quails; or shall, between the first day of March and the fourth day of July, kill or destroy any of the birds called woodcocks, snipes, larks or robins; or shall, between the first day of January and the first day of November, take, kill or destroy any of the birds called grouse or heath hens; or shall, within the respective times aforesaid, sell, or buy, or have in his possession, any of the said birds, killed or taken as aforesaid, he shall forfeit for every such partridge, quail or woodcock, the sum of two dollars, and for every such snipe, lark or robin, one dollar, and for every such grouse or heath hen the sum of ten dollars, to be recovered by complaint before any justice of the peace.

Penalty for shooting such birds on lands

SECT. 2. If any person shall shoot at or kill any of the birds, mentioned in the preceding section, or any other birds, upon lands not

owned or occupied by himself, and without license from the owner or occupant thereof, at any time between the first day of March and the fourth day of July, he shall forfeit and pay, to the occupant or owner of such lands, the sum of ten dollars, in addition to the actual damages sustained, to be recovered by such owner or occupant in an action of trespass.

of other persons. 1817, 103, § 2.

SECT. 3. No person shall take, kill or destroy any birds, on any salt marshes, between the first day of March and the first day of September; and if any person, within the limits of any town, to which the provisions of this section shall extend, shall shoot, take, kill or sell any of the birds therein mentioned, within the period of time aforesaid, he shall forfeit the sum of two dollars for every offence; provided, that nothing contained in this section shall prevent the owner or occupant of such lands from taking or killing any of said birds, on the land so owned or held by him.

— for killing birds on salt marshes except at certain seasons. 1821, 10.

SECT. 4. The provisions of the preceding sections shall not extend to any town, in which the inhabitants shall, at their annual meeting in any year, vote to suspend the operation thereof, in whole or in part, and for such term of time not exceeding one year, as they shall think expedient.

The preceding sections not to be in force in towns which vote to suspend their operation. 1817, 103, § 2.

SECT. 5. No person shall take, confine, kill or destroy any of the birds called plover, curlew, dough bird, or chicken bird, at any period from the twentieth day of April to the first day of September, between the hour of sunset and one hour before the sun's rising; and every person, offending against the provisions of this section, shall, for every such bird so taken, confined, killed or destroyed, forfeit the sum of one dollar, to be recovered on complaint before any justice of the peace of the county, in which the offence shall be committed, and to the use of such county.

Penalty for killing plover, &c., except at certain seasons. 1835, 136, § 1.

SECT. 6. If any person shall, at any time, kill or destroy any of the birds, mentioned in the preceding section, by the use of any other means or implements than such as are usually employed in fowling, or killing wild game, he shall, for every such offence, be liable to the same penalty, to be recovered in the same manner, and to the same use, as the penalty mentioned in the preceding section.

Penalty for killing with unusual implements, &c. 1835, 136, § 2.

SECT. 7. If any person shall, between the first day of January and the first day of August, kill or hunt any deer, except his own tame deer, or deer kept in his park or on his own land, he shall forfeit for every deer so killed the sum of twenty dollars, to the use of the town where the offence shall have been committed.

Penalty for hunting deer at certain seasons. 1817, 58.

CHAPTER 54.

OF THE DESTRUCTION OF CERTAIN NOXIOUS ANIMALS.

SECTION
1. Bounty, for destroying bears, &c., and how obtained.
2. Towns, to be reimbursed from state treasury.
3. " may raise money for bounties.

Bounty for destroying bears, &c., and how obtained. 1782, 39, § 1. 1835, 112.

SECTION 1. If any person shall, within the limits of any town, kill any wolf, bear, wild cat or fox, and shall bring the heads of such animals, respectively, to a constable of the said town, the said constable shall, in presence of one or more of the selectmen, cut off both the ears of every such head, and cause them to be burned; and the selectmen and constable shall give the person, bringing such head to them, a certificate thereof, stating the fact and also designating the species of animal so killed, and if such animal were a wolf, then further stating, whether it were a full grown wolf or a whelp; and upon filing the said certificate with the town treasurer, such person shall be paid out of the treasury of the town, for every head of such animal, therein mentioned, the following sums, to wit: for every head of a full grown wolf, the sum of fifteen dollars; for every head of a wolf's whelp, bear or wild cat, five dollars; and for every head of a fox, fifty cents.

Towns to be reimbursed from state treasury. 1782, 39, § 2. 1835, 112.

SECT. 2. All sums of money, so paid out of any town treasury, being certified by the treasurer of such town, shall be allowed and paid out of the treasury of the Commonwealth, and warrants shall be drawn accordingly.

Towns may raise money for bounties. 1817, 144.

SECT. 3. The inhabitants of any town, qualified to vote, may at any legal meeting warned for that purpose, raise any sum of money, which they may judge necessary, to encourage the destruction of the animals mentioned in this chapter, and any other noxious animals whatever.

CHAPTER 55.

OF FISHERIES.

SECTION
1. Penalty for poisoning fish with Indian cockle, &c.
2. " for unlawfully catching pickerel and trout.
3. Parents, masters, &c., to be answerable for minors.
4. Prosecutions limited to 30 days after the offence.

LOBSTERS, TAUTOG AND BASS.

5. Penalty for unlawfully taking lobsters, &c., in Fairhaven, &c.
6. Boundaries of the shores and waters, mentioned in the preceding section.
7. Lobster fishery in the waters, &c., of Provincetown.
8. Penalty.
9. Waters and shores of Provincetown, defined.
10. Penalties, how recovered.

OYSTERS AND OTHER SHELL FISH.

11. Penalty for unlawfully taking oysters, &c.
12. Selectmen may give permits.
13. Penalty for taking, &c., any other shell fish, in certain towns.
14. When vessels with oysters, &c., on board, may be seized.
15. The prohibitions as to shell fish, not to extend to Indians, &c.
16. No shell fish, except clams and horse-feet, to be taken in Chatham.
17. Forfeitures, how to enure and to be recovered.

Penalty for poisoning fish with Indian cockle, &c. 1830, 43.

SECTION 1. If any person shall put or throw into any waters within this state, for the purpose of taking or destroying any fish therein, any of the cocculus indicus, otherwise called Indian berry, or

Indian cockle, or any other poisonous substance, whether the same be mixed with any other substance or not, he shall forfeit the sum of ten dollars for every such offence, to be recovered by complaint before any justice of the peace.

SECT. 2. No person shall take or catch any pickerel or trout, in any rivers, streams or ponds, in any other manner than by hooks and lines; and no person shall take any pickerel, in any rivers, streams or ponds, from the first day of December to the first day of April; and every person, offending against any of the provisions of this section, shall forfeit the sum of fifty cents, for every pickerel or trout by him taken contrary to the said provisions, to be recovered by indictment, or on complaint before any justice of the peace; provided, that the inhabitants of any town may, at their annual meeting, suspend, in whole or in part, the provisions of this section, so far as respects such town, for any term of time not exceeding one year.

Penalty for unlawfully catching pickerel and trout. 1822, 21. 1824, 127, §§ 1 & 2.

SECT. 3. If any minor shall offend against the provisions of the preceding sections, the parent, master, or guardian of such minor shall be liable, and may be prosecuted accordingly.

Parents, masters, &c. to be answerable for minors. 1824, 127, § 2.

SECT. 4. All prosecutions, under the two preceding sections, shall be instituted within thirty days from the time of committing the offence.

Prosecutions limited to 30 days. 1824, 127, § 3.

LOBSTERS, TAUTOG AND BASS.

SECT. 5. No person, living without the state, shall take any lobsters, tautog, bass, or other fish, within the harbors, streams or waters of the towns of Fairhaven, New Bedford, Dartmouth and Westport, for the purpose of carrying them from thence, in vessels or smacks owned without this state, of any size whatever, nor in any owned within this state of more than fifteen tons' burthen; under a penalty of ten dollars for every offence, and a forfeiture of all the fish and lobsters so taken.

Penalty for unlawfully taking lobsters, &c. in Fairhaven, &c. 1821, 97, § 1.

SECT. 6. For the purposes of the preceding section, the waters and shores of the towns therein mentioned shall be deemed and taken to extend from the line of the state of Rhode-Island to the line of the county of Plymouth, and to include all the waters, islands and rocks, lying within one mile of the main land.

Boundaries of the shores and waters mentioned in the preceding section. 1821, 97, § 2.

SECT. 7. No person shall take any lobsters within the waters and shores of the town of Provincetown, for the purpose of carrying them from the said waters, in any vessel or smack whatever, of more than fifteen tons' burthen, or for the purpose of putting the same on board of any such vessel or smack, to be transported to any place, unless a permit shall be first obtained therefor from the selectmen of said town, who may grant the same, for such sum, to be paid to the use of the town, as they shall think proper.

Lobster fishery on the shores, &c. of Provincetown. 1821, 102, § 1.

SECT. 8. Every person, offending against the provisions of the preceding section, shall, for each offence, forfeit the sum of ten dollars; and in case the number of lobsters, so unlawfully taken, or found on board of any such vessel or smack, shall exceed one hundred, the person offending shall, in addition to the said penalty, forfeit a further sum of ten dollars for every hundred lobsters so taken or found, and in that proportion, for any number over the first hundred.

Penalty. 1821, 97, & 102.

SECT. 9. For the purposes of the two preceding sections, the

Waters and

shores of Provincetown, defined. 1821, 102. 1812, 27, § 2.

waters and shores of Provincetown shall be deemed and taken to be as follows, to wit; beginning at Race Point, one half mile from the shore, by said shore, to the end of Long Point, which forms the harbor of Provincetown, and from the end of Long Point, one half mile, and including the harbor within the town of Provincetown.

Penalties, how recovered. 1821, 97 and 102.

SECT. 10. All the penalties and forfeitures, mentioned in the five preceding sections, may be recovered to the use of the town, in which the offence shall have been committed, by indictment or by complaint before any justice of the peace.

OYSTERS AND OTHER SHELL FISH.

Penalty for unlawfully taking oysters, &c. 1795, 71, § 1.

SECT. 11. No person shall take any oysters from their beds, or destroy them, or wilfully obstruct their growth therein, in any part of this state, except as is provided in the following section; and every person, who shall otherwise take, destroy, or obstruct the same, shall forfeit, for every bushel of oysters, (including the shells) so taken or destroyed, the sum of two dollars.

Selectmen may give permits. 1795, 71, § 1.

SECT 12. The selectmen of any town, wherein oyster beds shall be, may give permits, in writing, to any person, to take oysters from their beds, at such times, in such quantities, and for such uses, as the said selectmen shall think reasonable, and shall express in their said permits; and every inhabitant of such town, without such permit, may take oysters from such beds therein, for the use of his family, from the first day of September to the first day of June, annually.

Penalty for taking, &c. any other shell fish, in certain towns. 1795, 71, § 2.

SECT. 13. If any person shall take any other shell fish from their beds, or destroy them, or wilfully obstruct their growth therein, in any of the towns of Malden, Medford, Charlestown, Rochester, Wareham, Hingham, Plymouth, Sandwich, Barnstable, Yarmouth, Eastham, Dennis, Wellfleet, Chatham, Nantucket, Edgartown, Tisbury, Dartmouth, Westport, Freetown, Fall River, Swanzey, New Bedford, Fairhaven, Somerset, Berkley, Brookline, Braintree, or Weymouth, except as is herein after excepted, the person, so offending, shall forfeit, for every bushel of such other shell fish, including the shells thereof, the sum of one dollar; provided, the selectmen of each of the said towns may, at all times, give permits in writing, to any person, to take such other shell fish from their beds in said towns, at such times, in such quantities, and for such uses, as the said selectmen shall deem reasonable, and shall express in their permit; and every inhabitant of each of the said towns, without such permit, may take such other shell fish from such beds therein, for the use of his family.

When vessels with oysters, &c. on board, may be seized. 1795, 71, § 3.

SECT. 14. If any vessel, boat, or craft shall be found within the limits of any town, and not owned therein, with any oysters on board, taken in such town without such permit, or within the limits of any of the towns, mentioned in the preceding section, and not owned therein, with other shell fish on board, taken in such town without such permit, any inhabitant of any town, wherein such vessel, boat, or craft shall so be found trespassing, may seize and detain the same, not exceeding forty eight hours, in order that the same, if need be, may, in that time, be attached or arrested by due process of law, to satisfy the said fines and forfeitures, with costs; provided, however,

that if the owner or master of any such vessel, boat or craft, shall, before the prosecution is instituted for the same, pay such forfeiture to the treasurer of the town, in which the same shall be incurred, such vessel, boat or craft, with the effects therein, shall be discharged.

SECT. 15. Nothing contained in the four preceding sections shall be construed to deprive any native Indians of the privilege of digging shell fish for their own consumption, or to prevent any fisherman from taking any quantity of shell fish, which he may want for bait, provided it do not exceed seven bushels, including their shells, at any one time.

The prohibitions as to shell fish, not to extend to Indians, &c. 1795, 71, § 5.

SECT. 16. No fisherman or any other person shall take, from the town of Chatham, any shell fish for bait or other use, except clams, and a shell fish commonly known by the name of horsefeet; and no quantity, exceeding seven bushels of clams, including the shells, or one hundred of said horsefeet, shall be taken in one week, for each vessel or craft, nor in any case without a permit being first obtained from the selectmen of the town.

No shell fish, except clams and horsefeet, to be taken in Chatham. 1799, 19.

SECT. 17. All the said fines and forfeitures shall enure to the use of the town wherein the offence shall be committed, and may be recovered, by indictment or on complaint before any justice of the peace, in the county where the offence was committed.

Forfeitures, how to enure and to be recovered. 1795, 71, § 4

CHAPTER 56.

OF LOST GOODS AND STRAY BEASTS.

SECTION
1. The finder of lost money or goods, to give notice, &c.
2. When stray beasts are taken, notice to be given.
3. Strays taken up within ten miles of the agricultural hall in Brighton.
4. Lost goods of the value of $10, or more, to be appraised.
5. Conditional right of owner to receive his goods or the value thereof.
6. " " of finder, if no owner appear.
7. Conditional right of owner of stray beasts, if he proves his right thereto within three months.
8. In case the owner does not prove his right, &c.
9. " " appears within one year, then, &c.,—If no owner appears, then, &c.
10. Penalty if finder neglects to give notice, &c.
11. " for taking away strays without paying charges.

SECTION 1. When any person shall find any lost money or lost goods, of the value of three dollars or more, the owner whereof is unknown, he shall, within two days, cause notice thereof to be posted up, in two public places within the town where the same were found, and shall, moreover, within seven days, give notice thereof, in writing, to the clerk of the town, and pay him twenty five cents for making an entry thereof in a book to be kept for that purpose; and if the money or goods so found be of the value of ten dollars or more, the finder shall, within one month after such finding, cause the

The finder of lost money or goods, to give notice, &c. 1788, 55, § 1.

same to be advertised in some newspaper, or to be publicly cried, if there be any town crier in the town, and notice thereof to be posted up in like manner, in two adjoining towns.

When stray beasts are taken up, notice to be given. 1788, 55, § 1.

SECT. 2. Every person, who shall take up any stray beast, shall cause a notice thereof to be entered with the town clerk, in a book to be kept for that purpose, containing a description of the color, and of the marks, natural and artificial, of the beast, and cause the same to be cried, and notifications thereof, containing a like description of the beasts, to be posted up, in the manner provided in the preceding section, otherwise he shall not be entitled to compensation for any expenses, which he may incur in relation thereto.

Strays taken up within ten miles of the agricultural hall in Brighton. 1827, 74, § 1.

SECT. 3. If any such stray beast shall be taken up within ten miles of the Agricultural Hall in the town of Brighton, the finder shall, within ten days after the beasts are taken up, in addition to the notice before required, post up a similar notice in Brighton, at such public place, as shall have been designated for such notices by the selectmen of that town; and the finder shall be entitled to receive therefor fifty cents, together with eight cents for every mile that he shall travel for that purpose.

Lost goods, &c. of the value of $10 or more to be appraised. 1788, 55, § 2.

SECT. 4. Every finder of lost goods or stray beasts, of the value of ten dollars or more, shall also, within two months, and before any use of said goods or beasts shall be made, procure from the town clerk, or from a justice of the peace, a warrant directed to two disinterested persons, to be appointed by the clerk or justice, and returnable into the town clerk's office, in seven days from the date, to appraise at their true value the goods or stray beasts, upon oath; which oath shall be administered by the clerk or justice.

Conditional right of owner to receive his goods or the value thereof. 1788, 55, § 3.

SECT. 5. If the owner of any such money, or goods, other than stray beasts, shall appear, within one year after such entry with the town clerk, and shall make out his right thereto, he shall have restitution of the same, or the full value thereof; he paying for entering the same, as aforesaid, together with all reasonable charges for keeping, notifying, crying and appraising, as aforesaid, and for necessary travel in the case; which charges shall, in case of disagreement between the owner and finder, be determined by some justice of the peace.

Conditional right of finder, if no owner appear. 1788, 55, § 3.

SECT. 6. If no owner shall appear within one year, then such lost money or goods shall remain to the finder, he paying to the treasurer of the town, one half of the value thereof, according to the said appraisement, (all lawful charges being first deducted,) and upon his neglect or refusal to pay the said half of the value, the same shall be recovered by the town treasurer.

— of the owner of stray beasts, if he proves his right thereto within three months. 1827, 74, § 2.

SECT. 7. If the owner of any such stray beasts shall appear, within three months after such entry with the town clerk, and shall make out his right thereto, he shall have restitution of the same, upon paying all lawful charges, as before provided in the case of lost goods.

In case the owner does not prove his right, then, &c. 1827, 74, § 2.

SECT. 8. If such owner shall not appear and make out his title to the beasts, within the said three months, the finder may sell them by public auction, first giving notice of such sale, at least four days before the time of sale, in two public places in the town where the beasts were taken up; and the money arising from the sale, after deduct-

ing all lawful charges, shall be deposited in the treasury of such town.

SECT. 9. If such owner shall appear, within one year after the said entry with the town clerk, and make out his title to the beasts, he shall, if they have not been sold, have restitution of the same, upon paying all lawful charges arising thereon, as provided in the case of lost goods; and if the beasts shall have been sold, he shall be entitled to receive the money, so deposited in the town treasury, from the proceeds of the sale; and if no owner shall appear within the said year, the beasts, or the value or price thereof, after deducting the said charges, shall remain, one half to the use of the finder, and the other half to the use of the town, in like manner as is before provided with respect to lost money or goods.

If the owner of beasts appears in one year, then, &c.

If no owner appears, then, &c. 1827, 74, § 2.

SECT. 10. If the finder of any lost goods, money or stray beast, shall neglect to cause the same to be entered and cried, and notice thereof to be posted up, as before directed, he shall forfeit the value of such goods, money or stray beast, unless he shall deliver the same, or otherwise account therefor, to the owner thereof, in which case, he shall forfeit a sum not exceeding twenty dollars; the forfeiture in either case to enure, to the use of the county.

Penalty, if finder neglects to give notice, &c. 1788, 55, § 5.

SECT. 11. If any person shall take away any beast, taken up as a stray, without paying all the lawful charges, incurred in relation to the same, he shall forfeit to the finder of such stray beast the value of the same, to be recovered in an action on the case.

— for taking away strays, without paying charges. 1788, 55, § 5.

CHAPTER 57.

OF WRECKS AND SHIPWRECKED GOODS.

SECTION
1. Governor may appoint commissioners of wrecks, &c. and remove them.
2. Duty of commissioners, on hearing of any wreck, &c.
3. Commissioners may employ assistants, &c.
4. " shall take an inventory of property, &c.
5. If commissioners and owners disagree, arbitrators to be chosen.
6. If arbitration is not agreed to, then the case to be decided at law.
7. No person except commissioners shall be held to pay for services rendered, unless, &c.
8. Penalty for intermeddling with wrecked property.
9. Commissioners, to advertise wrecked property.
10. " may dispose of property enough to pay duties and charges.
11. Perishable property, to be sold.
12. If no owner appears in one year, the commissioners to return an inventory to the treasurer.
13. Compensation for commissioners' services.
14. Liability of commissioners for neglect.

SECTION 1. The governor, with the advice and consent of the council, may appoint, in each of the counties, where he shall think it necessary, one or more commissioners of wrecks and shipwrecked goods, who shall be removable at pleasure; and each of the said com-

Governor may appoint commissioners of wrecks, &c. and remove them. 1814, 170, § 3.

missioners shall be sworn to the faithful discharge of his duty, and shall give bond to the judge of probate, for the county in which he resides, with sufficient sureties, to the acceptance of said judge, for the faithful discharge of his duty; and every person, having a claim against any such commissioner, for any breach or neglect of his official duty, may have a remedy therefor, by a suit on his bond, to be prosecuted in the name of the judge of probate, in like manner as on bonds given to judges of probate by administrators of the estates of deceased persons.

Duty of commissioners, on hearing of any wreck, &c. 1814, 170, § 1.

SECT. 2. Every such commissioner, immediately on receiving information of any shipwreck, or of the finding of any shipwrecked goods or property of any kind, to the amount of one hundred dollars or more, on any of the shores or waters within his county, shall repair to the place, where the said property may be found, and in case the same shall not be in the custody of any owner or agent, he shall take charge thereof, and shall preserve and secure the same for the owner.

Commissioners may employ assistants, &c. 1814, 170, § 1. 1796, 88, § 2.

SECT. 3. The commissioner in such case may employ as many persons, as he shall think necessary, to assist in preserving the property, and he may appoint guards to secure the property, and may suppress all tumults and disorders; and if any person shall disobey any lawful order of the commissioner, he shall forfeit for every such offence a sum not exceeding ten dollars, to be recovered in an action on the case, in the name of the commissioners, to the use of the town.

—shall take an inventory of property, &c. 1814, 170, § 1.

SECT. 4. The said commissioner shall, on every such occasion, take an inventory of all the property, that shall come to his possession; and when required by the owner of the property or his agent, or by any insurance company, or underwriter, or other person interested in said property, he shall make oath to the truth of such inventory, and shall deliver a copy thereof, if required, together with all the said property, to the owner, agent, or other person lawfully authorized to receive it; provided, there shall be first paid, or secured to be paid, to the commissioner, a reasonable compensation for his services and expenses, and such custom house duties, and other charges, if any, as he shall have paid or become liable to pay, upon or for the property in question.

If commissioner and owner disagree, arbitrators to be chosen. 1814, 170, § 1.

SECT. 5. If the commissioner and the other party shall not agree on the sum so due to the commissioner, the case may be submitted to arbitrators, in the manner provided in the one hundred and fourteenth chapter; and all the proceedings therein shall be conducted as provided in that chapter.

If arbitration is not agreed to, then the case to be decided at law, unless, &c.

SECT. 6. If the parties shall not agree to submit the case to arbitrators, it may be decided in an action at common law, to be commenced and prosecuted as the circumstances may require, unless the same shall be a matter within the exclusive jurisdiction of the courts of the United States.

No person except commissioners shall be held to pay for services rendered, unless, &c. 1814, 170, § 1.

SECT. 7. No owner, or other person interested in any such property, shall be held to pay to any person, other than one of the said commissioners, any charge for services or expenses in taking or securing the property, unless it be for property taken or secured before the arrival of a commissioner; in which case the commissioner shall,

upon due hearing of all parties interested, determine the compensation to be received as aforesaid, and from his award in writing, there shall be no appeal, unless the whole sum so demanded, shall exceed fifty dollars, in which case, an appeal shall lie to the court of common pleas, by either party who may be aggrieved by the doings of the commissioner; and the said court shall, in a summary manner, hear and determine the case, and may issue all such process, as may be necessary or proper to carry into effect their decrees and orders therein.

Penalty for intermeddling with property wrecked. 1814, 170, § 1.

SECT. 8. If any person shall, after the arrival of a commissioner, take, detain, or intermeddle with any property shipwrecked or found as aforesaid, except under the directions of the commissioner, or of the owner or agent, or other person interested, he shall forfeit a sum not exceeding one thousand dollars for each offence, to be recovered by an action of debt, which may be brought by the commissioner, owner, agent, or other person interested, to his own use.

Commissioners to advertise wrecked property. 1814, 170, § 2.

SECT. 9. The commissioner, as soon as may be, after his arrival at the place where any wreck or goods shall be found, shall publish the particulars of the shipwreck, and of the goods found, with such other material facts as he shall ascertain, in order that knowledge thereof may be given as soon as possible to the owner, agent, or persons interested; and if the commissioner shall neglect so to do, he shall forfeit fifty dollars, to be recovered by an action of debt, at the suit of the owner, agent, or other person interested, to his own use.

—may dispose of property enough to pay duties and charges. 1814, 170, § 2.

SECT. 10. The commissioner may dispose of so much of the property, by public auction, within thirty days after taking the same into his custody, as shall be sufficient to pay all duties thereon, which he shall have paid, or for which he shall have become liable to the custom house.

Perishable property to be sold. 1814, 170, § 2.

SECT. 11. When such property is of a perishable nature, and may be much reduced in value, by keeping it for one year, and no owner, agent, or other person interested therein, shall appear to claim it, within sixty days after it shall have been taken into the custody of the commissioner, he shall advertise the said property in the public newspapers, and shall sell the same by auction to the best advantage.

If no owner appears in one year, the commissioners to return an inventory to the treasurer. 1814, 170, § 2.

SECT. 12. If no owner, agent, or other person interested in such property, shall appear, within one year after it shall have been taken into the custody of the commissioner, and establish his claim thereto, the commissioner shall present to the treasurer of the Commonwealth, an inventory of the property, or, if sold, an account of the sales, with an account of all moneys paid by him for duties on the property, and for the expenses of securing and preserving it; and he shall make oath to the truth of such inventory and accounts, and shall pay and deliver to the treasurer the balance of such accounts, with all the said property remaining in his hands, for the use of the Commonwealth.

Compensation for commissioners' services. 1814, 170, § 2.

SECT. 13. The treasurer may make the commissioner such compensation for his services and expenses, as shall be just, to be ascertained, in case of disagreement between the commissioner and treasurer, in the same manner that is before provided for the adjustment of the like question, between the commissioner and the owner of the property.

Liability of commissioners for neglect. 1814, 170, § 2.

SECT. 14. If any commissioner shall, for the space of sixty days, after the expiration of the year, herein before limited for his accounting with the treasurer, neglect to present to the treasurer the inventory and accounts before mentioned, and to pay and deliver the balance due thereon, together with all the said property remaining in his hands, the treasurer shall cause a suit to be commenced therefor, for the use of the Commonwealth, and shall prosecute the same to final judgment and execution.

CHAPTER 58.

OF CERTAIN MUNICIPAL REGULATIONS OF POLICE.

SECTION

THEATRICAL EXHIBITIONS AND PUBLIC SHOWS.

1. Selectmen may license theatrical exhibitions, &c.
2. Penalty for setting up any exhibition, &c. contrary to law, or aiding therein.
3. Justices may require sureties of persons offending.

LIVERY STABLES; SAILMAKERS' AND RIGGERS' LOFTS.

4. Sailmakers, &c. to be licensed by selectmen.

ROCKETS, SQUIBS AND GUNPOWDER.

5. Penalty for having or selling rockets, &c. without license.
6. " for firing rockets, &c. without license.
7. Towns may order how gunpowder shall be kept within the town.
8. Justices, to issue warrants for searching places where gunpowder is unlawfully kept.
9. Penalty for unlawfully keeping gunpowder.

DOGS.

10. Towns may make by-laws respecting the keeping of dogs.
11. Fees for licenses, to be paid to the treasurer.
12. Dogs, to have collars, with names, &c. of owners.
13. Double damages for injury done by dogs.
14. Any person may kill any dog, when, &c.
15. Dangerous dogs, to be confined by owner, or killed.
16. If owner neglects, after notice, any person may kill his dog.
17. Owners liable to treble damages, in case, &c.

THEATRICAL EXHIBITIONS AND PUBLIC SHOWS.

Selectmen may license theatrical exhibitions, &c. 1825, 152, §§ 1 & 3.

SECTION 1. The selectmen of any town may at any meeting held for that purpose, license all theatrical exhibitions, public shows and exhibitions of any description, to which admission is obtained on payment of money, upon such terms and conditions as they shall think reasonable, and may regulate the same in such manner as they shall think necessary for the preservation of order and decorum, and to prevent the interruption of the public peace; provided, that no such license shall be in force for a longer term, than the time for which such selectmen shall have been elected to office.

Penalty for setting up any exhibition contrary to law, or aiding therein.

SECT. 2. Any person, who shall set up or promote any such exhibition or show, or shall publish or advertise the same or otherwise aid or assist therein, without a license first obtained, as provided in the preceding section, or contrary to the terms and conditions of such

license, or while the same is suspended, shall forfeit a sum not exceeding two hundred dollars. 1825, 152, § 1.

SECT. 3. Any justice of the peace, within his county, upon complaint made of any offence against the provisions of the preceding section, shall bind over all persons so offending, to appear at the next court of common pleas, and shall also require such persons to find sureties for the keeping of the peace and being of good behavior, until such term of the court, and shall commit such persons, upon their refusing or neglecting to recognize and find sureties as aforesaid. Justices of the peace may require sureties of persons offending. 1825, 152, § 2.

LIVERY STABLES; SAILMAKERS' AND RIGGERS' LOFTS.

SECT. 4. If any person shall occupy or use any building whatever, in any maritime town, for the business or employment of a sailmaker or rigger, or keeper of a livery stable, except in such parts of the town as the selectmen thereof shall direct, he shall forfeit a sum not exceeding fifty dollars, for every month, during which he shall so occupy or use such building, and in the like proportion for a longer or shorter time. Sailmakers, &c. to be licensed by selectmen. 1796, 88, § 5.

ROCKETS, SQUIBS AND GUNPOWDER.

SECT. 5. If any person shall have in his possession, with intent to sell, or shall offer for sale, or shall sell, or give away, any of the fireworks called rockets, crackers, squibs or serpents, without first having obtained the license of the selectmen of the town, he shall, for every such offence, forfeit a sum not exceeding ten dollars, to the use of the town in which the offence shall have been committed. Penalty for having or selling rockets, &c. without license. 1826, 3, § 1.

SECT. 6. If any person shall have in his possession, with intent to set fire to, or shall set fire to, any rocket, cracker, squib or serpent, or shall throw any lighted rocket, cracker, squib or serpent, within any town, without the license of the selectmen, he shall, for every offence, forfeit a sum not exceeding ten dollars, to the use of the town in which the offence shall have been committed. Penalty for firing rockets, &c. without license. 1826, 3, § 1.

SECT. 7. The inhabitants of every town may order, that no gunpowder shall be kept in any place, within the limits of such town, unless the same shall be well secured in tight casks or canisters; and that no gunpowder, above the quantity of fifty pounds, shall be kept or deposited in any shop, store or other building, or in any ship or vessel, which shall be within the distance of twenty five rods, from any other building or wharf; that no gunpowder, above the quantity of twenty five pounds, shall be kept or deposited in any shop, store or other building, within ten rods of any other building; and that no gunpowder, above the quantity of one pound, shall be kept or deposited in any shop, store or other building, within ten rods of any other building in such town, unless the same be well secured in copper, tin or brass canisters, holding not exceeding five pounds each, and closely covered with copper, brass or tin covers. Towns may order how gunpowder shall be kept within the town. 1828, 62, § 1.

SECT. 8. Upon complaint made to any justice of the peace, by either of the selectmen or firewards of any town, that he has probable cause to suspect and doth suspect, that gunpowder is deposited and kept within the limits of the town, contrary to law, such justice may issue his warrant, directed to either of the constables of such town, ordering him to enter any shop, store or other building, or Justices to issue warrants for searching places where gunpowder is suspected to be unlawfully kept. 1828, 62, § 2.

vessel, specified in said warrant, and there to make diligent search for the gunpowder, suspected to have been deposited or kept as aforesaid, and to make return of his doings to said justice forthwith.

Penalty for unlawfully keeping gunpowder. 1828, 62, § 3.

SECT. 9. If any person shall commit either of the offences, mentioned in the two preceding sections, he shall forfeit a sum not exceeding twenty dollars, to the use of the town, to be recovered by complaint before any justice of the peace; provided, that the four preceding sections shall not extend to any manufactory of gunpowder, nor in any case to prevent the transportation of gunpowder through any town, or from one part of any town to another part thereof.

DOGS.

Towns may make by-laws respecting the keeping of dogs. 1824, 139, §§ 1, & 2.

SECT. 10. The inhabitants of any town may make such by-laws, concerning the licensing, regulating and restraining of dogs, going at large, as they shall deem expedient, and may affix any penalties, not exceeding ten dollars for any breach thereof; provided, that no such by-law shall extend to any dog, not owned or kept in such town, and that no person shall be obliged to pay more than two dollars, annually, for any license granted under the provisions of this section.

Fees for licenses, to be paid to the treasurer. 1824, 139, § 2.

SECT. 11. All money received for the several licenses mentioned in this chapter, in any town, shall be paid to the treasurer for the use of the town.

Dogs, to have collars, with names, &c., of owners. 1812, 146, § 1.

SECT. 12. Every person, who shall keep or own any dog, shall cause to be constantly kept, about the neck of such dog, a collar, with the name and place of residence of such owner or keeper legibly marked on the same; and any person may kill any dog, being without a collar as aforesaid.

Double damages for injury done by dogs. 1798, 54, § 3.

SECT. 13. Every owner or keeper of any dog shall forfeit, to any person injured by such dog, double the amount of the damage sustained by him, to be recovered in an action of trespass, and in such action, the defendant may plead the general issue, and give any special matter in evidence, in excuse or justification.

Any person may kill any dog, when, &c. 13 Johns. R. 312. 4 Cowen, 351. 1791, 38, § 1.

SECT. 14. Any person may kill any dog, that shall suddenly assault him, while he is peaceably walking or riding, any where out of the enclosure of the owner or keeper of such dog; and any person may kill any dog, that shall be found out of the enclosure or immediate care of its owner or keeper, worrying, wounding or killing any neat cattle, sheep or lambs.

Dangerous dogs, to be confined by owner or killed. 1791, 38, § 2.

SECT. 15. If any person shall be assaulted by any dog, in manner as aforesaid, or if any dog shall hereafter be found strolling out of the enclosure or immediate care of its owner or keeper, and if such person shall, at any time within forty eight hours after such an assault, or the finding of such dog strolling as aforesaid, make oath thereof, before any justice of the peace for the county, or before the clerk of the town where the owner of such dog shall dwell, and shall further swear that he suspects such dog to be a dangerous or mischievous dog, and shall give notice thereof to such owner or keeper, by delivering him a certificate of such oath, signed by such justice or clerk, the owner or keeper of such dog shall forthwith kill or confine the same; and if he shall neglect so to do, for the space of twenty four hours, after notice is given as aforesaid, he shall forfeit the sum of ten dollars, to be recovered to the use of the town, on complaint before any justice of the peace.

SECT. 16. If, after such notice, such dog shall not be killed or confined, but shall again be found strolling out of the enclosure or immediate care of its owner or keeper, any person may kill such dog; and in any suit brought therefor, the defendant may plead the general issue and give the special matter in evidence.

If owner neglects, after notice, any person may kill his dog. 1791, 38, § 2.

SECT. 17. If any dog, after notice given to the owner or keeper, as before provided, shall, by any sudden assault, in manner as aforesaid, wound or cause to be wounded, any person, or shall worry, wound or kill any neat cattle, sheep or lambs, or do any other mischief, the owner or keeper shall be liable to pay to the person injured thereby treble damage, to be recovered with costs, by action of debt.

Owner liable to treble damages, in case, &c. 1791, 38, § 4.

PART II.

OF THE ACQUISITION, THE ENJOYMENT AND THE TRANSMISSION OF PROPERTY, REAL AND PERSONAL; THE DOMESTIC RELATIONS, AND OTHER MATTERS CONNECTED WITH PRIVATE RIGHTS.

TITLE I.

Of real property, and the alienation thereof.

CHAPTER 59. Of alienation by deed; and of the legal formalities, the construction, and the operation of deeds for the conveyance of lands.

CHAPTER 60. Of estates in dower, by the curtesy, for years, and at will; and general provisions concerning real estate.

CHAPTER 59.

OF ALIENATION BY DEED; AND OF THE LEGAL FORMALITIES, THE CONSTRUCTION, AND THE OPERATION OF DEEDS FOR THE CONVEYANCE OF LANDS.

SECTION

1. Conveyances of land by deed.
2. " by husband and wife, of the wife's land.
3. " by tenant in tail.
4. " by tenant for life, and remainder man in tail.
5. " by deed of quit claim, how to operate.
6. " by tenant for life or years, how to operate.
7. Expectant estate not to be defeated by certain acts.
8. Exception as to estates tail.
9. Construction of conveyance to one for life, with remainder to his heirs.
10. Construction of conveyance to two or more.
11. Exceptions thereto.
12. Deeds, by whom to be acknowledged.
13. Before whom.
14. In case of grantor's death, &c., the deed may be proved in court.

SECTION

15. How proved, when the subscribing witnesses are dead.
16. How, when the grantor refuses to acknowledge it.
17. Proof before a justice of the peace; and certificate thereof.
18. How proved, when all the subscribing witnesses are dead or absent.
19. Copy may be filed in the registry of deeds, and effect thereof.
20. Effect may be prolonged.
21. No deed without a subscribing witness, shall be so proved.
22. " to be recorded without acknowledgment, or proof of execution.
23. Register to keep a book, for noting the receipt of deeds.
24. Deeds to be noted therein, when received.
25. Certificate to be made on the deed when recorded.

SECTION
26. Conveyances of pews, where to be recorded.
27. Defeasance of conveyance to be recorded.
28. No conveyance, except a lease for seven years or less, to be valid unless by deed recorded.
29. Conveyances without writing to have effect only as leases at will.
30. Trusts, to be created and declared in writing.
31. Trusts, not effectual against a purchaser without notice.
32. Recording declaration of trust, equivalent to notice.
33. Mortgages discharged by entry on margin of the record.
34. Mortgagee liable to damages for refusing to execute a discharge.

SECTION 1. Conveyances of lands, or of any estate or interest therein, may be made by deed, executed by any person having authority to convey the same, or by his attorney, and acknowledged and recorded as directed in this chapter, without any other act or ceremony whatsoever. Conveyances of land by deed. 1783, 37, § 4.

SECT. 2. A husband and wife may, by their joint deed, convey the real estate of the wife, in like manner as she might do by her separate deed, if she were unmarried; but the wife shall not be bound by any covenant, contained in such joint deed. — by husband and wife, of the wife's land. 7 Mass. 19. 291. 3 Pick. 521. 4 Mason, 45.

SECT. 3. Any person, actually seized of lands as tenant in tail, may convey the same in fee simple, by a deed in common form, in like manner as if he were seized thereof in fee simple, and such conveyance shall bar the estate tail, and all remainders and reversions expectant thereon. — by tenant in tail. 1791, 60, § 1.

SECT. 4. When lands are held by one person for life, with a vested remainder in tail to another, the tenant for life and the remainder man may convey the same in fee simple, by their deed or deeds in common form, in like manner as if the remainder had been limited in fee simple; and such deed or deeds shall bar the estate tail, and all remainders and reversions expectant thereon. — by tenant for life, and remainder man in tail. 1804, 59.

SECT. 5. A deed of quitclaim and release, of the form in common use in this state, shall be sufficient to pass all the estate, which the grantor could lawfully convey by a deed of bargain and sale. — by deed of quitclaim, how to operate. 8 Pick. 143.

SECT. 6. A conveyance, made by a tenant for life or years, purporting to grant a greater estate than he possessed, or could lawfully convey, shall not work a forfeiture of his estate, but shall pass to the grantee all the estate which such tenant could lawfully convey. — by tenant for life or years, how to operate.

SECT. 7. No expectant estate shall be defeated or barred by any alienation or other act of the owner of the precedent estate, nor by any destruction of such precedent estate by disseizin, forfeiture, surrender or merger. Expectant estate not to be defeated by certain acts.

SECT. 8. The two preceding sections shall not be construed to prevent the barring of estates tail, in the manner before provided in this chapter, nor to prevent any expectant estate from being defeated in any manner provided for or authorized by the party creating the estate. Exception as to estates tail.

SECT. 9. When lands are given by deed or will to any person for his life, and after his death to his heirs in fee, or by words to that effect, the conveyance shall be construed to vest an estate for life only in such first taker, and a remainder in fee simple in his heirs. Construction of conveyance to one for life, with remainder to his heirs. 1 Coke's R. 94. 1791, 60, § 3.

Construction of conveyance to two or more. 16 Mass. 61. 1785, 62, § 4.

SECT. 10. All conveyances and devises of lands, made to two or more persons, except as provided in the following section, shall be construed to create estates in common, and not in joint tenancy; unless it shall be expressed therein that the grantees or devisees shall take the lands jointly, or as joint tenants, or in joint tenancy, or to them and the survivor of them.

Exceptions thereto. 7 Mass. 131. 11 Mass. 469. 5 Mass. 521. 1785, 62, § 4.

SECT. 11. The preceding section shall not apply to mortgages, nor to devises or conveyances made in trust, or made to husband and wife, nor to any devise or conveyance, in which it shall manifestly appear, from the tenor of the instrument, that it was intended to create an estate in joint tenancy.

Deeds, by whom to be acknowledged. 6 Pick. 86. 1783, 37, § 4.

SECT. 12. The acknowledgment of deeds shall be by the grantors or one of them, or by the attorney executing the same.

Before whom. 1783, 37, § 4. 1829, 125, § 1.

SECT. 13. The acknowledgment may be made before any justice of the peace in this state, or before any justice of the peace, magistrate, or notary public, within the United States, or in any foreign country, or before any commissioner, appointed for that purpose by the governor of this Commonwealth, or before any minister or consul of the United States in any foreign country.

In case of grantor's death, &c. the deed may be proved in court 1783, 37, § 4.

SECT. 14. When any grantor shall die, or depart from this state, without having acknowledged his deed, the due execution thereof may be proved by the testimony of any subscribing witness thereto, before any court of record in this state.

How proved, when the subscribing witnesses are dead. 1787, 5.

SECT. 15. If all the subscribing witnesses to such deed shall also be dead, or out of the state, the same may be proved before any court of record in this state, by proving the hand writing of the grantor and of any subscribing witness.

How, when the grantor refuses to acknowledge it. 1783, 37, § 5.

SECT. 16. If any grantor shall refuse to acknowledge his deed, the grantee, or any person claiming under him, may apply to any justice of the peace in the county where the land lies, or where the grantor or any subscribing witness to the deed resides, who shall thereupon issue a summons to the grantor, to appear at a certain time and place before the said justice, to hear the testimony of the subscribing witnesses to the deed; and the said summons, with a copy of the deed annexed, shall be served, seven days at least, before the time therein assigned for proving the deed.

Proof before a justice of the peace; and certificate thereof. 1783, 37, § 5.

SECT. 17. At such hearing, or at any adjournment thereof, the due execution of the deed may be proved, by the testimony of one or more of the subscribing witnesses; and if proved to the satisfaction of the justice, he shall certify the same thereon, and in his certificate he shall note the presence or absence of the grantor, as the fact may be.

How proved, when all the subscribing witnesses are dead or absent.

SECT. 18. If any grantor shall refuse to acknowledge his deed, and the subscribing witnesses to the same shall all be dead, or out of the state, it may be proved before any court of record in this state, by proving the hand writing of the grantor and of any subscribing witness; the said court first summoning the grantor for the purpose, and in the manner before provided in this chapter.

Copy may be filed in the registry of deeds, and effect thereof. 1783, 37, § 5.

SECT. 19. Any person, interested in a deed that is not acknowledged, may, at any time, before or during such application to a court of record, or such proceedings before a justice, file, in the registry of deeds, a copy of the deed, compared with the original by the

register, which shall, for the space of thirty days thereafter, have the same effect as the recording of the deed, if the deed shall within that time be duly proved and recorded.

SECT. 20. If, at the expiration of the said thirty days, such proceedings for proving the execution of the deed shall be pending before a justice of the peace, the effect of filing such copy shall continue, until the expiration of seven days after the termination of the proceedings.

Effect may be prolonged.

SECT. 21. No deed, which has not at least one subscribing witness, shall be proved in the manner before provided, before any court or justice of the peace.

No deed without a subscribing witness, shall be so proved.

SECT. 22. A certificate of the acknowledgment of the deed, under the hand of the officer taking the same, or of the proof as above provided, before any court or justice of the peace, by the clerk of the court, or the justice, respectively, shall be indorsed upon the deed, or annexed thereto; and such deed and certificate may be recorded at length, in the registry of deeds for the county where the lands lie; and no deed shall be recorded without such certificate.

No deed to be recorded without acknowledgment, or proof of execution. 4 Mass. 546. 13 Mass. 377. 1783, 37, § 4. 1787, 5.

SECT. 23. Every register of deeds shall keep a book, each page of which shall be divided into six columns, with titles or heads to the respective columns, in the following form, to wit:

Register to keep a book for noting the receipt of deeds. 1830, 15, § 1.

Date of Reception.	Grantors.	Grantees.	Town where the lands lie.	To whom the deed is delivered, after being recorded.	Fees received.

SECT. 24. The register shall enter in the said book all deeds and other instruments left to be recorded, and all copies left as cautions, in the order in which they are received; noting in the first column, the day, hour and minute of reception, and the other particulars in the appropriate columns; and every instrument shall be considered as recorded at the time so noted.

Deeds to be noted therein, when received. 1830, 15, § 2.

SECT. 25. The register shall certify, upon every instrument recorded by him, the time when it was received, and the number of the book, and the page where it is recorded.

Certificate to be made on the deed when recorded.

SECT. 26. Deeds of pews, and executions levied on pews, may be recorded by the clerk of the town, or by the clerk of the parish, or of the society or proprietors, if incorporated or legally organized; and such clerks shall receive the same fees as the register of deeds for the like services.

Conveyances of pews, where to be recorded. 1795, 53, § 2. 1831, 59.

SECT. 27. When a deed purports to contain an absolute conveyance of any estate in lands, but is made, or intended to be made, defeasible, by force of a deed of defeasance, or bond, or other instrument for that purpose, the original conveyance shall not be thereby defeated or affected, as against any person other than the maker of the defeasance, or his heirs or devisees, or persons having actual notice thereof, unless the instrument of defeasance shall have been recorded in the registry of deeds, for the county or district where the lands lie.

Defeasance of conveyance to be recorded. 1802, 33. 5 Pick. 181.

SECT. 28. No bargain and sale, or other like conveyance, of any estate in fee simple, fee tail, or for life, and no lease, for more than seven years from the making thereof, shall be valid and effectual, against any person other than the grantor and his heirs and devisees,

No conveyance except a lease for seven years or less, to be valid, unless by deed recorded.

1783, 37, § 4. 3 Mass. 575. 6 Mass. 30.

and persons having actual notice thereof, unless it is made by a deed recorded, as provided in this chapter.

Conveyances without writing to have effect only as leases at will. 1783, 37, § 1.

SECT. 29. All estates or interests in lands, created or conveyed without any instrument in writing, signed by the grantor or by his attorney, shall have the force and effect of estates at will only; and no estate or interest in lands shall be assigned, granted or surrendered, unless by a writing signed as aforesaid, or by the operation of law.

Trusts, to be created and declared in writing. 1783, 37, § 3.

SECT. 30. No trust concerning lands, excepting such as may arise or result by implication of law, shall be created or declared, unless by an instrument in writing, signed by the party creating or declaring the same, or by his attorney.

—not to affect a purchaser without notice.

SECT. 31. No such trust, whether implied by law, or created or declared by the parties, shall defeat the title of a purchaser for a valuable consideration and without notice of the trust, nor prevent any creditor, who has no notice of the trust, from attaching the premises, or taking them in execution, in like manner as if no such trust had existed.

Recording declaration of trust, equivalent to notice.

SECT. 32. When a trust is created or declared by any such instrument in writing, the recording thereof in the registry of deeds for the county or district where the lands lie, shall be deemed equivalent to actual notice thereof, to every person claiming under a conveyance, attachment, or execution, made or levied after such recording.

Mortgages discharged by entry on margin of the record. 1783, 37, § 6.

SECT. 33. Mortgages may be discharged by an entry on the margin of the record thereof in the registry of deeds, signed by the mortgagee, or his executor, administrator or assignee, acknowledging the satisfaction of the mortgage; and such entry shall have the same effect as a deed of release duly acknowledged and recorded.

Mortgagee liable to damages, for refusing to execute a discharge. 1783, 37, § 6.

SECT. 34. If any mortgagee, or his executor, administrator or assignee, as the case may be, after full performance of the condition, whether before or after the breach thereof, shall for the space of seven days after being thereto requested, and after a tender of his reasonable charges, refuse or neglect to make such a discharge as is mentioned in the preceding section, or to execute and acknowledge a deed of release of the mortgage, he shall be liable for all damages occasioned by such neglect or refusal, to be recovered in an action on the case.

CHAPTER 60.

OF ESTATES IN DOWER, BY THE CURTESY, FOR YEARS, AND AT WILL; AND GENERAL PROVISIONS CONCERNING REAL ESTATE.

SECTION
1. Dower in lands of the husband.
2. " in right of redemption.
3. " when to be assigned by the judge of probate, and how.
4. How, when the estate cannot be divided.
5. When to be recovered by writ of dower, with damages.

SECTION
6. Widow may occupy in common with the heirs, with their assent.
7. Widow may be barred, by joining in a conveyance with her husband, &c.
8. Or by a jointure, settled with her assent.
9. Or by a pecuniary provision.
10. If settled or made without her assent, she may elect.
11. So, in case of provision by will, in lieu of dower.
12. Widow not dowable of wild lands.
13. If evicted, may be endowed anew.
14. Alienage of widow not to bar her dower, &c.
15. Penalty for waste by tenant in dower.
16. Widow entitled to remain in husband's house forty days.
17. Tenant by the curtesy.
18. Terms for one hundred years to be regarded as real estate, while, &c.
19. Tenant to be regarded as a freeholder.
SECTION
20. Tenant in dower thereof, liable for one third of the rent.
21. Prior devises and conveyances of such terms, not to be affected, &c.
22. Tenant of part of the land demised, liable for proportion of the rent.
23. Rent may be recovered in an action of debt.
24. The action may be brought by or against executors, &c.
25. Landlords not to be deprived of other remedies.
26. Tenancy at will, how terminated.
27. Right to easements not to be acquired by a shorter period of use than 20 years.
28. The acquiring of such rights prevented by notice served and recorded.
29. Estates tail, liable for debts.
30. Contingent estates, alienable.
31. Pews to be real estate, except, &c.
32. Definition of the words "lands," "lands, tenements and hereditaments," "grantor," and "grantee."

SECTION 1. Every woman shall be entitled to her dower at common law, in the lands of her husband, to be assigned to her after his decease, unless she is lawfully barred thereof.

Dower in lands of the husband. 1783, 36, § 4. 1805, 90, § 1.

SECT. 2. If, upon any mortgage made by a husband, his wife shall have released her right of dower, or if the husband shall be seized of land, subject to any mortgage which is valid and effectual as against his wife, she shall, nevertheless, be entitled to dower in the mortgaged premises, as against every person except the mortgagee and those claiming under him; provided, that if the heir, or other person, claiming under the husband, shall redeem the mortgage, the widow shall either repay such part of the money paid by him, as shall be equal to the proportion, which her interest in the mortgaged premises bears to the whole value thereof, or she shall, at her election, be entitled to dower only according to the value of the estate, after deducting the money so paid for the redemption thereof.

Dower in right of redemption. 3 Pick. 475. 15 Mass. 278.

SECT. 3. When a widow is entitled to dower, in lands of which her husband died seized, and her right to dower is not disputed by the heirs or devisees, it may be assigned to her, in whatever counties the lands may lie, by the judge of probate for the county in which the estate of the husband is settled; and the judge shall for that purpose issue his warrant to three discreet and disinterested persons, authorizing them to set off the dower by metes and bounds, when it can be so done, without damage to the whole estate; and the commissioners shall be sworn before the judge of probate, or before a justice of the peace, to perform their duty faithfully and impartially, according to their best skill and judgment.

Dower when to be assigned by the judge of probate, and how. 9 Mass. 9.

SECT. 4. When the estate, out of which the dower is to be assigned, consists of a mill, or other tenement, which cannot be divided without damage to the whole, the dower may be assigned of the rents, issues or profits thereof, to be had and received by the widow, as a tenant in common with the other owners of the estate.

How, when the estate cannot be divided. 1783, 40, § 3.

When to be recovered by writ of dower, with damages.
12 Mass. 485.
1 Pick. 189. 317.
1783, 40, § 1.

SECT. 5. If the dower is not assigned by the judge of probate, nor set out by the heir, or other tenant of the freehold, the widow may recover the same, by writ of dower, in the courts of common law, as provided in the one hundred and second chapter.

Widow may occupy in common with the heirs, with their assent.
5 Pick. 146.
3 Pick. 475.
1816, 84.

SECT. 6. When a widow is entitled to dower, in lands of which her husband died seized, she may continue to occupy the same, with the children or other heirs of the deceased, or to receive one third part of the rents, issues or profits thereof, so long as the heirs do not object thereto, without having her dower assigned; and whenever the heirs, or any of them, shall think proper to hold or occupy their share in severalty, the widow may claim her dower, and shall have the same assigned to her according to law.

—may be barred by joining in conveyance with her husband, &c.
7 Mass. 14.
3 Mason, 347.
8 Pick. 536.
3 Greenl. 63.
1823, 146, § 1.

SECT. 7. A married woman may bar her right of dower, in any estate conveyed by her husband, by joining with him in the deed conveying the same, and therein releasing her claim to dower; or by releasing the same by a subsequent deed, executed jointly with her husband. She may also join with the guardian of her husband, in a deed for the like purpose, as provided in the seventy seventh chapter.

—or by a jointure, settled with her assent.
7 Mass. 153.
15 Mass. 106.

SECT. 8. A woman may also be barred of her dower, in all the lands of her husband, by a jointure settled on her with her assent, before her marriage; provided such jointure consist of a freehold estate in lands, for the life of the wife at least, to take effect in possession or profit, immediately on the death of the husband; her assent to such jointure being expressed, if she be of full age, by her becoming a party to the conveyance by which it is settled, and if she be under age, by her joining with her father or guardian in such conveyance.

—or by a pecuniary provision.

SECT. 9. Any pecuniary provision, that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of the husband.

If settled or made without her assent, she may elect.

SECT. 10. If any such jointure or pecuniary provision, in lieu of dower, be made before the marriage, and without the assent of the intended wife, or if it be made after marriage, it shall bar her dower, unless she shall, within six months after the death of her husband, make her election to waive such provision, and to be endowed of the lands of her husband; provided, that if the husband shall die, while absent from his wife, she shall have the term of six months, after notice of his death, within which to make her election as aforesaid; and that she shall also, in all cases, have six months for that purpose, after notice of the existence of such jointure or provision.

So, in case of provision by will, in lieu of dower.
12 Pick. 146.
1783, 24, § 8.

SECT. 11. If any provision be made for a widow in the will of her husband, she shall, within six months after probate of the will, make her election, whether she will take such provision, or be endowed of his lands; but she shall not be entitled to both, unless it plainly appears, by the will, to have been the intention of the testator, that she should have such provision, in addition to her dower.

Widow not dowable of wild lands.
1 Pick. 21.
15 Mass. 164.
7 Pick. 143.

SECT. 12. A widow shall not be endowed of wild lands, of which her husband shall die seized, nor of wild lands conveyed by him, although they should be afterwards cleared; but this shall not bar her right of dower in any wood lot, or other land used with the farm, or dwelling

house, although such wood lot or other land should have never been cleared.

SECT. 13. If a woman is lawfully evicted of lands, assigned to her as dower, or settled upon her as jointure, or is deprived of the provision made for her by will or otherwise, in lieu of dower, she may be endowed anew, in like manner as if such assignment, jointure, or other provision, had not been made.

If evicted, may be endowed anew. 13 Mass. 168.

SECT. 14. The alienage of a woman shall not bar her right of dower, excepting as to land conveyed by her husband, or taken from him by execution, before the twenty third day of February, in the year one thousand eight hundred and thirteen.

Alienage of a woman not to bar her dower, except, &c. 1812, 93, § 1.

SECT. 15. If any tenant in dower shall commit or suffer any waste on the premises held in dower, she shall forfeit the place wasted, and also the amount of the damage done to the premises, to be recovered in an action of waste, by the person having the next immediate estate of inheritance therein.

Penalty for waste by tenant in dower. 7 Pick. 152. 5 Mason, 13. 1783, 40, § 3.

SECT. 16. A widow may remain in the house of her husband forty days after his death, without being chargeable with rent therefor; and in the mean time she shall have her reasonable sustenance out of his estate.

Widow entitled to remain in husband's house forty days.

SECT. 17. When any man and his wife shall be seized in her right of any estate of inheritance in lands, and shall have issue born alive, which might inherit the same, the husband shall, on the death of his wife, hold the lands for his life as tenant thereof by the curtesy.

Tenant by the curtesy. 1783, 36, § 5. 1805, 90, § 2.

SECT. 18. When land is demised for the term of one hundred years or more, the term shall, so long as fifty years of the same remain unexpired, be regarded as an estate in fee simple, as to every thing concerning the descent and devise thereof upon the decease of the owner, the right of dower therein, and the sale thereof by executors, administrators or guardians, by license from any court; and also concerning the levying of executions thereon, and the redemption thereof, when taken in execution, or when mortgaged.

Terms for one hundred years to be regarded as real estate, while, &c. 5 Mass. 419. 1834, 162, § 1.

SECT. 19. Every person holding as lessee or assignee under such a lease, shall, so long as fifty years of the term remain unexpired, be regarded as a freeholder, for all the purposes, civil and political, mentioned and provided for in the constitution and laws of the state.

Tenant to be regarded as a freeholder. 1834, 162, § 2.

SECT. 20. When dower is assigned out of any such land, the tenant in dower, and her assignee, shall be held to pay to the owner of the unexpired residue of the term, one third part of the rent reserved, (if any) in the lease, under which the husband of such tenant held such term.

Tenant in dower thereof, liable for one third of the rent. 1834, 162, § 3.

SECT. 21. No devise of any such term by will, made before the first day of June, in the year one thousand eight hundred and thirty four, although the devisor should die after that day, and no other conveyance thereof, made before the said first day of June, shall be controled or affected by any thing contained in the three preceding sections.

Prior devises or conveyances of such terms, not to be affected, &c. 10 Mass. 437. 1834, 162, § 4.

SECT. 22. Every person, in possession of land, out of which any rent is due, whether it was originally demised in fee or for any other estate of freehold, or for any term of years, shall be liable for the amount or proportion of rent, due from the land in his possession, although it be only a part of what was originally demised.

Tenant of part of the land demised liable for proportion of the rent. 17 Mass. 440.

Rent may be recovered in an action of debt.

SECT. 23. Such rent may be recovered in an action of debt; and the deed of demise, or other instrument in writing, if there be any, showing the provisions of the lease, may be used in evidence by either party, to prove the amount of rent due from the defendant.

The action may be brought by or against executors, &c.

SECT. 24. Any such action may be brought by and against executors and administrators, for any arrears of rent accrued in the life time of the deceased parties, respectively, in the same manner as for debts due from or to the same parties, in their life time, on any personal contract.

Landlords, not to be deprived of other remedies.

SECT. 25. Nothing contained in the seven preceding sections shall deprive landlords of any other legal remedy, for the recovery of their rents, whether secured to them by their leases, or provided by law.

Tenancy at will, how terminated. 17 Mass. 282. 1 Pick. 43. 2 Pick. 70. 6 Pick. 339. 1825, 89, § 4.

SECT. 26. All estates at will may be determined by either party, by three months notice in writing, for that purpose, given to the other party; and when the rent reserved in such lease is payable at periods of less than three months, the time of such notice shall be sufficient, if it be equal to the interval between the days of payment; and in all cases of neglect or refusal to pay the rent due on a lease at will, fourteen days notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the lease.

Right to easements, not to be acquired by a shorter period of use than 20 years. 1824, 52.

SECT. 27. No person shall acquire any right or privilege of way, air, or light, nor any other easement, from, in, upon, or over, the land of another, by the adverse use or enjoyment thereof, unless such use shall have been continued uninterrupted, for twenty years.

The acquiring of such right prevented by notice served and recorded. 1824, 52.

SECT. 28. The person owning the land, in such case, may give notice in writing to the person claiming or using the privilege, expressing his intention to dispute the right of way, air, light, or other easement, and to prevent the other party from acquiring such right; and such notice, being served and recorded, as hereafter provided in this section, shall be deemed an interruption of such use, and shall prevent the acquiring of a right thereto, by the continuance of the use thereof, for any length of time whatever, after the notice aforesaid; and such notice shall be served, like an original summons in civil actions, on the other party, or his agent or guardian, if within the state; and otherwise, on the tenant or occupant of the estate, if there be any; and if not, a copy of the notice shall be affixed to the house, or to some other conspicuous part of the premises; and the service shall be indorsed and returned on the original paper, and said notice, with the return thereon, shall be recorded in the registry of deeds, for the county where the land lies, within three months after the service; and every such notice, given by the guardian or agent of the owner of the land, shall have the like effect as if given by himself.

Estates tail, liable for debt. 1791, 60, § 2.

SECT. 29. All lands, held in fee tail, shall be liable for the debts of the tenant in tail, both in his life time and after his decease, like estates in fee simple; and when taken in execution, or sold by executors, administrators or guardians, the creditor or purchaser shall hold the same in fee simple; but this shall not extend to lands, in which the debtor has only an estate tail in remainder.

Contingent estates alienable.

SECT. 30. When any contingent remainder, executory devise, or other estate in expectancy, is so granted or limited to any person,

that, in case of his death before the happening of the contingency, the estate would descend to his heirs in fee simple, such person may, before the happening of the contingency, sell, assign, or devise, the premises subject to the contingency.

Pews to be real estate, except, &c. 1795, 53, § 1. 1798, 42.

SECT. 31. Pews in all houses of public worship, excepting in the city of Boston, shall be real estate.

Definition of the words, "lands," "lands, tenements and hereditaments," "grantor" and "grantee."

SECT. 32. The word "lands," as used in this chapter, shall be construed as co-extensive in meaning with the words "lands, tenements and hereditaments." The word "grantor" may be construed as including every person, from or by whom, any freehold estate or interest passes, in or by any deed; and the word "grantee," as including every person, to whom any such estate or interest passes, in like manner.

TITLE II.

CHAPTER 61.

OF TITLE TO REAL PROPERTY BY DESCENT.

SECTION
1. General rules of descent.
2. Illegitimate child to inherit from the mother.
3. Mother to be heir to her illegitimate child.
4. Case of illegitimate child whose parents intermarry, &c.
5. Degrees of kindred how computed. Half blood to inherit.
6. Advancement to a child or other descendant.
7. Party advanced, not in any case to refund.
8. Advancement in real estate to be taken as part thereof, &c. how
9. " proved.
10. Its value, how ascertained.
11. Case of the person advanced, dying before the intestate.
12. Estates by curtesy, and in dower not affected.
13. Construction of certain expressions used in this chapter.

General rules of descent.

SECTION 1. When any person shall die seized of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, in fee simple or for the life of another, not having lawfully devised the same, they shall descend (subject to his debts) in manner following:

First, in equal shares to his children, and to the issue of any deceased child by right of representation; and if there is no child of the intestate living at his death, his estate shall descend to all his other lineal descendants; and if all the said descendants are in the same degree of kindred to the intestate, they shall share the estate equally; otherwise, they shall take according to the right of representation:

Secondly, if he shall leave no issue, his estate shall descend to his father:

Thirdly, if he shall leave no issue nor father, his estate shall descend in equal shares to his brothers and sisters, and to the children

of any deceased brother or sister by right of representation; provided, that if he shall leave a mother also, she shall take an equal share with his brothers and sisters:

Fourthly, if the intestate shall leave no issue, nor father, and no brother nor sister, living at his death, his estate shall descend to his mother, to the exclusion of the issue, if any, of deceased brothers or sisters:

Fifthly, if the intestate shall leave no issue, and no father, mother, brother nor sister. his estate shall descend to his next of kin in equal degree; excepting, that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor shall be preferred to those claiming through an ancestor who is more remote; provided, however,

Sixthly, if any person shall die leaving several children, or leaving one child and the issue of one or more others, and any such surviving child shall die under age and not having been married, all the estate, that came to the deceased child by inheritance from such deceased parent, shall descend in equal shares to the other children of the same parent, and to the issue of any such other children, who shall have died, by right of representation:

12 Mass. 490.

Seventhly, if at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall be also dead, and any of them shall have left issue, the estate, that came to such child by inheritance from his said parent, shall descend to all the issue of the other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the said estate equally; otherwise, they shall take according to the right of representation:

1805, 90.

Eighthly, if the intestate shall leave no kindred, his estate shall escheat to the Commonwealth.

Illegitimate child to inherit from the mother. 1828, 139.

SECT. 2. Every illegitimate child shall be considered as an heir of his mother, and shall inherit her estate, in whole or in part, as the case may be, in like manner as if he had been born in lawful wedlock; but he shall not be allowed to claim, as representing his mother, any part of the estate of any of her kindred, either lineal or collateral.

Mother to be heir to her illegitimate child. 4 Pick. 93. 1828, 139.

SECT. 3. If any illegitimate child shall die intestate, without lawful issue, his estate shall descend to his mother; excepting in the case provided for in the following section.

Case of illegitimate child, whose parents intermarry, &c.

SECT. 4. When, after the birth of an illegitimate child, his parents shall intermarry, and his father shall, after the marriage, acknowledge him as his child, such child shall be considered as legitimate to all intents and purposes, except that he shall not be allowed to claim, as representing either of his parents, any part of the estate of any of their kindred, either lineal or collateral.

Degrees of kindred, how computed. Half blood to inherit. 1805, 90, § 1.

SECT. 5. The degrees of kindred shall be computed according to the rules of the civil law; and the kindred of the half blood shall inherit equally with those of the whole blood in the same degree.

Advancement to a child or

SECT. 6. Any estate, real or personal, that may have been given by the intestate in his life time, as an advancement to any child or other lineal descendant, shall be considered as a part of the intestate's

estate, so far as it regards the division and distribution thereof among his issue, and shall be taken by such child or other descendant towards his share of the intestate's estate.

other descendant. 1 Pick. 161. 1805, 90, § 3.

SECT. 7. If the amount of such advancement shall exceed the share of the heir so advanced, he shall be excluded from any further portion, in the division and distribution of the estate, but he shall not be required to refund any part of such advancement; and if the amount so received shall be less than his share, he shall be entitled to as much more as will give him his full share of the estate of the deceased.

Party advanced, not in any case to refund.

SECT. 8. If any such advancement shall be made in real estate, the value thereof shall, for the purposes of the preceding section, be considered as part of the real estate to be divided; and if it be in personal estate, it shall be considered as part of the personal estate; and if, in either case, it shall exceed the share of real or of personal estate, respectively, that would have come to the heir so advanced, he shall not refund any part of it, but shall receive so much less out of the other part of the estate, as will make his whole share equal to those of the other heirs, who are in the same degree with him.

Advancement in real estate to be taken as part thereof, &c. 16 Mass. 200.

SECT. 9. All gifts and grants shall be deemed to have been made in advancement, if they are expressed in the gift or grant to be so made, or if charged in writing by the intestate as an advancement, or acknowledged in writing, as such, by the child or other descendant.

Advancement, how proved. 4 Pick. 21. 5 Pick. 527. 1805, 90, § 3.

SECT. 10. If the value of the estate so advanced shall be expressed in the conveyance, or in the charge thereof made by the intestate, or in the acknowledgment by the party receiving it, it shall be considered as of that value, in the division and distribution of the estate; otherwise, it shall be estimated according to its value when given.

Its value, how ascertained. 1805, 90, § 3.

SECT. 11. If any child or other lineal descendant, so advanced, shall die before the intestate, leaving issue, the advancement shall be taken into consideration, in the division and distribution of the estate; and the amount thereof shall be allowed accordingly by the representatives of the heir so advanced, as so much received towards their share of the estate, in like manner as if the advancement had been made directly to them.

Case of the person advanced dying before the intestate.

SECT. 12. Nothing contained in this chapter shall affect the title of a husband as tenant by the curtesy, nor that of a widow as tenant in dower.

Estate by curtesy and in dower, not affected. 1805, 90, § 1.

SECT. 13. The word "issue," as used in this chapter, includes all the lawful lineal descendants of the ancestor; and the words "real estate" include all lands, tenements and hereditaments, and all rights thereto, and interests therein, possessed and claimed, in fee simple, or for the life of a third person. Inheritance or succession, "by right of representation," takes place when the descendants of any deceased heir take the same share or right in the estate of another person, that their parent would have taken, if living. Posthumous children are considered as living at the death of their parent.

Construction of certain expressions contained in this chapter.

TITLE III.

CHAPTER 62.

OF WILLS OF REAL AND PERSONAL ESTATE.

SECTION.

1. Who may devise, and what may be devised.
2. Devise of right of entry or of action; and case of the devisor being disseized after making the will.
3. " of lands acquired after making the will.
4. General devise, how construed.
5. Who may make a will of personal estate.
6. Will, how made.
7. Soldiers and mariners may make nuncupative wills.
8. Devise, &c., to an attesting witness to be void, unless, &c.
9. Will, how revoked.
10. " may be deposited by testator for safe keeping in the registry of probate.
11. Such will to be enclosed in sealed wrapper, &c.
12. To whom to be delivered.
13. When to be opened by the judge of probate.
14. Possessor of a will to deliver it, &c., within 30 days after testator's decease.
15. Will, how proved, when not objected to.
16. Mode of trial on appeal to S. J. C. in case, &c.

SECTION

17. Will proved without this state, may be allowed and recorded here.
18. Proceedings in such case.
19. Effect of a will, so allowed.
20. The estate to be settled as in other cases.
21. Case of a descendant having no provision in the will of the ancestor.
22. Case of a posthumous child having no provision.
23. Devisees, &c., to contribute equally to the share of a posthumous child.
24. Case of a devisee dying before testator, and leaving issue.
25. When estate devised is taken to pay debts, other devisees to contribute;
26. Unless a different appropriation is made by the will.
27. The whole estate to be liable for debts.
28. Child, &c., omitted in the will, and posthumous child, liable and entitled to contribution as a devisee.
29. Case of insolvency of one of devisees, &c.
30. Undevised real estate liable for debts, before that which is devised.
31. Proceedings in suits for contribution.
32. No will effectual without probate—Probate conclusive.

Who may devise, and what may be devised. 1783, 24, § 1.

SECTION 1. Every person of full age and of sound mind, being seized in his own right of any lands, tenements or hereditaments, or of any right thereto, or entitled to any interest therein, excepting an estate tail, may devise and dispose of the same by his last will and testament in writing; and all such estate, not disposed of by the will, shall descend as the estate of an intestate; being chargeable, in both cases, with the payment of all his debts.

Devise of right of entry, or of action, and case of the devisor being disseized after making the will. 15 Mass. 115. 10 Mass. 131.

SECT. 2. When any person shall devise lands, of which he may not then be seized, but to or for which he has any right of entry, or when, after the making of any devise, the devisor shall be disseized or ousted of the devised premises, they shall nevertheless pass to the devisee, in like manner as they would have descended to the heirs of the devisor, if he had died intestate; and the devisee shall have the like remedy for the recovery thereof, either by entry or by action, as the heirs might have had.

SECT. 3. Any estate, right or interest in lands, acquired by the testator, after the making of his will, shall pass thereby in like manner, as if possessed at the time of making the will, if such shall clearly and manifestly appear by the will, to have been the intention of the testator.

Devise of estate acquired after making the will. 5 Pick. 112. 6 Mass. 149.

SECT. 4. Every devise of land, in any will hereafter made, shall be construed to convey all the estate of the devisor therein, which he could lawfully devise, unless it shall clearly appear by the will, that the devisor intended to convey a less estate.

General devise, how construed.

SECT. 5. Every person of full age and of sound mind may, by his last will and testament in writing, bequeath and dispose of all his personal estate, remaining at his decease, and all his right thereto and interest therein; and all such estate, not disposed of by the will, shall be administered as intestate estate.

Who may make a will of personal estate. 1 Pick. 239.

SECT. 6. No will, excepting such nuncupative wills as are mentioned in the following section, shall be effectual to pass any estate, whether real or personal, nor to charge, or in any way affect the same, unless it be in writing, and signed by the testator, or by some person in his presence and by his express direction, and attested and subscribed, in the presence of the testator, by three or more competent witnesses; and if the witnesses are competent at the time of attesting the execution of the will, their subsequent incompetency, from whatever cause it may arise, shall not prevent the probate and allowance of the will, if it be otherwise satisfactorily proved.

Will, how made. 14 Mass. 421. 5 Mass. 229. 12 Mass. 358. 9 Pick 350. 3 Pick. 374. 4 Greenl. 220. 1783, 24, § 2.

SECT. 7. Nothing herein contained shall prevent any soldier, being in actual military service, nor any mariner, being at sea, from disposing of his wages and other personal estate, by a nuncupative will, as he might heretofore have done.

Soldiers and mariners may make nuncupative wills. 2 Greenl. 298. 1783, 24, § 6.

SECT. 8. All beneficial devises, legacies and gifts whatsoever, made or given in any will to a subscribing witness thereto, shall be wholly void, unless there be three other competent subscribing witnesses to the same; but a mere charge on the lands of the devisor, for the payment of debts, shall not prevent his creditors from being competent witnesses to his will.

Devise, &c. to an attesting witness to be void, unless, &c. 1783, 24, §§ 11 & 12.

SECT. 9. No will shall be revoked, unless by burning, tearing, cancelling or obliterating the same, with the intention of revoking it, by the testator himself, or by some person in his presence and by his direction; or by some other will or codicil in writing, executed as prescribed in this chapter; or by some other writing signed, attested and subscribed, in the manner provided, in this chapter, for the making of a will; excepting only, that nothing contained in this section shall prevent the revocation implied by law from subsequent changes in the condition or circumstances of the testator.

Will, how revoked. 15 Mass. 115. 4 Greenl. 341. 1783, 24, § 2.

SECT. 10. Any will in writing may be deposited, by the person making the same, or by any person for him, in the registry of probate in the county where the testator lives, to be safely kept, until delivered or disposed of, as herein after provided; and the register, upon being paid the fee of one dollar therefor, shall receive and keep such will, and give a certificate of the deposite thereof.

Will may be deposited by testator, for safe keeping, in the registry of probate.

SECT. 11. Every will, intended to be deposited as aforesaid, shall be enclosed in a sealed wrapper, and shall have indorsed thereon the name of the testator, and his place of residence, and the day

Such will to be enclosed in a sealed wrapper, &c.

when and the person by whom it was delivered; and may also have indorsed the name of any person, to whom it is to be delivered after the death of the testator; and it shall not be opened, nor read, until delivered to a person entitled to receive the same, or otherwise disposed of, as herein after provided.

To whom to be delivered.

SECT. 12. Such will shall, during the life time of the testator, be delivered only to himself, or to some person authorized by him, by an order in writing, duly proved by the oath of a subscribing witness; and after his death, it shall be delivered to the person named in the indorsement on the wrapper of the will, if there be any person so named, who shall demand it.

When to be opened by the judge of probate.

SECT. 13. If no person shall demand the will, in pursuance of such appointment, it shall be publicly opened before the judge of probate, at the first court held after notice of the testator's death, and shall be retained in the registry, until it is there offered for probate; or if the jurisdiction of the case belongs to any other court, it shall be delivered to the executors or other persons entitled to the custody of it, to be presented for probate in such other court.

Possessor of a will to deliver it to, &c. within 30 days after testator's decease.
6 Greenl. 274.
4 Mass. 137.
4 Pick. 33.

SECT. 14. Every person, other than the register of probate, having the custody of any will, shall, within thirty days after notice of the death of the testator, deliver the same into the probate court, which has jurisdiction of the case, or to the executors named in the will; and if he shall, without any reasonable cause, neglect to do so, after being duly cited for that purpose, by the judge of probate, he may be committed to the jail of the county, by warrant of the said judge, there to be kept in close custody, until he shall deliver the will as above directed; and he shall be further liable to the action of any party aggrieved, for the damage which may be sustained by such neglect.

Will, how proved, when not objected to.
3 Mass. 236.
5 Pick. 510.
1817, 190, § 33.

SECT. 15. When it shall appear to the judge of probate, by the consent in writing of the heirs at law, or by other satisfactory evidence, that no person interested in the estate intends to object to the probate of the will, he may in his discretion grant probate thereof, upon the testimony of one of the subscribing witnesses, without requiring the attendance of all of them, although the others should be within reach of the process of the court.

Mode of trial on appeal to the S. J. C. in case, &c.
1817, 190, § 7.

SECT. 16. In case of an appeal from the probate court, concerning the probate of a will, if it shall appear from the reasons of appeal, that the sanity of the testator, or the attestation of the witnesses in his presence, is in controversy, the supreme judicial court may, for the determination thereof, direct a real or feigned issue to be tried by a jury in the same court, at the expense of the appellant, if the issue be found against him.

Will proved without this state, may be allowed and recorded here.
4 Greenl. 134.
1785, 12, § 1.

SECT. 17. Any will, that shall have been proved and allowed in any other of the United States, or in any foreign country, according to the laws of such state or country, may be allowed and recorded in this state, in the manner and for the purposes mentioned in the following sections.

Proceedings, in such case.
1785, 12, § 2.

SECT. 18. A copy of the will and of the probate thereof, duly authenticated, shall be produced by the executor, or by any person interested therein, to the judge of probate in any county, in which there is any estate, real or personal, on which the will may operate;

whereupon the judge shall assign a time and place for hearing the case, and shall cause notice thereof, to all persons interested, to be given in some public newspaper, three weeks successively, the first publication to be thirty days at least before the time so assigned.

SECT. 19. If, on hearing the case, it shall appear to the judge that the instrument ought to be allowed in this state, as the last will and testament of the deceased, he shall order the copy to be filed and recorded; and the will shall then have the same force and effect, as if it had been originally proved and allowed in the same court, in the usual manner; provided however, that nothing herein contained shall be construed to make valid any will, that is not executed, attested and subscribed in the manner prescribed by the laws of this state, nor to give any operation and effect to the will of an alien, different from what it would have had, if originally proved and allowed within this state.

Effect of a will, so allowed. 16 Mass. 433. 1785, 12, § 2.

SECT. 20. After the allowing and recording of any will, pursuant to the three preceding sections, the judge of probate shall grant letters testamentary thereon, or letters of administration with the will annexed, and shall proceed in the settlement of the estate, that may be found in this state, in the manner provided in the seventieth chapter, with respect to the estates of persons, who were inhabitants of any other state or country; and the letters testamentary or of administration, thus granted, shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of the probate court in every other county.

The estate to be settled, as in other cases. 1785, 12, § 1.

SECT. 21. When any testator shall omit to provide in his will for any of his children, or for the issue of any deceased child; they shall take the same share of his estate, both real and personal, that they would have been entitled to if he had died intestate; unless they shall have been provided for by the testator in his life time; or unless it shall appear that such omission was intentional, and not occasioned by any mistake or accident.

Case of a descendant, having no provision in the will of the ancestor. 1 Mass. 146. 2 Mass. 570. 3 Mass. 17. 14 Mass. 357. 1783, 24, § 8.

SECT. 22. When any child of a testator, born after his father's death, shall have no provision made for him by his father, in his will or otherwise, he shall take the same share of his father's estate, both real and personal, that he would have been entitled to, if his father had died intestate.

Case of a posthumous child, having no provision. 1783, 24, § 7.

SECT. 23. When any portion is assigned to a posthumous child, or to a child, or the issue of a child, omitted in the will of his parent, as mentioned in the two preceding sections, the same shall be taken equally from all the devisees and legatees, in proportion to the value of what they shall respectively receive under the will; unless, in consequence of a specific devise or bequest, or of some other provisions in the will, a different apportionment among the devisees and legatees shall be found necessary, in order to give effect to the intention of the testator, as to that part of his estate which shall pass by his will.

Devisees, &c. to contribute equally to the share of a posthumous child. 1783, 24, § 7.

SECT. 24. When a devise of real or personal estate is made to any child or other relation of the testator, and the devisee shall die before the testator, leaving issue who survive the testator, such issue shall take the estate so devised, in the same manner as the devisee

Case of a devisee, dying before testator and leaving issue. Cas. Tem. Talb. 251.

1 Scho. & Lef. 111. 1783, 24, § 8.

would have done, if he had survived the testator; unless a different disposition thereof shall be made or required by the will.

When estate devised is taken to pay debts, other devisees to contribute; 1783, 24, § 18.

SECT. 25. When any estate, real or personal, that is devised, shall be taken from the devisee, for the payment of the debts of the testator, all the other devisees and legatees shall contribute their respective proportions of the loss, to the person from whom the estate is taken, so as to make the loss fall equally on all the devisees and legatees, according to the value of the property received by each of them; excepting as provided in the following section.

Unless a different appropriation is made by the will.

SECT. 26. If in such a case the testator shall, by making a specific devise or bequest, have virtually exempted any devisee or legatee from his liability to contribute with the others, for the payment of the debts, or if he shall, by any other provisions in his will, have prescribed or required any appropriation of his estate, for the payment of his debts, different from that prescribed in the preceding section, the estate shall be appropriated and applied, in conformity with the provisions of the will.

The whole estate to be liable for debts.

SECT. 27. Nothing contained in the two preceding sections shall impair, or in any way affect, the liability of the whole estate of the testator for the payment of all his debts; but the provisions in these sections shall apply only to the marshalling of the assets, as between those who hold or claim under the will.

Child, &c. omitted in the will and posthumous child, liable, and entitled to contribution, as a devisee.

SECT. 28. When any part of the estate of a testator descends to a child or other descendant, by reason of his having no provision made for him in the will, or when it descends to a posthumous child, such estate shall, for all the purposes of the three preceding sections, be considered as if it had been devised to such child or other descendant; and he shall accordingly be bound to contribute with the devisees and legatees, as before provided, and shall be entitled to claim contribution from them accordingly.

Case of insolvency of one of devisees, &c.

SECT. 29. When any of the persons, who are liable to contribute towards the discharge of such debt, according to the provisions contained in the four preceding sections, shall be insolvent or unable to pay his just proportion thereof, the others shall be severally liable for the loss occasioned by such insolvency, each one in proportion to the value of the property received by him from the estate of the deceased; and if any one of the persons so liable shall die, without having paid his proportion of such debt, his executors and administrators shall be liable therefor, in like manner as if it had been his proper debt, to the extent to which he would have been liable, if living.

Undevised real estate liable for debts, before that which is devised. 6 Mass. 149 3 Johns. Ch. R. 148. 312.

SECT. 30. When any part of the real estate of a testator shall descend to his heirs, by reason of its not being devised or disposed of by his will, and his personal estate shall be insufficient for the payment of his debts, the undevised real estate shall be first chargeable with the debts, in exoneration, as far as it will go, of the real estate that is devised; unless it shall appear from the will, that a different arrangement of his assets, for the payment of his debts, was made by the testator; in which case, they shall be applied for that purpose, in conformity with the provisions of the will.

Proceedings in suits for contribution.

SECT 31. All cases arising under this chapter, in which devisees or legatees may be required to contribute to make up the share

of any child of the testator, or of the issue of any child, or in which contribution is to be made among devisees, legatees and heirs, or any of them, may be decided in an action at law, when the case is such as to allow of that course of proceeding; or may be heard and determined in the probate court, allowing an appeal to the supreme court of probate, as in other cases; or they may be originally brought, and finally determined, in the supreme judicial court as a court of chancery.

SECT. 32. No will shall be effectual to pass either real or personal estate, unless it shall have been duly proved and allowed in the probate court; and the probate of a will devising real estate shall be conclusive as to the due execution of the will, in like manner as it is of a will of personal estate.

No will effectual without probate. Probate conclusive. 1 Pick. 114. 16 Mass. 433.

TITLE IV.

Of the settlement of the estates of deceased persons.

CHAPTER 63. Of letters testamentary and other proceedings on the probate of a will.
CHATTER 64. Of the administration and distribution of the estates of intestates.
CHAPTER 65. Of the inventory, and collection of the effects of deceased persons.
CHAPTER 66. Of the payment of debts and legacies of deceased persons.
CHAPTER 67. Of executors and administrators rendering their accounts, and settling estates.
CHAPTER 68. Of the proceedings when the estate of the deceased is insolvent.
CHAPTER 69. Of the appointment of trustees for minors and others; and of their powers and duties.
CHAPTER 70. General provisions concerning the settlement of the estates of deceased persons.

CHAPTER 63.

OF LETTERS TESTAMENTARY AND OTHER PROCEEDINGS ON THE PROBATE OF A WILL.

SECTION
1. Letters testamentary to be issued.
2. Executors' bond to the judge of probate.
3. Different bond may be given when executor is residuary legatee.
4. Such bond not to discharge lien of creditors on real estate, unless, &c.
5. If executor renounces, &c., administration to be granted.

SECTION
6. Administration during the minority of executor.
7. Executor, for what causes removable.
8. Bond of administrator with the will annexed.
9. Marriage of an executrix extinguishes her authority.
10. Executor of executor not to administer the estate of the first testator.

Letters testamentary to be issued.

SECTION 1. When any will shall have been duly proved and allowed, the judge of probate shall issue letters testamentary thereon to the executor, if any, named therein, if he is legally competent, and if he shall accept the trust and shall give bond to discharge the same; otherwise the judge of probate shall grant letters of administration on the estate, as hereinafter provided.

Executor's bond to the judge of probate. 8 Pick. 526. 1783, 26, § 17. 1817, 190, § 14. 1 Mass. 35.

SECT. 2. Every executor, before entering upon the execution of his trust, shall give bond with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the said judge or to his successor, with condition as follows:

First, to make and return to the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the testator, which are by law to be administered, and which shall have come to his possession or knowledge:

Secondly, to administer according to law, and to the will of the testator, all his goods, chattels, rights and credits, and the proceeds of all his real estate, that may be sold for the payment of his debts or legacies, which shall at any time come to the possession of the executor, or to the possession of any other person for him: and

Thirdly, to render upon oath a just and true account of his administration, within one year, and at any other times, when required by the judge of probate.

And when there are two or more persons appointed executors, none shall intermeddle nor act as such, but those who actually give bond as before prescribed.

Different bond may be given when executor is residuary legatee. 1783, 24, § 17.

SECT. 3. Provided however, that if the executor is residuary legatee, he may, instead of the bond prescribed in the preceding section, give bond in a sum and with sureties to the satisfaction of the judge of probate, with condition to pay all the debts and legacies of the testator; in which case he shall not be required to return an inventory.

Such bond, not to discharge lien of creditors on real estate, unless, &c. 3 Mass. 523. 542.

SECT. 4. The giving of such bond, as is provided in the preceding section, shall not discharge the lien on the real estate of the testator, for the payment of his debts, excepting only on such part thereof, as shall have been sold by the executor, to one who purchased in good faith, and for a valuable consideration; and all the estate not so sold may be taken in execution by any creditor, who is not otherwise satisfied, in like manner, as if a bond had been given in the other form.

If executor renounces, &c. administration to be granted. 1783, 24, § 16.

SECT. 5. If any person, who is appointed an executor, shall refuse to accept the trust, or if after being duly cited for that purpose, he shall neglect to appear and accept the same, or if he shall neglect, for twenty days after probate of the will, to give bond as before prescribed, the judge of probate shall grant letters testamentary to the other executors, if there be any capable and willing to accept the trust; and if there is no such other executor, the judge of probate

shall commit administration of the estate, with the will annexed, to the widow of the deceased or to his next of kin, or to such other person, as would have been entitled thereto, if the deceased had died intestate.

Administration during the minority of an executor. 1783, 24, § 17.

SECT. 6. When a person appointed executor is under the age of twenty one years, at the time of proving the will, administration may be granted with the will annexed, during his minority, unless there be another executor who shall accept the trust, in which case, the estate shall be administered by such other executor, until the minor shall arrive at full age, when he may be admitted as joint executor with the former, upon giving bond as before provided.

Executor, for what causes removable. 1783, 24, § 19. 1806, 98, § 1.

SECT. 7. When an executor, residing out of this state, shall, after being duly cited by the judge of probate, neglect to render his accounts and to settle the estate according to law; or when any executor shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge of probate may remove him, and the other executor, if there is any, may proceed in discharging the trust, as if the executor, so removed were dead; and if there is no other executor to discharge the trust, the judge may commit administration, with the will annexed, of the estate not already administered, to such person as he shall think fit, in like manner as if the executor so removed were dead.

Bond of administrator with the will annexed.

SECT. 8. Every person, who is appointed administrator with the will annexed, shall, before entering on the execution of his trust, give bond to the judge of probate, in like manner and with like condition, as is required of an executor.

Marriage of an executrix extinguishes her authority. 17 Mass. 341. 14 Mass. 295. 1783, 24, § 19.

SECT. 9. When an unmarried woman, who is executrix either alone or jointly with another person, shall marry, her husband shall not be an executor in her right, but the marriage shall operate as an extinguishment of her authority as executrix; and the other executor, if there is any, may proceed in discharging the trust, as if she were dead; and if there is no other executor, administration, with the will annexed, may be granted of the estate not already administered.

Executor of executor not to administer the estate of the first testator. 1783 24, § 19.

SECT. 10. The executor of an executor shall have no authority, as such, to administer the estate of the first testator; but, on the death of the sole or surviving executor of any last will, administration of the estate of the first testator, not already administered, may be granted, with the will annexed, to such person, as the judge of probate shall think fit to appoint.

CHAPTER 64.

OF THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF INTESTATES.

SECTION
1. Distribution of personal estate of intestates.
2. Advancements to issue, not to be computed in the distribution to the widow.

SECTION
3. What court shall grant administration.
4. To whom it shall be granted.
5. Administrator's bond to the judge of probate.
6. Special administration, during suit, &c.
7. Bond of special administrator.
8. His power and duty.
9. To cease on appointment of executor or administrator.
10. Special administrator not liable to creditors.—Limitation of actions against executor, &c.
11. Executor in his own wrong, who shall be.
12. Accountable to the rightful executor or administrator.
13. No original administration after twenty years.
14. Administration de bonis non, when to be granted.
15. Administrator removable for cause, and a successor to be appointed.
16. Administration to be revoked, on proof of a will.
17. Marriage of administratrix, extinguishes her authority.

Distribution of personal estate of intestates. 1805, 90, § 1. 1833, 40.

SECTION 1. When any person shall die possessed of any personal estate, or of any right or interest therein, not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

First, the widow, if any, shall be allowed all her articles of apparel or ornament, according to the degree and estate of her husband, and such provisions and other necessaries, for the use of herself and the family under her care, as shall be allowed and ordered in pursuance of the sixty fifth chapter; and this allowance shall be made, as well when the widow waives the provision made for her in the will of her husband, as when he dies intestate:

Secondly, the personal estate, remaining after such allowance, shall be applied to the payment of the debts of the deceased, with the charges of his funeral, and of settling his estate:

Thirdly, the residue, if any, of the personal estate, shall be distributed among the same persons, who would be entitled to the real estate, by the sixty first chapter, and in the same proportion as there prescribed, excepting that alienage in any person, claiming a distributive share of the personal estate, shall be no impediment to his receiving the same share, that he would have been entitled to if he had been a citizen; and excepting also as is herein further provided; that is to say,

Fourthly, if the intestate were a married woman, her husband shall be entitled to the whole of the said residue of the personal estate:

Fifthly, if the intestate leave a widow and issue, the widow shall be entitled to one third of the said residue:

Sixthly, if there be no issue, the widow shall be entitled to one half thereof:

Seventhly, if the intestate leave no kindred, the widow shall be entitled to the whole of the said residue: and

Eightly, if there be no husband, widow, or kindred of the intestate, the whole shall escheat to the Commonwealth.

Advancements to issue not to be computed in the distribution to the widow. 1 Pick. 161.

SECT. 2. If the intestate leave a widow and issue, and any of the issue shall have received an advancement from the intestate in his life time, the value of such advancement shall not be taken into consideration, in computing the one third part to be assigned to the widow; but she shall be entitled to the third part only of the said residue, after deducting the value of the advancement.

SECT. 3. Upon the decease of any inhabitant of this state, letters testamentary, or letters of administration on his estate, shall be granted by the judge of probate of the county, in which the deceased was an inhabitant or resident, at the time of his death; and when any person shall die intestate in any other state or country, leaving any estate to be administered within this state, administration thereof shall be granted by the judge of probate of any county, in which there is any estate to be administered; and the administration, which shall be first lawfully granted in the last mentioned case, shall extend to all the estate of the deceased within the state, and shall exclude the jurisdiction of the probate court in every other county.

What court shall grant administration. 5 Pick. 20. 370. 1817, 190, § 1.

5 Pick. 519.

SECT. 4. Administration of the estate of an intestate shall be granted to some one or more of the persons hereinafter mentioned; and they shall be respectively entitled thereto, in the following order, to wit:

To whom it shall be granted. 1817, 190, § 14. 1833, 100.

First, his widow, or next of kin, or both, as the judge of probate shall think fit; and if they do not voluntarily either take or renounce the administration, they shall, if resident within the county, be cited by the judge for that purpose:

Secondly, if the persons so entitled to administration are incompetent, or evidently unsuitable for the discharge of the trust, or if they neglect, without any sufficient cause, for thirty days after the death of the intestate, to take administration of his estate, the judge of probate shall commit it to one or more of the principal creditors, if there be any competent and willing to undertake the trust:

Thirdly, if there be no such creditor, the judge shall commit administration to such other person as he shall think fit; provided however,

Fourthly, that if the deceased were a married woman, administration of her estate shall in all cases be granted to her husband, if competent and willing to undertake the trust, unless she shall, by force of a marriage settlement or otherwise, have made some testamentary disposition of her separate estate, or some other provision, which shall render it necessary or proper to appoint some other person to administer her estate; and provided also,

Fifthly, that if the deceased were an alien, and left no widow or next of kin in this state, administration of his estate shall be granted to the consul or vice consul of the nation to which he belonged, if there be any in this state, in preference to his creditors.

SECT. 5. Every administrator shall, before entering on the execution of his trust, give bond with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the said judge or to his successors, with condition as follows:

Administrator's bond to the judge of probate.

First, to make and return into the probate court, within three months, a true inventory of all the real estate, and all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge:

1 Mass. 35.

Secondly, to administer according to law all the goods, chattels, rights and credits of the deceased, and the proceeds of all his real estate, that may be sold for the payment of his debts, which shall at any time come to the possession of the administrator, or to the possession of any other person for him:

Thirdly, to render upon oath a true account of his administration within one year, and at any other times when required by the judge of probate :

Fourthly, to pay any balance remaining in his hands, upon the settlement of his accounts, to such persons as the judge of probate shall direct : and

1817, 190, § 14. Fifthly, to deliver the letters of administration into the probate court, in case any will of the deceased shall be thereafter duly proved and allowed.

Special administration, during suit. 1834, 174, § 1.

SECT. 6. When, by reason of a suit concerning the proof of a will, or from any other cause, there shall be a delay in granting letters testamentary or of administration, the judge of probate may in his discretion appoint a special administrator, to collect and preserve the effects of the deceased ; and in case of an appeal from the decree appointing such special administrator, he shall nevertheless proceed in the execution of his duties, until it shall be otherwise ordered by the supreme court of probate.

Bond of special administrator. 1834, 174, § 5.

SECT. 7. Every such administrator shall, before entering on the duties of his trust, give bond with sufficient surety or sureties, in such sum as the judge of probate shall order, payable to the said judge or to his successor, with condition that he will make and return into the probate court, within three months, a true inventory of all the goods, chattels, rights and credits of the deceased, which have or shall come to his possession or knowledge, and that he will truly account on oath for all the goods, chattels, debts and effects of the deceased, that shall be received by him as such special administrator, whenever required by the judge of probate, and will deliver the same to the person, who shall be appointed executor or administrator of the deceased, or to such other person as shall be lawfully authorized to receive the same.

His power and duty. 1834, 174, § 2.

SECT. 8. Such special administrator shall collect all the goods, chattels and debts of the deceased, and preserve the same for the executor or administrator, who shall be thereafter appointed ; and for that purpose may commence and maintain suits as an administrator ; and may also sell such perishable and other goods, as the judge of probate shall order to be sold ; and he shall be allowed such compensation for his services, as the judge of probate shall think reasonable.

To cease on appointment of executor or administrator. 1834, 174, § 3.

SECT. 9. Upon the granting of letters testamentary or of administration, the power of the special administrator shall cease, and he shall forthwith deliver to the executor or administrator all the goods, chattels, money and effects of the deceased in his hands and the executor or administrator may be admitted to prosecute any suit, commenced by the special administrator, in like manner, as an administrator de bonis non is authorized to prosecute a suit, commenced by a former executor or administrator.

Special administrator not liable to creditors. Limitation of actions against executor, &c. 1834, 174, § 4.

SECT. 10. Such special administrator shall not be liable to an action by any creditor of the deceased ; and the time of limitation, for all suits against the estate, shall begin to run from the time of granting letters testamentary or of administration in the usual form, in like manner as if such special administration had not been granted.

Executor in his

SECT. 11. If any person shall sell or embezzle any of the goods

or effects of a deceased person, before having taken out letters testamentary or of administration thereon, and given bond as executor or administrator, or without an appointment as special administrator, he shall be liable to the actions of the creditors and other persons aggrieved, as an executor in his own wrong.

own wrong, who shall be. 1783, 24, § 16.

SECT. 12. Every executor in his own wrong shall be liable to the rightful executor or administrator, for the full value of the goods or effects of the deceased taken by him, and for all damages, caused by his acts, to the estate of the deceased; and he shall not be allowed to retain or deduct any part of the goods or effects, excepting for such funeral expenses or debts of the deceased, or other charges, actually paid by him, as the rightful executor or administrator might have been compelled to pay.

—accountable to the rightful executor or administrator.

SECT. 13. Administration shall not be originally granted, after the expiration of twenty years from the death of the testator or intestate.

No original administration after 20 years. 1817, 190, § 17.

SECT. 14. When any sole executor or administrator shall die without having fully administered the estate, the judge of probate shall grant letters of administration, with the will annexed, or otherwise, as the case may require, to some suitable person, to administer the goods and estate of the deceased, not already administered; provided there be personal estate of the deceased, not administered, to the amount of twenty dollars, or debts to the like amount remaining due from the estate.

Administration de bonis non, when to be granted. 1783, 24, § 19. 1817, 190, § 17.

SECT. 15. When an administrator, residing out of this state, having been duly cited by the judge of probate, shall neglect to render his accounts and to settle the estate according to law; or when any administrator shall become insane, or otherwise incapable of discharging the trust, or evidently unsuitable therefor; the judge of probate may remove him, and thereupon the other administrators, if there be any, may proceed in discharging the trust, as if the one so removed were dead; and if there be no other administrator to discharge the trust, the judge may commit administration of the estate, not already administered, to such person as he shall think fit, in like manner as if the administrator so removed were dead.

Administrator removable for cause, &c. Successor to be appointed. 1782, 25, § 1. 1783, 24, § 19. 1808, 98, § 1.

SECT. 16. If, after granting letters of administration as of an intestate estate, a will of the person deceased shall be duly proved and allowed, the first administration shall be revoked; and the executor, or the administrator, with the will annexed, shall be entitled to demand, collect and sue for, all the goods, chattels, rights and credits of the deceased, remaining unadministered.

Administration to be revoked, on proof of a will. 1817, 190, § 14

SECT. 17. When an unmarried woman, who is administratrix, either alone or jointly with another person, shall marry, her husband shall not become an administrator in her right, but the marriage shall operate as an extinguishment of her authority as administratrix; and the other administrator, if there be any, may proceed in discharging the trust, as if she were dead; and if there be no other administrator, the judge of probate may grant administration of the estate not already administered.

Marriage of an administratrix extinguishes her authority. 17 Mass. 342. 14 Mass. 295. 1783, 24, § 19.

CHAPTER 65.

OF THE INVENTORY, AND COLLECTION OF THE EFFECTS OF DECEASED PERSONS.

SECTION
1. Inventory to be returned within three months, except, &c.
2. Appraisers how appointed, and sworn.
3. Form of justice's order to appraisers.
4. What articles shall not be included in the inventory, nor considered as assets;
5. Although personal estate should be insufficient to pay debts;
6. And whether a will, be left or not, &c.
7. Persons suspected of concealing effects, may be examined on oath.
8. When personal estate is insufficient, real estate may be sold to pay debts.
9. Proceeds of such sale to be considered personal assets.
10. Executor or administrator, may compound with a debtor.
11. Mortgage of real estate to be considered personal assets.
12. In case of redemption, executor or administrator to release, and meantime to hold in trust, &c.
13. Lands taken in execution by executor or administrator, to be considered personal assets.
14. Lands so held by mortgage or execution, may be sold for payment of debts.
15. If not so sold, how distributed.

Inventory to be returned within three months. except, &c. 1817, 190, § 14.

SECTION 1. Every executor and administrator shall, within three months after his appointment, make and return upon oath, into the probate court, a true inventory of the real estate, and all the goods, chattels, rights and credits of the deceased, which are by law to be administered, and which shall have come to his possession or knowledge; except only, that an executor, who is a residuary legatee, may give bond to pay all the debts and legacies of the deceased, as provided in the sixty third chapter; and he shall be thereupon excused from returning such an inventory.

Appraisers, how appointed.

— and sworn. 1817, 190, § 14.

SECT. 2. The estate and effects, comprised in the inventory, shall be appraised by three suitable disinterested persons, who shall be appointed by the judge of probate, or by a disinterested justice of the peace, and sworn to the faithful discharge of their trust; and if any part of such estate, or effects, be in any other county, any disinterested justice of such county may appoint the appraisers thereof.

Form of justice's order to appraisers.

SECT. 3. When appraisers shall be appointed by a justice of the peace, he shall issue an order to them, in substance as follows:

ss.

To of , in said county. You are hereby appointed to appraise, on oath, the estate and effects of , late of , deceased, which may be in said county. When you have performed that service, you will deliver this order, and your doings in pursuance thereof, to , (executor or administrator as the case may be) of said deceased. that he may return the same to the probate court for said county of . Given under my hand, this day of , in the year

Justice of the Peace.

What articles shall not

SECT. 4. The following articles shall he omitted in making the

inventory, and shall not be considered as assets, nor be administered as such, to wit:

be included in the inventory, nor considered as assets;

First. All the articles of apparel or ornament of the widow, according to the degree and estate of her husband; and also the apparel of the minor children, if there be any:

Secondly. The wearing apparel of the deceased, not exceeding one hundred dollars in value, which shall be distributed, at the discretion of the executor or administrator, among the family of the deceased.

Thirdly. Such provisions and other articles, as shall be necessary for the reasonable sustenance of the widow, if any, and also of the family of the deceased, for forty days after his death; together with such further necessaries, as the judge shall order to be allowed to the widow, for the use of herself and the minor children, if any, under her care.

10 Pick. 431.

SECT. 5. All the articles above mentioned shall be omitted in the inventory, although it should thereby become necesssry to sell real estate of the deceased, for the payment of his debts, and although his estate should be insolvent.

— although personal estate should be insufficient to pay debts; 1816, 95, § 1.

SECT. 6. They shall also be omitted, whether the deceased left a will, or died intestate, and notwithstanding the widow may have waived the provision made for her by the will.

— and whether a will be left or not &c. 3 Pick. 375.

SECT. 7. Upon complaint made to the judge of probate, by any executor or administrator, or by any heir, legatee, creditor, or other person interested in the estate of any person deceased, against any one suspected of having concealed, embezzled or conveyed away any of the money, goods or effects of the deceased, the judge may cite such suspected person to appear before him, and to be examined on oath, upon the matter of such complaint; and if the person so cited shall refuse to appear and submit to such examination, or to answer such interrogatories, as shall be lawfully propounded to him, the judge may commit him to the common jail of the county, there to remain in close custody, until he shall submit to the order of the court; and all such interrogatories and answers shall be in writing, and shall be signed by the party examined, and filed in the probate court.

Persons suspected of concealing effects, may be examined on oath. 7 Greenl. 467. 4 Mass. 322. 1783, 32, § 11.

SECT. 8. When the goods and chattels, rights and credits, in the hands of an executor or administrator, shall not be sufficient to pay the debts of the deceased, with the charges of administration, his real estate, or as much thereof as may be necessary, shall be sold for that purpose by the executor or administrator, upon obtaining a license therefor in the manner provided in the seventy first chapter.

When personal estate is insufficient, real estate may be sold to pay debts. 1783, 32, § 1.

SECT. 9. The proceeds of any real estate, sold as aforesaid, shall be considered as assets in the hands of the executor or administrator, in like manner as if the same had originally been part of the goods and chattels of the deceased; and such executor or administrator, and the sureties in his administration bond, shall be accountable and chargeable therefor.

Proceeds of such sale to be considered personal assets.

SECT. 10. When any debtor of a deceased person shall be unable to pay all his debts, the executor or administrator, with the approbation of the judge of probate, may compound with such debtor, and give him a discharge, upon receiving a fair and just dividend of his estate and effects.

Executor or administrator may compound with a debtor. 1817, 190, § 21. 1826, 136.

Mortgage of real estate to be considered personal assets. 16 Mass. 18. 1788, 51, § 1.

SECT. 11. When any mortgagee of real estate, or any assignee of such mortgagee, shall die, without having foreclosed the right of redemption, the mortgaged premises, and the debt secured thereby, shall be considered as personal assets in the hands of his executor or administrator, and shall be administered and accounted for as such; and if the mortgagee or assignee shall not have obtained possession of the mortgaged premises, in his life time, his executor or administrator may take possession thereof, by open and peaceable entry, or by action, in like manner, as the deceased might have done, if living.

In case of redemption, executor or administrator to release; and meantime to hold in trust, &c. 4 Mass. 598. 1788, 51, § 4.

SECT. 12. In case of the redemption of any such mortgage, the money paid thereon shall be received by the executor or administrator of the deceased, and he shall thereupon release and discharge the mortgage; and until such redemption, the executor or administrator, if possession shall have been taken, either by himself or by the deceased, shall be seized of the mortgaged premises, in trust for the same persons, whether creditors, next of kin, or others, who would be entitled to the money, if the premises had been redeemed.

Lands taken in execution by executor or administrator, to be considered personal assets. 4 Mass. 598. 6 Greenl. 133. 1788, 51, § 3.

SECT. 13. When an executor or administrator shall recover judgment for any debt due to the deceased, and shall levy the execution on real estate, he shall be seized of such real estate, in trust for the same persons, who would have been entitled to the money, if the judgment had been satisfied in money; and the estate so taken in execution shall be considered as personal assets, in the hands of the executor or administrator, and shall be accounted for as such; and if redeemed, the money shall be received by the executor or administrator, who shall thereupon release the estate.

Lands, so held by mortgage or execution, may be sold for payment of debts. 1788, 51, § 3.

SECT. 14. Any real estate, so held by an executor or administrator in mortgage, or taken in execution, may be sold, (subject to the right of redemption, if not foreclosed) for the payment of debts or legacies, and the charges of administration, in the same manner as any real estate, of which the deceased person died seized; such sale to be made by the executor or administrator, upon obtaining a license therefor, in the manner provided in the seventy first chapter.

If not so sold, how distributed. 1788, 51, § 3.

SECT. 15. If any land, so held by an executor or administrator in mortgage or on execution, shall not be redeemed, nor sold as before provided, it shall be assigned and distributed to the same persons, and in the same proportions, as if it had been part of the personal estate of the deceased; and if, upon such distribution, the estate shall come to two or more persons, the judge of probate may cause partition thereof to be made between them, in like manner as if it had been real estate held by the deceased, in his life time.

CHAPTER 66.

OF THE PAYMENT OF DEBTS AND LEGACIES OF DECEASED PERSONS.

SECTION
1. Public notice to be given of taking administration.
2. Perpetuating evidence of notice.
3. Limitation of actions by creditors;

SECTION

4. Except, when assets are received after the four years;
5. Or, when the right of action accrues after that time.
6, 7, 8. Mode of proceeding in such case.
9. The action of a creditor against heirs, devisees, &c. not barred.
10. No action to be brought against executor, &c. within one year, except, &c.
11. Executors and administrators not liable for deficiency of assets, in case, &c.
12. But may plead that they have fully administered;
13. Or represent the estate insolvent.
14. If assets are exhausted in paying preferred debts executor, &c. may plead that he has fully administered.
15. When executor, &c. may demand security from legatee, or next of kin, to refund.
16. Legatee may sue after four years, in case, &c.

SECTION

17. Executors and administrators liable, in case of unnecessary delay, &c.
18. Claims of executors and administrators may be submitted to arbitration;
19. Or decided by the court, or by a jury, on appeal.
20. Limitations of actions against administrators de bonis non.
21. Administrator de bonis non, liable for two years at least.
22. Liable for four years, in case, &c.
23. Administrator de bonis non to give notice of his appointment.
24. To be further liable, in case of new assets received.
25. Provision when notice is omitted by accident, &c. and when evidence is not perpetuated.
26. Liability for damage, caused by omission, to continue.
27. Estate of deceased joint debtor, liable.

SECTION 1. Every executor and administrator shall, within three months after giving bond for the discharge of his trust, cause notice of his appointment to be posted up in two or more public places, in the town in which the deceased last dwelt; or, instead of such posting up, he may be required by the judge of probate to give notice of his appointment, by publishing the same in some newspaper, or in such other manner as the judge of probate, taking into consideration the business of the deceased, and the circumstances of his estate, shall direct.

Public notice to be given of taking administration. 1788, 66, § 1.

SECT. 2. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made before the judge of probate, or before any justice of the peace, and filed and recorded, together with a copy of the notice, in the probate court, within one year after giving bond as aforesaid, shall be admitted as evidence of the time, place and manner, in which the notice was given.

Perpetuating evidence of notice. 1788, 66, § 1. 1830, 145.

SECT. 3. No executor or administrator, after having given notice of his appointment, as provided in the first section, shall be held to answer to the suit of any creditor of the deceased, unless it be commenced within four years from the time of his giving bond as aforesaid, excepting in the cases hereinafter mentioned.

Limitation of actions by creditors. 1788, 66, § 3. 1791, 28, § 2.

SECT. 4. When assets shall come to the hands of an executor or administrator, after the expiration of the said four years, he shall account for and apply the same, in like manner, as if they had been received within the four years; and he shall be liable to an action at law, or to any suit or process in the probate court, on account of such new assets, by, or for the benefit of, any creditor, in like manner as if the assets had been received within the said four years; provided, that such action, or other proceeding, be commenced within one year after the creditor shall have notice of the receipt of such new assets, and not more than four years after the same shall be actually received.

—except when assets are received after four years; 3 Pick. 365.

—or, when the right of action accrues after that time. 1788, 66, § 4.

SECT. 5. Any creditor of the deceased, whose right of action shall not accrue within the said four years after the date of the administration bond, may present his claim to the judge of probate, at any time before the estate is fully administered; and if, on examination thereof, it shall appear to the judge that the same is justly due from the estate, he shall order the executor or administrator to retain in his hands sufficient to satisfy the same; or if any of the heirs of the deceased, or the devisees, or others interested in his estate, shall offer to give bond to the alleged creditor, with sufficient surety or sureties, for the payment of the demand, in case the same shall be proved to be due from the estate, the judge may, if he think fit, order such bond to be taken, instead of requiring the executor or administrator to retain assets as aforesaid.

Mode of proceeding in such case.

SECT. 6. The decision of the judge of probate, upon the claim of such creditor, shall not be conclusive against the executor or administrator, or other person interested to oppose the allowance thereof; and they shall not be compelled to pay the same, unless it shall be proved to be due, in an action to be commenced by the claimant, within one year after the same shall become payable.

Same subject.

SECT. 7. The action for this purpose shall be brought against the executor or administrator, in case he shall have been required to retain assets therefor; but if the heirs or others interested in the estate shall have given bond, as before provided, the action shall be brought on the bond.

Same.

SECT. 8. If the action is brought on the bond, the defendant may plead a general performance of the condition thereof; whereupon the plaintiff shall, in his replication, set forth his original cause of action against the deceased person, in like manner as would be required in a declaration for the same demand, against executors or administrators, and may allege the non-payment thereof as a breach of the condition of the bond; and the defendant may rejoin, that nothing is due to the plaintiff, on which plea, issue may be joined, as on a general issue to a declaration; or he may plead any other matter of defence, that would be available in law against the same demand, if prosecuted in the usual manner, against the executor or administrator of the deceased; and the pleadings shall proceed in legal form, until the joinder of an issue of law or of fact; and if it shall appear that anything is due from the estate of the deceased to the plaintiff, he shall have judgment and execution therefor, with his costs, against the obligors in the bond; otherwise, they shall recover judgment for costs against him.

Action of creditor against heirs, devisees, &c. not barred. 1788, 66.

SECT. 9. Nothing herein contained shall prevent or bar the action of any creditor against the heirs, next of kin, devisees, or legatees, of the deceased, as provided in the seventieth chapter.

No action to be brought against executor, &c. within one year, except. &c. 1788, 66, § 2.

SECT. 10. No executor or administrator shall be held to answer to the suit of any creditor of the deceased, if commenced within one year after his giving bond for the discharge of his trust, unless it be for the recovery of a demand that would not be affected by the insolvency of the estate, or unless it be brought, after the estate has been represented insolvent, for the purpose of ascertaining a claim that is contested.

Executors and

SECT. 11. If any executor or administrator, who shall have given

notice of his appointment, as prescribed in this chapter, shall not, within one year thereafter, have notice of demands against the estate of the deceased, which will authorize him to represent it insolvent, he may, after the expiration of the said one year, proceed to pay the debts due from the estate; and he shall not become personally liable to any other creditor, in consequence of any such payments, made before notice of his demand, although the remaining estate should be insufficient to satisfy such last mentioned creditor.

administrators not liable for deficiency of assets, in case, &c. 1823, 144, § 2.

SECT. 12. If any executor or administrator shall have paid away, in manner aforesaid, the whole of the estate and effects of the deceased, before notice of the demand of any other creditor, he shall not be required, in consequence of such new demand, to represent the estate insolvent, but may plead plene administravit; and upon proving such payments, he shall be discharged.

—but may plead that they have fully administered; 1823, 144, § 2.

SECT. 13. If any executor or administrator shall have paid away, in manner aforesaid, so much of the estate and effects of the deceased, that the remainder shall be insufficient to satisfy any demand, of which he shall afterwards have notice, he shall be liable to pay, on such last mentioned demand, only so much as may then remain in his hands; and if there be two or more such demands exhibited, which shall together exceed the amount of assets remaining in his hands, he may represent the estate insolvent, and shall divide and pay over, what shall remain in his hands, to and among such creditors as shall prove their debts, under the commission of insolvency, pursuant to such decree as the judge of probate shall make in that behalf; but the creditors of the deceased, who shall have been previously paid by the executor or administrator, as aforesaid, shall not be liable to refund any part of the amount so received by them.

—or represent the estate insolvent. 1823, 144, § 3.

SECT. 14. If it shall appear, upon the settlement of the administration account in the probate court, that the whole estate and effects, which have come to the hands of the executor or administrator, have been exhausted in paying the charges of administration, the allowance to the widow and family of the deceased, and the charges of his last sickness and funeral, or any other debts or claims, entitled by law to a preference over the common creditors of the deceased, such settlement shall be a sufficient bar to any action brought against the executor or administrator, by any creditor who is not entitled to such preference; and the executor or administrator may give the same in evidence, under the plea of plene administravit, although the estate may not have been represented insolvent.

If the assets are exhausted in paying preferred debts, executor, &c. may plead that he has fully administered. 1823, 144, § 1.

SECT. 15. When an executor or administrator shall, within four years after having given bond for the discharge of his trust, be required, by any legatee or next of kin, to make payment, in whole or in part, of his legacy or distributive share, the judge of probate may, if he shall think fit, require that the legatee or next of kin shall first give bond to the executor or administrator, with surety or sureties, to be approved by the judge, with condition to refund the amount so to be paid, or as much thereof as may be necessary to satisfy any demands, that may be afterwards recovered against the estate of the deceased, and to indemnify the executor or administrator against all loss and damage on account of such payment.

When executor &c. may demand security from legatee or next of kin, to refund. 1817, 190, § 22.

SECT. 16. Every legatee may recover his legacy in an action at

Legatee may

sue after four years, in case, &c.
1783, 24, § 17.
1783, 66, § 5.

the common law; and nothing contained in this chapter shall bar any action, brought at any time against an executor, or an administrator with the will annexed, for the recovery of any legacy, annuity or bequest whatsoever.

Executors and administrators liable, in case of unnecessary delay, &c.
1783, 32, § 8.

SECT. 17. If any executor or administrator shall unreasonably delay to raise money, by collecting the debts and effects of the deceased, or by selling the real estate, if necessary, and if he can obtain a license therefor, or shall neglect to pay what he has in his hands; and if in consequence of such delay or neglect, the estate of the deceased shall be taken in execution by any of his creditors; it shall be deemed unfaithful administration in such executor or administrator, and he shall be liable, in an action on his administration bond, for all damages occasioned thereby.

Claims of executors and administrators may be submitted to arbitration.
1789, 11, § 1.

SECT. 18. If any debt, claimed by an executor or administrator, as due to him from the deceased, shall be disputed by any person interested in the estate, the executor or administrator shall file, in the probate court, a statement of his claim in writing, setting forth distinctly and fully the nature and grounds thereof; and the same may then be submitted, under an order of the probate court, to one or more arbitrators, to be agreed on by the executor or administrator and the party objecting to the claim; and the judge of probate shall have the like power to discharge the rule, by which the claim is referred, and to reject and disallow the award, or to recommit it to the same arbitrators, as might be exercised by the courts of common law with regard to cases referred by a rule of those courts; and the award of such arbitrators, if accepted by the judge of probate, shall be final and conclusive on all parties interested in the estate.

—or decided by the court or by a jury, on appeal.

SECT. 19. If, in the case last mentioned, the parties should not agree in the appointment of arbitrators, or if the award should not be confirmed by the judge of probate, he shall himself decide on the claim, upon such evidence as shall be adduced before him, saving to any person interested an appeal to the supreme court of probate, as in other cases; and on such appeal, either party may have the claim submitted to a jury, or the court may direct it to be so decided, and thereupon a real or feigned issue shall be made up, under the direction of the court, and shall be tried by a jury, as other issues in civil actions are tried; and the verdict thereon, being duly allowed and recorded, shall be conclusive.

Limitations of actions against administrators de bonis non.
5 Pick. 321.

SECT. 20. When any executor or administrator shall die or be removed, without having fully administered the goods and estate of the deceased, and a new administrator of the same estate shall be appointed, the time allowed to the creditors of the deceased, for bringing their actions, shall be enlarged as follows, to wit; to so much of the four years, provided for the limitation of the said actions, as shall have expired whilst the former executor or administrator continued in office, shall be added so much time after the appointment of the new administrator, as will make five years in the whole; and the new administrator shall not be held to answer to the suit of any creditor, commenced after the expiration of the said five years, excepting as is provided in the following sections.

Administrator de bonis non, liable for two years at least.

SECT. 21. Every such new administrator shall, in all cases, be liable to the actions of the creditors, for the space of two years after

he shall have given bond for the discharge of his trust, although the whole time allowed to the creditors should be thereby extended beyond the said five years.

SECT. 22. If the former executor or administrator shall not have given notice of his appointment, in the manner before prescribed in this chapter, the new administrator shall be liable to the actions of the creditors, for the space of four years after the date of the bond given by such new administrator.

Liable for four years, in case, &c.

SECT. 23. The new administrator shall give notice of his appointment, in the same manner that is prescribed in this chapter, with respect to an original administrator; and if he shall fail so to do, he shall have no benefit of the limitations herein provided.

Administrator de bonis non to give notice of his appointment.

SECT. 24. When assets shall come to the hands of such new administrator, after any of the periods above limited for the commencement of actions against him, he shall account for the same, and shall be liable to an action at law, and to any suit or process in the probate court, on account of such new assets, by or in behalf of any creditor, in like manner, as is provided in this chapter, with respect to an original executor or administrator.

To be further liable, in case of new assets received.

SECT. 25. If, by reason of any accident or mistake, notice shall not be given of the appointment of any executor, or of any original administrator, or administrator de bonis non, within the three months herein before prescribed for that purpose, or the evidence thereof shall fail to be perpetuated as herein before provided, the judge of probate may, on the petition of the executor or administrator, order and allow such notice to be given at any time afterwards; in which case, the said four years and other periods of time, which are hereinbefore limited for the commencement of actions against executors and administrators, and for other purposes, and which begin to run, as before directed, from the date of the administration bond, shall begin to run respectively from the time of passing such order of the court.

Provision, when notice is omitted by accident, &c., and when evidence is not perpetuated.

SECT. 26. No order of court, passed by virtue of the preceding section, shall exempt the executor or administrator, or their respective sureties, from their liability for any damages, for which they would otherwise have been liable, by reason of the omission to give notice within the said three months.

Liability for damage caused by omission, to continue.

SECT. 27. When two or more persons shall be indebted in any joint contract, or upon a judgment founded on any such contract, and either of them shall die, his estate shall be liable therefor, as if the contract had been joint and several, or as if the judgment had been against himself alone.

Estate of deceased joint debtor, liable. 2 Mass. 572. 1799, 57.

CHAPTER 67.

OF EXECUTORS AND ADMINISTRATORS RENDERING THEIR ACCOUNTS, AND SETTLING ESTATES.

SECTION
1. Personal estate to be accounted for as appraised, except, &c.
2. Executors, &c., to be charged for increase, and allowed for decrease.

SECTION
3. Judge of probate may order a sale.
4. Executors, &c., not chargeable with bad debts.
5. Chargeable with certain articles not inventoried.
6. And with income of real estate, if any, received.
7. To render an account within one year, upon oath—And further accounts from time to time.
8. Allowance for their services and expenses.
9. How liable for not rendering any account.
10. Accounts settled, in what cases to be opened.
11. Costs, recovered against an executor, &c., how to be paid and allowed.

Personal estate to be accounted for as appraised, except, &c. 1817, 190, § 19.

SECTION 1. Every executor and administrator shall account for the personal estate, at the value at which it shall be appraised, excepting as provided in the following sections.

Executors, &c. to be charged for increase, and allowed for decrease. 1817, 190, § 19.

SECT. 2. No profit shall be made by executors or administrators by the increase, nor shall they sustain any loss by the decrease, or destruction, without their fault, of any part of the estate; and if they shall sell any part of the personal estate for more than the appraised value, they shall account for the excess; and if they shall sell any for less than the appraised value, they shall be allowed for the loss, if it shall appear to the judge of probate, that such sale was expedient, and for the interest of all concerned in the estate.

Judge of probate may order a sale. 1817, 190, § 19.

SECT. 3. The judge of probate, on the application of the executor or administrator, or of any person interested in the estate, as a creditor, next of kin, legatee, or otherwise, such application being made within six months after the return of the inventory, may order the personal estate or any part thereof, to be sold by public auction or private sale, as he shall think most for the interest of all concerned in the estate; and the executor or administrator shall in such case account therefor, at the price for which it shall be sold.

Executors, &c. not chargeable with bad debts.

SECT. 4. No executor or administrator shall be accountable for any debts, inventoried as due to the deceased, if it shall appear to the judge of probate, that they remain uncollected without his fault.

Chargeable with certain articles not inventoried.

SECT. 5. Every executor and administrator shall be chargeable, in his account, with all goods, chattels, rights and credits of the deceased, which shall come to his hands, and which are by law to be administered, although they should not be included in the inventory; also with all the proceeds of real estate, sold for the payment of debts or legacies, and with all the interest, profit and income, that shall in any way come to his hands, from the personal estate of the deceased.

—and with income of real estate, if any, received. 5 Greenl. 387. 1789, 11, § 1.

SECT. 6. If any part of the real estate shall have been used or occupied by the executor or administrator, he shall account for the income thereof, as shall be ordered by the judge of probate, with the assent of the executor or administrator and of such other parties interested, as may be present at the rendering of the account; and if the parties do not agree on the sum to be allowed, it shall be determined by three disinterested persons, to be appointed for that purpose by the judge of probate, whose award, being accepted by the judge, shall be final.

To render an account within one year, upon oath: and further accounts

SECT. 7. Every executor and administrator shall, within one year after having given bond for the discharge of his trust, render his first account of his administration upon oath; and he shall render in

like manner such further accounts of his administration, from time to time, as may be necessary or convenient, or when required by the judge of probate, until the estate shall be wholly settled; and he may be examined on oath by the judge of probate, upon any matters relating to his accounts.

from time to time.

SECT. 8. Executors and administrators shall be allowed the following commissions, upon the amount of the personal estate collected and accounted for by them, and of the proceeds of real estate sold under an order of court for the payment of debts, which shall be received in full compensation for all their ordinary services; that is to say:

Allowance for their services and expenses.

For the first thousand dollars, at the rate of five per cent:

For all above that sum, and not exceeding five thousand dollars, at the rate of two and one half per cent: and

For all above five thousand dollars, at the rate of one per cent.

And in all cases, such further allowances shall be made, as the court shall consider just and reasonable, for their actual and necessary expenses, and for any extraordinary services, not required of an executor or administrator, in the common course of his duty; provided, however, that when provision shall be made by the will of the deceased for compensation to any executor, the same shall be deemed a full satisfaction for his services, in lieu of the aforesaid commissions or his share thereof, unless he shall, by an instrument filed in the probate court, renounce all claim to such compensation given by the will.

SECT. 9. When any executor or administrator, after being duly cited by the judge of probate, shall neglect to render any account of his administration, his bond may be put in suit, as provided in the seventieth chapter; and if he shall persist in such neglect to account, judgment shall be rendered against him, and he shall be liable in like manner and to the same extent, as if he had been an executor in his own wrong.

How liable, for not rendering any account.

SECT. 10. When an account is settled in the absence of any person adversely interested, and without notice to him, the account may be opened, on the application of such person, at any time within six months thereafter; and upon every settlement of an account by an executor or administrator, all his former accounts may be so far opened, as to correct any mistake or error therein; excepting that any matter in dispute between two parties, which had been previously heard and determined by the court, shall not be again brought in question by either of the same parties, without leave of the court.

Accounts settled, in what cases to be opened.

SECT. 11. If judgment shall be recovered against an executor or administrator for costs, in any suit commenced or prosecuted by him in that capacity, the estate in his hands shall not be taken on the execution for such costs; but execution shall be awarded against him as for his own debt; and the amount paid by him thereupon shall be allowed in his administration account, unless it shall appear to the judge of probate, that the suit was commenced or prosecuted unnecessarily, or without any reasonable cause.

Costs recovered against executor, &c. how to be paid and allowed. 16 Mass. 530.

CHAPTER 68.

OF THE PROCEEDINGS WHEN THE ESTATE OF A DECEASED PERSON IS INSOLVENT.

SECTION
1. Certain debts entitled to preference.
2. Representation of insolvency, and appointment of commissioners.
3. Commissioners to give notice of their meetings.
4. To make report in six or eighteen months.
5, 6, 7. Provision for contingent debts.
8. Claims to be decided at the common law, upon appeal.
9. Notice to be given on such appeal, and when.
10. Trial and judgment, but no execution thereon.
11. Claim may be submitted to arbitration.
12. Costs upon such appeal.
13. Remedy, when appeal is omitted by accident, &c.
14. Allowance of such appeal not to disturb prior dividends.
15. Commissioners, &c., may examine claimant on oath.
16. Commissioners, &c., may administer oaths—Penalty for false swearing.
17. Distribution among creditors, after commissioners' report.
18. Further distribution, in case, &c.
19. Actions by creditors, after representation of insolvency.
20. Claims not proved, to be barred, unless, &c.
21. If a surplus remain after paying debts allowed, other creditors may claim it.
22. How divided between two or more such creditors.
23. Administrator liable only for assets in his hands.
24. Creditor may sue after three years, in case, &c.
25. Penalty on executor or administrator neglecting to settle his accounts.
26. Further allowance to widow, if the estate proves to be solvent.

Certain debts entitled to preference. 1784, 2, § 1.

SECTION 1. When the estate of any person deceased shall be insolvent, or insufficient to pay all his debts, it shall, after discharging his necessary funeral expenses, and those of his last sickness, and the expenses of administration, be applied to the payment of his debts in the following order:

First, debts entitled to a preference under the laws of the United States:

Secondly, public rates and taxes, and sums due to the Commonwealth for duties on sales at auction, and other excise duties:

Thirdly, debts due to all other persons.

And if there be not enough to pay all the debts of any one class, all the creditors of that class shall be paid rateably, in proportion to their respective debts; and no payment shall be made to creditors of any one class, until all those of the preceding class or classes, of whose claims the executor or administrator shall have had notice, shall be fully paid.

Representation of insolvency, and appointment of commissioners. 1784, 2.

SECT. 2. When it shall appear to the judge of probate, from the representation of an executor or administrator, that the estate of the deceased will probably be insufficient for the payment of his debts, the judge shall appoint two or more fit persons to be commissioners, to receive and examine all claims of creditors against the estate of the deceased, and to return to the probate court a list of all the claims that shall have been laid before them, with the sum that they shall have allowed on each claim; and the commissioners, before enter-

ing on the duties of their office, shall be sworn to the faithful discharge thereof.

SECT. 3. The commissioners of insolvency shall appoint convenient times and places for their meetings, to receive and examine the claims of creditors, and shall give notice thereof, by causing notifications to be posted up in some public place, in the town in which the deceased last dwelt, or in such other manner, as the judge of probate, having regard to the circumstances of the case, shall order.

Commissioners to give notice of their meetings. 1784, 2.

SECT. 4. The period of six months, after the appointment of the commissions, [*commissioners*] shall be allowed for the creditors to present and prove their claims; and the judge of probate may allow such further time for this purpose, not to exceed eighteen months from the date of the commission, as he shall think necessary, according to the circumstances of the case; and at the expiration of the time for the proof of debts, the commissioners shall make their return to the judge.

—to make report in six or eighteen months 6 Pick. 458. 1784, 2.

SECT. 5. If, at the return of the commission, any person shall be liable as a surety for the deceased, or shall have any other contingent claim against his estate, which could not be proved as a debt under the commission, upon the representation and proof thereof before the judge of probate, he shall, in ordering a dividend, leave in the hands of the executor or administrator, a sum sufficient to pay to such contingent creditor a proportion equal to what shall then be paid to the other creditors.

Provision for contingent debts. 1821, 72.

SECT. 6. If, at any time within four years after the date of the administration bond, such contingent debt shall become absolute, it may be allowed by the judge of probate, if not disputed by the executor or administrator; and if disputed, it may be proved before the commissioners already appointed, or others to be appointed by the judge, in like manner as if presented before the first return of the commissioners.

Same subject. 1821, 72.

SECT. 7. Upon the allowance of such claim, the creditor shall be entitled to a dividend thereon, equal to what shall have been paid to the other creditors, so far as the same can be paid without disturbing the former dividend; and if his claim shall not be finally established, or if the dividend due to him shall not exhaust the assets in the hands of the executor or administrator, the residue of the assets shall be divided among all the creditors, who shall have proved their debts.

Same. 1821, 72.

SECT. 8. Any person, whose claim shall be disallowed in whole or in part by the commissioners, and any executor or administrator, who shall be dissatisfied with the allowance of any claim, may appeal from the decision of the commissioners, and the claim shall thereupon be determined at common law; and if the demand shall be such as might be carried by appeal, in a common personal action, from the court of common pleas, to the supreme judicial court, the appeal from the commissioners shall be made directly to the supreme judicial court for the county in which the probate or administration is granted; otherwise it shall be made to the court of common pleas for the same county; and in either case it shall be tried and determined, in like manner, as if an action had been brought therefor by the supposed creditor against the executor or administrator.

Claims to be decided at the common law, upon appeal. 1784, 2.

SECT. 9. Such appeal shall be claimed, and notice thereof shall

Notice to be given on such

appeal, and when. 1784, 2.

be given at the probate office, within thirty days after the return of the commissioners; and in the case of an appeal by an executor or administrator, he shall also give notice thereof to the creditor, within the said thirty days; and in every case, the appeal shall be entered at the court appealed to, which shall be held for the same county, next after the expiration of the said thirty days.

Trial and judgment, but no execution thereon. 1784, 2.

SECT. 10. At the term of the court, at which the appeal is entered, the supposed creditor shall file a statement in writing of his claim, setting forth briefly and distinctly all the material facts, which would be necessary in a declaration for the same cause of action; and the like proceedings shall be thereupon had, in the pleadings, trial, and determination of the cause, as in an action at law, prosecuted in the usual manner; excepting, that no execution shall be awarded against the executor or administrator for the debt, if any, found due to the claimant; and the final judgment in the case shall be conclusive as to the claim in question; and the list of debts allowed by the commissioners shall be altered, if necessary, to conform thereto.

Claim may be submitted to arbitration. 1784, 2.

SECT. 11. After the claiming of such appeal from the decision of the commissioners, the parties may, if they think fit, waive a trial at law, and submit the claim to the determination of arbitrators, to be agreed on between them, and to be appointed accordingly, by a rule of the probate court; in which case the appeal shall not be entered at the court appealed to; and the award of such arbitrators, if accepted by the court, shall be conclusive as to the claim, in like manner, as is provided in the preceding section, with regard to a judgment in a court of common law.

Costs upon such appeal.

SECT. 12. The party prevailing upon any such appeal shall be entitled to costs, to be taxed and recovered as in common actions, against the adverse party; which costs, if recovered against the executor or administrator, may be allowed to him, in his administration account, out of the assets in his hands.

Remedy, when appeal is omitted by accident, &c. 1816, 62.

SECT. 13. Any person, whose claim shall be disallowed by the commissioners, and who shall, by accident, mistake or otherwise, and not by his own neglect, omit to claim or prosecute his appeal as before provided, may, upon his petition therefor to the supreme judicial court holden in any county, be allowed to claim and prosecute an appeal in manner aforesaid, upon such terms as the court shall impose, if it shall appear that justice requires a further examination of his claim; provided, that no such petition shall be sustained, unless it be presented within two years after the return of the commissioners, and within four years after the date of the administration bond.

Allowance of such appeal not to disturb prior dividends. 1816, 62.

SECT. 14. The allowance of such appeal, and the judgment that may follow thereon, shall not disturb any distribution, that may have been ordered before notice of the petition, or notice of the intention to present the same, shall have been given in writing at the probate office, or to the executor or administrator; but the debts, if any, proved and allowed in the case last mentioned, shall be paid only out of such assets as may remain in, or come to, the hands of the executor or administrator, after payment of the sums due on such prior decree of distribution.

Commissioners, &c. may examine claimant on oath.

SECT. 15. The commissioners may, when they shall think it proper, require an oath to be administered to any claimant, to make true

answers to all such questions as shall be asked of him by them relating to his claim; and they may thereupon examine him upon all matters relating thereto; and if he shall refuse to take such oath, or to answer fully all questions that shall be lawfully put to him, the commissioners may disallow his claim; and on any appeal from the award of the commissioners, the court, in which the appeal is pending, shall have the like power to examine the claimant on oath, and to disallow his claim, if he shall refuse to take the oath, or to answer fully upon his examination thereon.

Commissioners may administer oaths. Penalty for false swearing. 1789, 50, § 1.

SECT. 16. Any one of the commissioners may administer the said oath to the claimant, and may also administer the oath to all witnesses, produced and examined before the commissioners; and any person guilty of perjury upon such examination, either as a claimant or a witness, shall be liable to the punishment provided for perjury in other cases.

Distribution among creditors, after commissioner's return. 1 Greenl. 251. 1784, 2.

SECT. 17. After the expiration of thirty days from the return made by the commissioners, the judge of probate shall make such a decree for the distribution of the effects among the creditors, as the case shall require, according to the provisions of this chapter; and if, before making such decree, he shall have notice of any appeal from the commissioners, then claimed or pending, he may suspend his decree until the determination of such appeal, or he may order a distribution among the creditors, whose debts are allowed, leaving in the hands of the executor or administrator a sum sufficient to pay the claimant, whose demand is disputed, a proportion equal to what shall be paid to the other creditors.

Further distribution in case, &c. 3 Pick. 365.

SECT. 18. If the whole assets should not have been distributed upon the first order of distribution, or if further assets should afterwards come to the hands of the executor or administrator, the judge of probate shall make such further decree or decrees for the distribution thereof, as the case may require.

Actions by creditors after representation of insolvency. 1 Mass. 502. 4 Mass. 624. 6 Pick. 330. 1784, 2.

SECT. 19. No action shall be brought against an executor or administrator, after the estate is represented insolvent, unless it be for a demand that is entitled to a preference and would not be affected by the insolvency of the estate, or unless the assets should prove more than sufficient to pay all the debts allowed by the commissioners; and if the estate is represented insolvent, whilst an action is pending against the executor or administrator, for any demand that is not entitled to such preference, the action may be discontinued without the payment of costs; or, if the demand is disputed, the action may be tried and determined, and judgment may be rendered thereon, in the same manner and with the same effect, as is provided in the case of an appeal from the award of the commissioners; or the action may be continued at the discretion of the court, without costs to either party, until it shall appear whether the estate is insolvent, and if it should not prove to be insolvent, the plaintiff may prosecute the action as if no such representation had been made.

Claims not proved, to be barred, unless, &c. 15 Mass. 140. 148. 264. 1784, 2.

SECT. 20. Every creditor of an estate, that proves to be insolvent, who shall not have presented his claim for allowance, in the manner prescribed in this chapter, shall be forever barred from recovering the same, unless further assets of the deceased shall come to the hands of the executor or administrator, after the decree of distribu-

tion; in which case his claim may be proved, allowed, and paid, in the manner and with the limitations, provided in this chapter for the case of contingent debts.

If a surplus remain after paying the debts allowed, other creditors may claim it. 1833, 189.

SECT. 21. If, after the report of the commissioners of insolvency, the assets shall prove to be sufficient to pay all the debts allowed under the commission, the executor or administrator shall pay the same in full; and if any other debt shall afterwards be recovered against him, he shall be liable therefor only to the extent of the assets then remaining in his hands.

How divided between two or more such creditors. 1833, 189.

SECT. 22. If there are two or more such creditors, the assets, if insufficient to pay their demands in full, shall be divided among them, in proportion to the amount of their respective debts.

Administrator liable only for assets in his hands. 1833, 189.

SECT. 23. The executor or administrator, in such a case, shall be permitted to prove, under the general issue, the amount of assets in his hands, and thereupon judgment shall be rendered in the usual form; but execution shall not issue for more than the amount of such assets; and if there is more than one judgment, the court shall apportion the amount between them.

Creditor may sue after three years, in case, &c. 1833, 189.

SECT. 24. If it shall not be ascertained, at the end of three years after the granting of letters testamentary or of administration, whether any estate, that has been represented insolvent, is, or is not so, in fact, any creditor, whose claim shall not have been presented before the commissioners, may commence an action therefor against the executor or administrator; and such action may be continued, without costs for the defendant, until it shall appear whether the estate is insolvent; and if it should not prove to be so, the plaintiff may prosecute the action, as if no such representation had been made.

Penalty on executor or administrator, neglecting to settle his accounts. 6 Greenl. 268. 1794, 5.

SECT. 25. If any executor or administrator shall neglect to render and settle his accounts in the probate court, within six months after the return made by the commissioners, or after the final liquidation of the demands of the creditors, or within such further time as the judge of probate shall allow therefor, so as to delay a decree of distribution, such neglect shall be deemed unfaithful administration, and a breach of the condition of his bond; and the executor or administrator may be forthwith removed, and he shall also be liable, in a suit on the bond, for all damages occasioned by his default.

Further allowance to the widow, if the estate proves to be solvent. 1816, 95, § 1.

SECT. 26. When the estate of any deceased person shall be represented insolvent, and an allowance shall be thereupon made to his widow, if the estate shall afterwards prove to be solvent, the judge of probate may, by a new decree, make such further allowance to the widow, as the circumstances of the case may require.

CHAPTER 69.

OF THE APPOINTMENT OF TRUSTEES FOR MINORS AND OTHERS; AND OF THEIR POWERS AND DUTIES.

SECTION
1. Testamentary trustees to give bond;
2. Except in certain cases.
3. Further exceptions.
4. Neglecting it, to be considered as declining the trust.
5. Trustee may resign, with consent of the judge of probate.
6. Executor, &c., of trustee not bound to accept the trust.
7. Trustee may be removed.
8. Appointment of new trustee.
9. Trustees originally appointed by judge of probate, to give bond.
10. Appraisers, when to be appointed.
11. Supreme judicial court and court of probate may authorize sales and investments.
12. And determine in equity all matters of trust.
13. Proceedings in suits on trustees' bonds.

SECTION 1. Every person, who shall be appointed a trustee for minors or others, under any last will, excepting such as are exempted by the succeeding sections of this chapter, shall, before entering on the duties of his trust, give bond with sufficient surety or sureties, to the judge of probate for the county in which the will shall have been proved, and in such sum as the judge shall prescribe, with condition as follows: Testamentary trustees to give bond. 1817, 190, § 37.

First, to make a true inventory of all the real estate, and all the goods, chattels, rights and credits, belonging to him as trustee, and which shall come to his possession or knowledge, and to return the same into the probate court, at such time as the judge shall direct:

Secondly, to dispose of and manage all such estate and effects, and faithfully to discharge his trust in relation thereto, according to law and the will of the testator:

Thirdly, to render an account on oath of the property in his hands, and of the management and disposition thereof, within one year, and at any other times when required by the judge of probate: and

Fourthly, at the expiration of his trust, to settle his accounts with the judge of probate, and to pay over and deliver all the estate and effects remaining in his hands, or due from him, on such settlement, to the person or persons who shall be entitled thereto according to law, and the will of the testator.

SECT. 2. Such trustee shall be exempted from giving bond as aforesaid, when the testator, in the will appointing him, shall have ordered or requested that such bond shall not be taken, unless, from a change in his situation or circumstances, or other sufficient cause, the judge of probate shall think it proper to require him to give bond; and he shall also be exempted, when all the persons interested in the trust fund, being of full age and legal capacity, shall certify to the judge of probate their consent that such bond shall not be required. — except in certain cases. 1817, 190, § 37.

SECT. 3. No trustee, who shall have undertaken the trust before this act shall go into operation, shall be required to give bond in any case, in which it shall not have been required, by the laws in force at the time of his undertaking the trust, unless, from a change in his Further exception. 1817, 190, § 37.

situation or circumstances, or other sufficient cause, the judge of probate shall think it proper to require him to give bond.

Neglecting it, to be considered as declining the trust. 1817, 190, § 38.

SECT. 4. Every person appointed a trustee, who shall neglect to give bond as aforesaid, within such time as the judge of probate shall allow for that purpose, shall be considered as having declined the trust.

Trustee may resign, with consent of the judge of probate. 1817, 190, § 39.

SECT. 5. Every such trustee may, upon his own request, be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same.

Executor, &c. of trustee not bound to accept the trust. 1817, 190, § 39.

SECT. 6. No person, succeeding to such trust, as executor or administrator of a former trustee, shall be required to accept the same against his will.

Trustee may be removed. 1817, 190, § 41.

SECT. 7. When any trustee, appointed either by a testator or by the judge of probate, shall become insane, or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge may, after notice to such trustee and to all others interested, remove him and appoint another in his stead.

Appointment of new trustee. 12 Pick. 445. 1817, 190, § 40.

SECT. 8. When any person, appointed a trustee, shall decline or resign the trust, or shall die before the objects thereof are accomplished, if no adequate provision is made, by the will, for supplying such vacancy, the judge of probate shall, after notice to all persons interested, appoint a new trustee, to act alone or jointly with the others, as the case may be; and every trustee, appointed by the judge of probate, by force of this or of the preceding section, shall have and exercise the same powers, rights and duties, whether as a sole or a joint trustee, as if he had been originally appointed by the testator; and the trust estate shall vest in him, in like manner as it did or would have vested in the trustee, in whose place he is substituted; and the judge may, moreover, order such conveyances to be made by the former trustee or his representatives, or by the other remaining trustees, as may be proper or convenient, to vest in the trustee, newly appointed, either alone or jointly with the others, as the case may be, the estate and effects that are to be held in trust.

Trustee, originally appointed by judge of probate to give bond. 1817, 190, § 41.

SECT. 9. Every trustee, appointed by the judge of probate, shall, before entering on the duties of his trust, give bond in the manner prescribed in the first section; excepting only, that the judge may dispense with the making and returning of an inventory by the new trustee, when he shall think such inventory unnecessary; in which case the condition of the bond shall be altered accordingly.

Appraisers, when appointed.

SECT. 10. In all cases, when an inventory is required to be returned by any trustee, the estate and effects shall be appraised by three suitable persons, to be appointed and sworn, as is prescribed by law with respect to the estate of a deceased testator or intestate.

S. J. court and court of probate may authorize sales and investments. 1820, 54, § 3; 1817, 190, § 35.

SECT. 11. The judges of probate in their respective counties, and also the supreme judicial court, may, on the application of the trustee, or of any person interested in the trust estate, after notice to all other persons interested therein, authorize or require the trustee to sell any stock in the public funds, or in any bank, insurance company or other corporation, or any other personal estate or effects held by him in trust, and to invest the proceeds of such sale, and also any other trust moneys in his hands, in real estate, or in any other manner that shall be most for the interest of all concerned therein;

and the said courts respectively may from time to time give such further directions, as the case may require, for managing, investing, and disposing of the trust fund, subject to any provisions contained in the will respecting the disposal of the trust estate.

SECT. 12. The said courts, respectively, may hear and determine in equity all other matters relating to the trusts mentioned in this chapter.

— and determine in equity, all matters of trust.

SECT. 13. Any bond, given by a trustee, as provided in this chapter, may be put in suit by order of the judge of probate, for the use and benefit of any person interested in the trust estate; and the proceedings in such suit shall be conducted in like manner, as is provided in the seventieth chapter, with respect to bonds given by executors or administrators.

Proceedings in suits on trustees' bonds. 1817, 190, § 43.

CHAPTER 70.

GENERAL PROVISIONS CONCERNING THE SETTLEMENT OF THE ESTATES OF DECEASED PERSONS.

SECTION

1. Jurisdiction, when the judge of probate is interested.
2. Bond may be taken from executors, &c., jointly or severally. Sureties to be approved.
3. Administration bond may be put in suit for the benefit of creditor, when, &c.
4. Same, when the estate is insolvent.
5. And for the benefit of the next of kin;
6. Or of any other person interested.
7. Bond, how indorsed, and who liable for the costs of suit.
8, 9. Process to bring in the principal obligor.
10. Proceedings in such suit on administration bond:—judgment and execution:—for the benefit of a creditor:—of the next of kin:—on breach for not accounting:—on any other breach:—for the use of two or more persons:—for costs as well as damages—Execution, how served.
11. Moneys recovered thereon, how disposed of.
12. Scire facias, to recover further damages.
13. Estate of deceased in the hands of heirs, &c., liable for certain debts.
14. Mode of proceeding in such case.
15. Estate of any heir, &c., liable after his death.
16. Where two or more are liable, creditor may have a bill in equity.

SECTION

17. Case of insolvency, &c., of any heir or devisee.
18. Amendments allowed, when necessary, to add parties.
19. Heirs, &c., liable to contribution between themselves.
20. Acts of executor or administrator before removal, valid.
21. Administration on the estate of a foreigner, or citizen of another state.
22. Residue, to be distributed here, or transmitted, &c.
23, 24, 25, 26. Distribution, when such estate is insolvent.
27. When sureties in probate court become insufficient, new bond to be required.
28. Surety may be discharged after six years.
29. Principal to give new bond, or be removed.
30. Prior sureties liable for all preceding breaches.
31. Account may be allowed on the oath of one joint executor, &c.
32. Final discharge of executor, &c., and evidence thereof perpetuated.
33. Money due, if not claimed, to be deposited, &c.
34. How paid afterwards.
35. Suits between co-executors, &c., may be determined in equity.
36. Appeal allowed to supreme judicial court in all cases mentioned in this chapter.

Jurisdiction when the judge of probate is interested, &c. 1817, 190, § 5.

SECTION 1. When any judge of probate shall be disqualified to act in any case within his jurisdiction, by reason of his personal interest therein, or of his relation to any of the parties, such case shall be transferred to the probate court of the most ancient adjoining county, and the judge of such adjoining county shall have jurisdiction thereof, and shall proceed therein in all respects, as he would and ought to have done, if the case had originated within his own county; excepting only, that when any such case shall occur in Nantucket, or Duke's county, it shall be transferred to the probate court of the county of Barnstable, and be there heard and determined in manner aforesaid.

Bond may be taken from executors, &c. jointly or severally. Sureties to be approved. 1834, 174, § 6. 1782, 28, § 4. 1817, 190, § 23.

SECT. 2. When two or more persons are appointed executors, administrators, or testamentary trustees, the judge of probate may take a separate bond with sureties from each of them, or a joint bond with sureties from all of them together; and in all bonds with sureties, given to any judge of probate, all the sureties shall be inhabitants of this state, and such as the judge shall approve.

Administration bond may be put in suit for the benefit of a creditor, when, &c. 1786, 55, § 2.

SECT. 3. The bond, given by executors or administrators for the discharge of their trust, may be put in suit by any creditor of the deceased, for his own benefit, when he shall have recovered judgment for his debt against the executors or administrators, and they shall have neglected, upon demand made by the creditor, to pay the same, or to show sufficient goods or estate of the deceased, to be taken in execution for that purpose.

—same, when the estate is insolvent. 1786, 55, § 2.

SECT. 4. If the estate is insolvent, a suit on the bond may be brought by any creditor, when the amount due to him has been ascertained by the decree of distribution, if the executor or administrator shall neglect to pay the same when demanded.

—and for the benefit of the next of kin. 1786, 55, § 2.

SECT. 5. Such a suit may be brought by any person as next of kin, to recover his share of the personal estate, after a decree of the probate court, ascertaining the amount due to him, if the executor or administrator shall neglect to pay the same when demanded.

—or of any other person interested. 16 Mass. 524. 1786, 55, § 2.

SECT. 6. When it shall appear to the judge of probate, on the representation of any person interested in the estate of any deceased testator or intestate, that the executor or administrator has failed to perform his duty, in any other particular than those before specified, the judge may authorize any creditor, next of kin, legatee, or other person aggrieved by such mal-administration, to bring an action on the bond.

Bond, how indorsed, and who liable for the costs of suit. 1786, 55, § 2.

SECT. 7. In all the preceding cases, the writ shall be indorsed by the persons, for whose benefit or at whose request the action is brought, or by their attorney, and the indorsers shall be liable for the costs of suit, and execution therefor shall be issued against them, and not against the judge of probate; and when the action is brought for the benefit of any person or persons, as creditors or next of kin, as before provided in this chapter, there shall be a further indorsement on the writ, specifying that it is brought for the use or benefit of such creditors, or next of kin.

Process to bring in the principal obligor. 1783, 20, § 2.

SECT. 8. If the principal in any such bond shall be resident within this state, at the commencement of the action, and shall not be made a defendant therein, or shall not be served with process, the court may, at the request of any of the sureties, continue or post-

pone the action, so long as may be necessary to summon or bring in the principal, as provided in the following section.

SECT. 9. The sureties may thereupon take out a writ, in such form as the court shall prescribe, to arrest the principal, or to attach his goods or estate, and to summon him to appear and answer as a defendant in the original action; and if, after being duly served with such process, fourteen days at least before the time appointed for him to appear and answer to the suit, he shall neglect so to do, and if the judgment shall be for the plaintiff, it shall be rendered against the said principal obligor, together with the other defendants, in the same manner as if he had been originally a party to the suit; and any attachment made, or bail taken, on such process, shall be liable to respond the judgment, in like manner as if made or taken in the original suit. Same subject. 1788, 20, § 2.

SECT. 10. Every suit on an administration bond shall be brought in the supreme judicial court, held for the county in which the bond is taken; and when it shall appear that the condition of the bond has been broken, the court, upon a hearing in chancery, shall award execution in manner following: Proceedings in suit on administration bond. Judgment and execution,

First, if the action is brought for the benefit of a creditor, execution shall be awarded in the name of the plaintiff, but expressed to be for the use of the creditor, for the amount due to him, upon the judgment that he shall have recovered, or upon the order of distribution in his favor: —for the benefit of a creditor; 1786, 55.

Secondly, if it is brought for the benefit of any person as next of kin, a like execution shall be awarded for the use of such person, for the amount due to him, according to the decree of the probate court: —of the next of kin; 1786, 55.

Thirdly, if it is brought for a breach of the condition, in not accounting for the estate, as required in the sixty seventh chapter, the execution shall be awarded in the name of the plaintiff, without expressing that it is for the use of any other person: —on breach for not accounting;

Fourthly, if the action is brought for any other breach of the condition of the bond, execution shall be awarded, without expressing that it is for the use of any particular person, for the full value of all the estate of the deceased, that shall have come to the hands of the executor or administrator, and for which he shall not satisfactorily account, and for all such damages as shall have been occasioned by his neglect or mal-administration: —on any other breach; 1786, 55. 1816, 94, § 2.

Fifthly, if there be two or more persons, for whose use execution is to be awarded, as provided in this section, a separate execution shall be issued for the sum due to each of them: — for the use of two or more persons:

Sixthly, the execution, in every case, shall include the costs of suit, as well as debt or damages; and if there is more than one execution, the amount due for costs shall be equally divided between them: — for costs as well as damages:

Seventhly, in every case, the person, for whose use the execution is expressed to be awarded, shall be considered in all respects as the judgment creditor, and may cause it to be levied in his own name, and for his own benefit, as if the action had been brought, and the judgment recovered, in his name. — execution, how served. 1786, 55.

SECT. 11. All moneys, received on any execution issued as aforesaid, (unless the execution be awarded for the use of a creditor, Moneys received thereon, how disposed of.

or person next of kin, as provided in the first and second subdivisions of the preceding section,) shall be paid over to the co-executor or co-administrator, if there be any, or to whoever shall then be the rightful executor or administrator, and shall be assets in his hands, to be administered according to law.

Scire facias, to recover further damages.

SECT. 12. If, after the awarding of execution, as heretofore provided in this chapter, the executor or administrator shall commit a new breach of the condition of the bond, or if any creditor, next of kin, legatee, or other person interested in the estate, shall have a claim for further damages, on account of any neglect or mal-administration of the executor or administrator, a writ of scire facias on the original judgment may be sued out, in like manner as is provided for the commencement of the original suit; and the court shall thereupon proceed to award a new execution, in like manner as might have been done in the original suit.

Estate of deceased in the hands of heirs, &c., liable for certain debts. 13 Mass. 384. 1788, 66, § 5.

SECT. 13. After the settlement of any estate by an executor or administrator, and after the expiration of the time, limited for the commencement of actions against him by the creditors of the deceased, the heirs, next of kin, devisees and legatees of the deceased, shall be liable, in the manner provided in the following sections, for all debts, which could not have been sued for, against the executor or administrator, and for which provision shall not have been made, according to the sixty sixth chapter.

Mode of proceeding in such case. 1788, 66, § 5.

SECT. 14. Any such creditor, whose right of action shall first accrue, after the expiration of the said time of limitation, and whose claim shall not have been presented to the judge of probate, or, if presented, shall not have been allowed, as provided in the sixty sixth chapter, may recover the same against the heirs and next of kin of the deceased, and the devisees and legatees under his will, each one of whom shall be liable to the creditor, to an amount not exceeding the value, whether of real or personal estate, that he shall have received from the deceased; provided, that if, by the will of the deceased, any part of his estate, or any one or more of the devisees or legatees, shall be made exclusively liable for the debt, in exoneration of the residue of the estate, or of the other devisees or legatees, the provisions of the will shall be complied with in that respect; and the persons and estate, so exempted by the will, shall be liable for only so much of the debt, if any, as cannot be recovered from those who are first chargeable therewith; and provided further, that no such suit shall be maintained, unless it be commenced within one year, next after the time when the right of action shall first accrue.

Estate of any heir, &c., liable after his death. 1788, 66, § 5.

SECT. 15. If any of the said heirs, next of kin, devisees or legatees, shall die, without having paid his just proportion of such debt, his executors and administrators shall be liable therefor, as for his proper debt, to the extent to which he would have been liable, if living.

Where two or more are liable, creditor may have a bill in equity. 10 Mass. 450.

SECT. 16. If, in the case specified in the two preceding sections, there should be more than one person liable for the debt, the creditor may recover the same, in a bill of equity in the supreme judicial court, against all the persons so liable, or as many of them as are within the reach of process; and the court shall thereupon determine, by the verdict of a jury, if either party require it, what

sum, if any, is due to the plaintiff; and they shall also decide, according to the course of proceedings in chancery, how much each one of the defendants is liable to pay, towards the satisfaction of the debt, and may award execution and other proper process therefor.

SECT. 17. If any one of the heirs, devisees or others, who were originally liable for the debt, shall be insolvent, or unable to pay his proportion thereof, or shall be beyond the reach of process, the others shall nevertheless be liable to the creditor, for the whole amount of his debt; provided, that no one shall be compelled to pay more than the amount received by him from the estate of the deceased.

Case of insolvency, &c., of any heir or devisee. 1783, 24, § 18. 1788, 66.

SECT. 18. No such suit shall be dismissed or barred, for want of including, as defendants, all the persons who might have been so included; but, in any stage of the cause, the court may award proper process to bring in any other parties, and may allow such amendments, as may be necessary to charge them as defendants, upon such terms as the court shall think reasonable.

Amendments allowed, when necessary, to add parties.

SECT. 19. If, in consequence of insolvency, absence, or from any other cause, any one of the persons liable for such debt shall fail to pay his just proportion thereof to the creditor, he shall be liable to indemnify all, who shall, by reason of such failure on his part have paid more than their just proportion of the debt; such indemnity to be recovered by all of them jointly, or in separate actions by any one or more of them, for his or their parts respectively, at their election.

Heirs, &c., liable to contribution between themselves.

SECT. 20. When any letters of administration shall be revoked, or when any executor or administrator shall be removed, all previous sales, whether of real or personal estate, made lawfully by the executor or administrator, and with good faith on the part of the purchaser, and all other lawful acts, done by such executor or administrator, shall remain valid and effectual.

Acts of executor or administrator before removal, valid.

SECT. 21. When administration shall be taken in this state, on the estate of any person who was an inhabitant of any other state or country, his estate found here, after payment of his debts, shall be disposed of according to his last will, if he left any duly executed according to the laws of this state; and if there be no such will, his real estate shall descend according to the laws of this state, and his personal estate shall be distributed and disposed of, according to the laws of the state or country of which he was an inhabitant.

Administration on the estate of a foreigner, or citizen of another state. 9 Mass. 355. 11 Mass. 264.

SECT. 22. Upon the settlement of such an estate, and after the payment of all debts, for which the same is liable in this state, the residue of the personal estate, if any, may be distributed and disposed of in manner aforesaid, by the probate court in which the estate is settled; or it may be transmitted to the executor or administrator, if there be any, in the state or country where the deceased had his domicil, to be there disposed of according to the law of the place; as the court, under the circumstances of the case, shall think best.

Residue, to be distributed here, or transmitted, &c.

SECT. 23. If such deceased person died insolvent, his estate found in this state shall, as far as practicable, be so disposed of, that all his creditors, here and elsewhere, may receive each an equal share, in proportion to their respective debts.

Distribution, when such estate is insolvent. 3 Pick. 128. 6 Pick. 481. 8 Pick. 475.

SECT. 24. To this end, his estate shall not be transmitted to the foreign executor or administrator, until all his creditors, who are citizens of this state, shall have received the just proportion, that would

Same subject.

be due to them, if the whole estate of the deceased, wherever found, that is applicable to the payment of common creditors, were divided among all the said creditors, in proportion to their respective debts, without preferring any one species of debt to another.

Same.

SECT. 25. In such a case, no creditor, not being a citizen of this state, shall be paid out of the assets found here, until all those who are citizens shall have received their just proportion, as provided in the preceding section.

Same.

SECT. 26. If there be any residue, after such payment to the citizens of this state, the same may be paid to any other creditors, who shall have duly proved their debts here, in proportion to the amount due to each of them respectively; provided, that no one shall receive more than would be due to him, if the whole estate were divided ratably among all the creditors, as before provided; and the balance, if any, may be transmitted to the foreign executor or administrator; or, if there be none such, it shall, after the expiration of four years from the appointment of the administrator, be distributed ratably among all the creditors, both citizens and others, who shall have proved their debts in this state.

When sureties in a probate bond become insufficient, new bond to be required. 1817, 190, § 42.

SECT. 27. Whenever the sureties in any bond, given to the judge of probate, shall be insufficient, the supreme judicial court, or the probate court, on the petition of any person interested, and after notice to the principal in the bond, may require a new bond to be given, with such surety or sureties, as the court shall judge sufficient.

Surety may be discharged after six years. 1817, 190, § 42.

SECT. 28. Any surety, in a bond given to the judge of probate, may at any time, after the expiration of six years from the date of the bond, upon his petition to the supreme judicial court, or the probate court, be discharged from all further responsibility upon such bond, if the court, after due notice to all persons interested, shall think it reasonable and proper to discharge him; and the principal shall thereupon give a new bond, with such surety or sureties, as the court shall judge sufficient.

Principal to give new bond, or be removed. 1817, 190, § 42.

SECT. 29. If, in the cases specified in the two preceding sections, the principal shall not give such new bond, within such time as shall be ordered by the court, he shall be removed from his trust, and some other person may be appointed in his stead, as the circumstances of the case may require.

Prior sureties liable for all preceding breaches. 1817, 190, § 42.

SECT. 30. When a new bond shall be required, as above provided, the sureties in the prior bond shall, nevertheless, be liable for all breaches of the condition, committed before the new bond shall be approved by the judge of probate.

Account may be allowed on the oath of one joint executor, &c.

SECT. 31. When any account is rendered in the probate court, by two or more joint executors, administrators, or trustees, the judge of probate may, in his discretion, allow the account, upon the oath of any one of them.

Final discharge of executor, &c.; and evidence thereof perpetuated.

SECT. 32. When an executor, administrator, guardian, or trustee, shall have paid or delivered over to the persons entitled thereto, the money or other property in his hands, as required by any decree of distribution, or other decree of the probate court, he may perpetuate the evidence of such payment, by presenting to the said court, within one year after such decree was made, an account of such payments, or of the delivery over of such property, which, being proved to the

satisfaction of the judge, and verified by the oath of the party, shall be allowed as his final discharge, and ordered by the judge to be recorded; and such discharge shall forever exonerate the party and his sureties from all liability under such decree unless his account shall be impeached for fraud or manifest error.

SECT. 33. If any sum of money, directed by a decree of the probate court to be paid over, as mentioned in the last section, shall remain for the space of six months unclaimed, the executor, administrator, guardian or trustee, who was ordered to pay over the same, may deposite it in some savings bank, or other like institution, or may invest it in bank stock, or other stocks, as the court of probate shall direct, to accumulate for the benefit of the person entitled thereto; and such deposite or investment shall be made in the name of the judge of probate, for the time being, and shall be subject to the order of the said judge and his successors in office, as hereinafter provided; and the person, making such deposite or investment, shall file in the probate court a memorandum thereof, with the original certificates or other evidence of title thereto, which shall be allowed as a sufficient voucher for such payment under the said decree.

Money due, if not claimed, to be deposited, &c.

SECT. 34. When the person, entitled to the money deposited, shall satisfy the judge of probate for the time being, of his right to receive the same, the judge shall cause it to be paid over and transferred to him.

How paid afterwards.

SECT. 35. The supreme judicial court may hear and determine in equity all disputes and controversies between co-executors and co-administrators, and between their respective legal representatives, in all cases where there is not a plain, adequate, and complete remedy at law; and in such case the court shall have the same power, and may proceed in like manner, as is provided in cases between copartners, joint tenants, or tenants in common.

Suits between co-executors, &c. may be determined in equity. 1832, 162.

SECT. 36. Any person aggrieved at any order, sentence, decree or denial, of the judge of probate, in any case, or relating to any matters, provided for in the fourth title, may appeal therefrom to the supreme judicial court, in the manner prescribed in the eighty first and eighty third chapters.

Appeal allowed to S. J. C. in all cases mentioned in this chapter.

TITLE V.

Of title to real property by special provisions of law.

CHAPTER 71. Of the sale of lands for the payment of debts, by executors, administrators, and guardians.

CHAPTER 72. Of the sale of land of minors, and other persons under guardianship, and securing the proceeds for their use.

CHAPTER 73. Of taking land to satisfy executions for debt.

CHAPTER 71.

OF THE SALE OF LANDS FOR THE PAYMENT OF DEBTS, BY EXECUTORS, ADMINISTRATORS, AND GUARDIANS.

SECTION

1. Real estate of a deceased person may be sold for payment of his debts, in case, &c.
2. What courts may license the sale.
3. Petition for license, &c.
4. The whole to be sold, when a partial sale would injure the residue.
5. Judge of probate to certify the facts.
6. Bond to be given in such case.
7. Case of devise for payment of debts, &c.
8. Notice of petition to be given to all who are interested.
9. Persons interested may give bond, and prevent the sale.
10. Upon obtaining license, the executor or administrator may convey.
11. Sale to include lands fraudulently conveyed by deceased, rights of entry, &c.
12. Such lands may be first recovered by the executor or administrator.
13. Action therefor, how brought.
14. Oath to be taken by executor or administrator before the sale.
15. Notice of sale, how given.
16. Evidence thereof, how perpetuated.
17. Sale to be by public auction; may be adjourned.
18. Notice of adjournment, how given.
19. License in force for one year only, except, &c.
20. Real estate, when to be sold for payment of legacies.
21. Foreign executor or administrator may be licensed to sell real estate.
22. To give bond, unless he is already bound.
23. To give a further bond to account for the surplus, when he sells more than is necessary.
24. Oath, notice of sale, and perpetuating evidence of notice.
25. Proceedings in probate court to be had in the county where copy of appointment is filed.
26. Real estate of a ward may be sold by his guardian, for payment of his debts.
27. The whole to be sold, when a partial sale would injure the residue.
28. Overseers of the poor to give their assent, in certain cases.
29. Who entitled to notice, as interested in the estate.
30. What courts may license the sale.
31. Foreign guardian may be licensed to sell the estate of his ward.
32. To give bond, unless he is already bound.
33. To give a further bond, when he sells more than is necessary.
34. Surplus proceeds of all sales made under this chapter, to be considered as real estate.
35. Oath by guardian, notice of sale, and perpetuating evidence of notice.
36. Costs may be awarded on petition for sale, in certain cases.
37. Actions for lands sold by executor, administrator, or guardian, limited to five years, unless, &c.
38. Requisites of a valid sale, as against an heir or ward.
39. Executor, administrator and guardian liable for neglect or misconduct in the sale.
40. Requisites of a valid sale, as against claimants, adverse to the heir or ward.

Real estate of deceased may be sold for payment of his debts, in case, &c.
1783, 32, § 1.
1818, 112.

SECTION 1. When the goods and chattels of any deceased person, in the hands of his executor or administrator, shall be insufficient to pay all his debts, with the charges of administering the estate, his executor or administrator may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

What courts may license the sale.
5 Pick. 140.
1783, 32, § 1.
1817, 190, § 10.

SECT. 2. Such license may be granted by the supreme judicial court, or by the court of common pleas, in any county, or by the probate court, in which the letters testamentary or of administration were granted.

SECT. 3. In order to obtain such license, the executor or administrator shall present to the court a petition, setting forth the amount of the debts due from the deceased, as nearly as they can be ascertained, and the amount of the charges of administration, and the value of the personal estate; and if it shall be necessary to sell only a part of the real estate, he may also set forth the value, description, and condition of the estate, or of such part thereof as he shall propose to sell; and the court may, in all cases, when it is not necessary to sell the whole, decide and direct what specific part of the estate shall be sold.

Petition for license, &c. 6 Mass. 149. 1783, 32, §§ 1 & 2.

SECT. 4. If it shall be represented in such petition, and shall appear to the court, that it is necessary to sell some part of the real estate, and that by such partial sale the residue of the estate, or of some specific part or piece thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof, as the court shall think necessary and most for the interest of all concerned therein.

The whole to be sold, when a partial sale would injure the residue. 13 Mass. 162. 15 Mass. 58. 1783, 32, §§ 1 & 2.

SECT. 5. Every such petition, when made to the supreme judicial court, or court of common pleas, shall be accompanied by a certificate from the judge of probate of the county, where the executor or administrator was appointed, setting forth the amount of the debts due from the deceased, so far as they are ascertained, and the value of his real and personal estate; and when the petitioner shall pray for the sale of more than is necessary for the payment of debts, in order to prevent damage to the residue, the judge of probate shall further certify his opinion, whether it is necessary that the whole, or a part of the estate should be sold, and if part only, what part.

Judge of probate to certify the facts. 1783, 32, § 3.

SECT. 6. When the executor or administrator is licensed to sell more than is necessary for the payment of debts, he shall before the sale give bond, with sufficient surety or sureties, to the judge of probate for the county in which he was appointed, with condition to account for all the proceeds of the sale, that shall remain after payment of the debts and charges, for which the land was sold, and to dispose of the same according to law.

Bond to be given in such case. 8 Pick. 526. 3 Greenl. 282. 1783, 32, § 2. 1834, 174, §§ 5 & 6.

SECT. 7. If there should be, in the last will of the deceased, any disposition of his estate for the payment of his debts, or any provision, which may require or induce the court to marshal the assets, in any manner different from that which the law would otherwise prescribe, such devises, or parts of the will, shall be set forth in the petition, and a copy of the will shall be exhibited to the court; and the assets shall be marshalled accordingly, so far as it can be done consistently with the rights of the creditors.

Case of devise for payment of debts, &c. 6 Mass. 149.

SECT. 8. No such license shall be granted until notice of the petition, and of the time and place appointed for hearing the same, shall have been given to all persons interested in the estate, that they may appear and show cause why the same should not be granted; such notice to be served on them personally, fourteen days at least before the time appointed for hearing the petition, or to be published three weeks successively in such newspaper as the court shall order; provided, that if all the said persons interested signify in writing their assent to such sale, the notice may be dispensed with.

Notice of petition to be given to all who are interested. 1783, 32, § 1. 1817, 190, § 10.

SECT. 9. Such license shall not be granted, if any of the persons

Persons interested may give

bond, and prevent the sale. 1817, 190, § 10.

interested in the estate shall give bond to the executor or administrator, in a sum and with sureties to be approved by the court, with condition to pay all the debts mentioned in the petition, that shall eventually be found due from the estate, with the charges of administering the same, so far as the goods and chattels, rights and credits of the deceased shall be insufficient therefor.

Upon obtaining license, the executor or administrator may convey. 8 Greenl. 220. 1783, 32, § 2.

SECT. 10. If the facts set forth in the petition shall be proved to the satisfaction of the court, and if no sufficient cause be shown to the contrary, the court shall grant the license, and the executor or administrator shall be thereupon authorized to execute, in due form of law, conveyances of such real estate as he shall sell, which conveyances shall be effectual to pass to the purchaser all the estate, right, title and interest, in the granted premises, which the testator or intestate had therein, at the time of his decease, or which was then in any way chargeable with the payment of his debts.

Sale to include lands fraudulently conveyed by deceased, rights of entry, &c. 1805, 90, § 5. 11 Mass. 379. 14 Mass. 137.

SECT. 11. The real estate, liable to be sold as aforesaid, shall include all that the deceased may have conveyed with intent to defraud his creditors, and also all rights of entry, and rights of action, and all other rights and interests in lands, tenements, and hereditaments, which by law would descend to heirs; provided, that lands so fraudulently conveyed shall not be taken from any one, who purchased them for a valuable consideration, in good faith, and without knowledge of the fraud; but they shall be liable only in the same cases, in which they would have been liable to attachment or execution, by a creditor of the grantor, in his life time; and provided also, that no claim, by entry or by action, to lands so fraudulently conveyed, shall be made unless within five years next after the decease of the grantor.

Such lands may be first recovered by the executor or administrator.

SECT. 12. If the executor or administrator shall be licensed to sell any lands, so fraudulently conveyed by the deceased, or any to which he had a right of entry or of action, the executor or administrator may first obtain possession thereof by entry or by action, and may sell the same at any time, within one year after obtaining such possession.

Action therefor, how brought.

SECT. 13. If the executor or administrator shall have occasion to bring any such action, he may make a formal entry upon the premises, and bring the action on his own seizin acquired by such entry, demanding the land as executor or administrator.

Oath to be taken by executor or administrator before the sale. 1817, 190, § 11.

SECT. 14. Every executor and administrator, licensed to sell real estate as aforesaid, shall, before fixing on the time and place of sale, take and subscribe an oath before the judge of probate, or before some justice of the peace, in substance as follows; that, in disposing of the estate which he is licensed to sell, he will use his best judgment, in fixing on the time and place of sale, and that he will exert his utmost endeavors to dispose of the same, in such manner as will be most for the advantage of all persons interested therein.

Notice of sale, how given. 1783, 32, § 1. 1788, 66, § 1. 1829, 108, § 2.

SECT. 15. The executor or administrator shall give public notice of the time and place of such sale, by causing notifications thereof to be posted up, thirty days at least before the sale, in some public place in the town where the deceased person last dwelt, and in two adjoining towns, if there be so many in the county, and also in the town where the lands lie; or the court, which licenses the sale, may

order such notice to be published three weeks successively in any newspaper, instead of the posting of such notifications, and the executor or administrator shall publish the same accordingly.

SECT. 16. An affidavit of the executor or administrator, or of the person employed by him to give such notice, being made before the judge of probate, or before any justice of the peace, and filed and recorded, together with a copy of the notice, in the probate office, within one year after the sale, shall be admitted as evidence of the time, place, and manner of giving the notice.

Evidence thereof, how perpetuated. 1788, 66, § 1. 1812, 24. 1830, 145.

SECT. 17. Every such sale shall be made by public auction; and if at the time appointed for the sale, the executor or administrator shall deem it for the interest of all persons concerned therein, that the sale should be postponed, he may adjourn it for any time not exceeding fourteen days.

Sale to be by public auction; may be adjourned. 5 Greenl. 240. 1783, 32, § 1. 1817, 190, § 13.

SECT. 18. In case of such adjournment, notice thereof shall be given by a public declaration, at the time and place first appointed for the sale; and if the adjournment shall be for more than one day, further notice thereof shall be given, by posting and [*or*] publishing, as the time and circumstances may admit.

Notice of adjournment, how given.

SECT. 19. No such license shall be in force for more than one year after the granting thereof, excepting in the case before provided for, when a sale is made of land recovered by an executor or administrator.

License in force for one year only, except, &c. 1817, 190, § 12.

SECT. 20. When a testator shall have given any legacy, by a will that is effectual to pass or change [*charge*] real estate, and his goods, chattels, rights and credits, shall be insufficient to pay such legacy, together with his debts and the charges of administration, the executor, or the administrator with the will annexed, may be licensed to sell his real estate for that purpose, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter, in the case of a sale for the payment of debts.

Real estate when to be sold for payment of legacies. 14 Mass. 421. 1783, 32, § 1.

SECT. 21. When an executor or administrator shall be appointed in any other state, or in any foreign country, on the estate of any person dying out of this state, and no executor or administrator thereon shall be appointed in this state, the foreign executor or administrator may file an authenticated copy of his appointment in the probate court, for any county in which there may be any real estate of the deceased; after which, he may be licensed by the same probate court, or by the supreme judicial court, or court of common pleas, in any county, to sell real estate for the payment of debts or legacies, and charges of administration, in the same manner, and upon the same terms and conditions, as are prescribed in the case of an executor or administrator appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

Foreign executor or administrator may be licensed to sell real estate. 3 Mass. 514. 1817, 182, § 2.

SECT. 22. When it shall appear to the court granting the license, that such foreign executor or administrator is bound, with sufficient surety or sureties, in the state or country in which he was appointed, to account for the proceeds of such sale, for the payment of debts or legacies, and charges of administration, and a copy of such bond, duly authenticated, shall be filed in the probate court of the county where the copy of his appointment is filed, no further bond for that purpose shall be required of him here; otherwise, before making

To give bond, unless he is already bound. 1817, 182, § 2.

such sale, he shall give bond with sufficient surety or sureties to the judge of probate, for the same county, with condition to account for and dispose of the said proceeds, for the payment of the debts or legacies of the deceased, and the charges of administration, according to the law of the state or country in which he was appointed.

To give a further bond to account for the surplus, when he sells more than is necessary to pay, &c. 1817, 182, § 2. 1783, 32, § 2.

SECT. 23. When such foreign executor or administrator is licensed to sell more than is necessary for the payment of debts, legacies and charges of administration, as before provided for in this chapter, he shall, before making the sale, give bond, with sufficient surety or sureties, to the judge of probate, with condition to account, before the same judge, for all the proceeds of the sale, that shall remain after payment of the said debts, legacies and charges, and to dispose of the same according to law.

Oath, notice of sale, and perpetuating evidence of notice. 1817, 182.

SECT. 24. Every foreign executor or administrator, licensed to sell real estate, as provided in this chapter, shall, before fixing on the time and place of sale, take and subscribe an oath like that required to be taken, in the like case, by an executor or administrator appointed in this state; and he shall give public notice of the time and place of sale, and shall proceed therein in like manner, as is prescribed for an administrator appointed here, when making such a sale; and the evidence of the giving of such notice may be perpetuated in the same manner.

Proceedings in probate court to be had in the county, where copy of appointment is filed. 1817, 182.

SECT. 25. All proceedings, required to be had in a probate court in this state, respecting such sale by a foreign executor or administrator, shall be had in the court for the county, in which an authenticated copy of his appointment is filed, as provided in the twenty first section.

Real estate of a ward may be sold by his guardian, for payment of his debts. 5 Pick. 482. 1783, 38, § 4. 1806, 102. 1830, 140, § 1.

SECT. 26. When the goods, chattels, rights and credits, in the hands of the guardian of any minor, or of any idiot or insane person, or of any person under guardianship on account of excessive drinking, gaming, idleness or debauchery, shall be insufficient to pay all the just debts of the ward, with the charges of managing his estate, the guardian may be licensed to sell his real estate for that purpose, in like manner, and upon the like terms and conditions, as are prescribed in this chapter, in the case of a sale by executors or administrators, excepting in the particulars in which a different provision is hereinafter made.

The whole to be sold, when a partial sale would injure the residue. 1783, 32, § 2. 1818, 112, § 1. 1830, 140. 1834, 174, § 1.

SECT. 27. If it shall be represented in the petition by the guardian, and shall appear to the court, that it is necessary to sell some part of the real estate of the ward, and that by such partial sale the residue of the estate, or of some specific piece or part thereof, would be greatly injured, the court may license a sale of the whole of the estate, or of such part thereof as the court shall think necessary, and most for the interest of all concerned; the guardian giving bond to account for the surplus of the proceeds of the sale, in like manner as is prescribed in this chapter, in the case of a like sale by an executor or administrator.

Overseers of the poor to give their assent, in certain cases. 1818, 112, § 1. 1830, 140.

SECT. 28. No license shall be granted, as provided in the two preceding sections, in any case excepting that of minors, unless the overseers of the poor of the town or place, of which the ward is an inhabitant, or in which he resides, shall certify in writing their approbation of such proposed sale

SECT. 29. All those, who are next of kin, and heirs apparent or presumptive, of the ward, shall be considered as interested in the estate, and may appear as such, and answer to the petition of the guardian; and when personal notice of the petition is required to be given, they shall be notified as persons interested, according to the provisions respecting similar sales by executors and administrators, contained in this chapter.

Who entitled to notice, as interested in the estate.

SECT. 30. Such license to a guardian, in all the cases specified in this chapter, may be granted by the supreme judicial court, or by the court of common pleas in any county, or by the probate court, in which the guardian was appointed.

What courts may license the sale. 1783, 32, § 1. 1817, 190, § 10.

SECT. 31. When any minor, insane person or spendthrift, residing without this state, shall be put under guardianship, in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment, in the probate court for any county in which there may be any real estate of the ward; after which he may be licensed to sell the real estate, for the payment of the debts of the ward, and the charges of managing his estate, in the same manner, and upon the same terms and conditions, as are prescribed in this chapter, in the case of a guardian appointed in this state, excepting in the particulars in which a different provision is hereinafter made.

Foreign guardian may be licensed to sell the estate of his ward. 1817, 182, § 1.

SECT. 32. When it shall appear to the judge of probate, that the foreign guardian is bound, with sufficient surety or sureties, in the state or country where he was appointed, to account for the proceeds of such sale, and an authenticated copy of such bond shall be filed in the probate court, no further bond shall be required here; otherwise, he shall give bond, in like manner as is prescribed in this chapter, in the case of sales by foreign executors or administrators.

To give bond unless he is already bound. 1817, 182, § 2.

SECT. 33. When such foreign guardian shall be licensed to sell more than is necessary to pay the debts and charges, he shall, before making the sale, give bond, with sufficient surety or sureties, to the judge of probate, with condition to account, before the same judge, for all the proceeds of the sale, that shall remain after payment of the said debts and charges, and to dispose of the same according to law.

To give a further bond, when he sells more than is necessary. 1817, 182, § 2.

SECT. 34. In all cases of a sale by an executor, administrator or guardian, of part or the whole of the real estate of his testator, intestate or ward, under a license granted by any court, by virtue of the provisions of this chapter, whether such executor, administrator or guardian shall have been appointed in this sate or elsewhere, the surplus of the proceeds of the sale, remaining on the final settlement of the accounts, shall be considered as real estate, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been by the laws of this state, if it had not been sold.

Surplus proceeds of all sales made under this chapter, to be considered as real estate. 3 Mass. 518. 9 Pick. 130.

SECT. 35. Every guardian, whether appointed in this state or elsewhere, when licensed to sell real estate, as provided in this chapter, shall, before fixing on the time and place of sale, take and subscribe an oath, like that required to be taken in the same case by executors and administrators; and he shall give notice of the time and place of sale, and shall proceed therein, in like manner as is prescribed

Oath by guardian, notice of sale, and perpetuating evidence of notice. 1783, 66. § 1. 1814, 71. 1817, 182, § 2.

in the same case for executors and administrators; and the evidence of the giving of such notice may be perpetuated in the same manner.

Costs may be awarded on petition for sale in certain cases. 1783, 32, § 6.

SECT. 36. If any person shall appear and object to the granting of any license prayed for, under the provisions of this chapter, by an executor, administrator or guardian, and if it shall appear to the court that either the petition, or the objection thereto, is unreasonable, they may, in their discretion, award costs to the party prevailing in the case.

Actions for lands sold by executor, administrator or guardian, limited to 5 years, unless, &c. 1817, 190, § 12.

SECT. 37. No action, for the recovery of any estate, sold by an executor or administrator, under the provisions of this chapter, shall be maintained by any heir or other person, claiming under the deceased testator or intestate, unless it be commenced within five years next after the sale; and no action for any estate sold in like manner by a guardian shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; excepting only, that persons out of the state, and minors and others under any legal disability to sue, at the time when the right of action shall first accrue, may commence such action at any time within five years after the removal of the disability, or after their return to the state; and no entry shall be made, unless by judgment of law, upon any lands sold as aforesaid, with a view to avoid the sale, unless within the times of limitation before prescribed for the commencement of an action.

Requisites of a valid sale, as against an heir or ward.

SECT. 38. In case of an action, relating to any estate sold by an executor, administrator or guardian, in which an heir or other person claiming under the deceased, or in which the ward or any person claiming under him, shall contest the validity of the sale, it shall not be avoided on account of any irregularity in the proceedings, provided it shall appear;

First, that the executor, administrator or guardian, was licensed to make the sale, by a court of competent jurisdiction:

Secondly, that he gave a bond which was approved by the judge of probate, in case any bond were required by the court, upon granting the license:

Thirdly, that he took the oath prescribed in this chapter:

Fourthly, that he gave notice of the time and place of sale, as prescribed herein: and

Fifthly, that the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

Executor, administrator and guardian, liable for neglect or misconduct in the sale. 5 Pick. 521.

SECT. 39. If, in relation to such sale, there shall be any neglect or misconduct in the proceedings of the executor, administrator or guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor, in a suit on the probate bond, or otherwise, as the case may require.

Requisites of a valid sale, as against claimants adverse to the heir or ward.

SECT. 40. If the validity of a sale by an executor, administrator or guardian shall be drawn in question, by any person claiming adversely to the title of the deceased testator or intestate, or of the ward, or claiming under any title that is not derived from or through the deceased person or the ward, the sale shall not be held void on account of any irregularity in the proceedings, provided it shall appear that the executor, administrator or guardian, was licensed to make the sale, by a court of competent jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

CHAPTER 72.

OF THE SALE OF LAND OF MINORS, AND OTHER PERSONS UNDER GUARDIANSHIP, AND SECURING THE PROCEEDS FOR THEIR USE.

SECTION
1. Real estate of wards may be sold for their maintenance;
2. Or for the purpose of investing the proceeds.
3. When sold for their maintenance, the proceeds, how disposed of.
4. How, when sold for investment.
5. Residue of proceeds to be disposed of as real estate.
6. What courts may license the sale.
7. The license to be granted on petition of the guardian, and to specify the purpose of the sale.
8. Notice to be given to all persons interested.
9. Overseers of the poor to give their assent in certain cases.
10. Guardian to give bond with surety.
11. To take and subscribe an oath.
12. Sale, how conducted; notice thereof; and perpetuating evidence of notice.
13. No license to be in force for more than one year.
14. Foreign guardian may be licensed to sell the estate of his ward.
15. Oath, notice of sale, and perpetuating evidence of notice.
16. Proceedings in probate court to be had in the county where copy of appointment is filed.
17. Residue of proceeds of such sale, to be disposed of as real estate: bond to be given to account therefor accordingly.
18. Costs to be awarded on petitions for sale, in certain cases.
19. Actions for lands sold by guardians, limited to five years, unless, &c.
20. Requisites of a valid sale, as against the ward.
21. The guardian liable for neglect or misconduct in the sale.
22. Requisites of a valid sale, as against claimants adverse to the ward.

SECTION 1. When the income of the estate of any person under guardianship, whether as a minor, insane person, or spendthrift, shall be insufficient to maintain the ward and his family, his guardian may sell his real estate for that purpose, upon obtaining a license therefor, and proceeding therein in the manner hereinafter provided.

Real estate of wards may be sold for their maintenance. 1783, 38, § 4. 1806, 102.

SECT. 2. When it shall appear, upon the representation of any such guardian, that it would be for the benefit of his ward, that his real estate, or any part thereof, should be sold, and the proceeds thereof be put out on interest, or invested in some productive stock, his guardian may sell the same accordingly, upon obtaining a license therefor, and proceeding therein as hereinafter provided.

— or for the purpose of investing the proceeds. 1783, 32, § 5. 1826, 64. 1828, 121. 1830, 140, § 1.

SECT. 3. If the estate is sold for the maintenance of the ward and his family, as provided in the first section, the guardian shall apply the proceeds of the sale to that purpose, so far as necessary, and shall put out the residue, if any, on interest, or invest it in the best manner in his power, until the capital shall be wanted for the maintenance of the ward and his family; in which case the capital may be used for that purpose, as far as may be necessary, in like manner as if it had been personal estate of the ward.

When sold for their maintenance, the proceeds, how disposed of.

SECT. 4. If the estate is sold, in order to put out and invest the proceeds, as provided in the second section, the guardian shall make the investment according to his best judgment, or in pursuance of any order, that may be made relating thereto, by the probate court,

How, when sold for investment.

or the supreme judicial court, as provided in the seventy ninth chapter.

Residue of proceeds to be disposed of as real estate.

SECT. 5. In every case of the sale of real estate, as provided in this chapter, the residue of the proceeds, if any, remaining upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been, if it had not been sold.

What courts may license the sale. 1783, 32, § 1. 1817, 190, § 10.

SECT. 6. Such license, in either of the cases aforesaid, may be granted by the supreme judicial court, or the court of common pleas, in any county, or by the probate court for the county in which the guardian is appointed; and when the application is made to the supreme judicial court, or the court of common pleas, it shall be accompanied by a certificate from the judge of probate for the same county, setting forth his opinion as to the necessity or expediency of making the proposed sale.

The license to be granted on petition of the guardian, and to specify the purpose of the sale.

SECT. 7. In order to obtain such license, the guardian shall present to the court a petition, setting forth the condition of the estate, and the facts and circumstances on which the petition is founded, tending to show the necessity or expediency of a sale; and if after a full examination, on the oath of the petitioner or otherwise, it shall appear to the court, either that it is necessary, or that it would be for the benefit of the ward, that the real estate or any part of it should be sold, they may grant a license therefor, specifying therein, whether the sale is to be made for the maintenance of the ward and his family, or in order that the proceeds may be put out and invested as aforesaid.

Notice to be given to all persons interested.

SECT. 8. No such license shall be granted, until notice by public advertisement or otherwise, as the court shall order, shall have been given to the next of kin of the ward, and to all persons interested in the estate, to appear and show cause why the same should not be granted.

Overseers of the poor, to give their assent in certain cases. 1806, 102. 1826, 64. 1830, 140, § 1.

SECT. 9. No such license shall be granted for the sale of any estate, excepting that of a minor, unless the overseers of the poor of the town or place, of which the ward is an inhabitant, or in which he resides, shall certify in writing their approbation of such proposed sale.

Guardian to give bond with surety. 1783, 32, § 2. 1834, 174, § 7.

SECT. 10. Every guardian, licensed to sell real estate as aforesaid, shall, before the sale, give bond to the judge of probate for the county, in which he was appointed, with sufficient surety or sureties, with condition to sell the same, in the manner prescribed for sales of real estate by executors and administrators, and to account for and dispose of the proceeds of the sale, in the manner provided by law.

— to take and subscribe an oath. 1817, 190, § 11.

SECT. 11. Such guardian shall, also, before fixing on the time and place of sale, take and subscribe an oath, in substance, like that required in the seventy first chapter to be taken by an executor, administrator, or guardian, when licensed to sell real estate by force of that chapter.

Sale, how conducted; notice thereof; and perpetuating evidence of notice.

SECT. 12. He shall also give public notice of the time and place of sale, and shall proceed therein in like manner as is prescribed in the case of a sale by a guardian in the seventy first chapter; and the evidence of the giving of such notice may be perpetuated in the same

manner, and with the same effect, as is provided in the like case in that chapter. 1788, 66, § 6. 1814, 71.

SECT. 13. No license granted in pursuance of this chapter shall be in force for more than one year after the time of granting the same. No license in force for more than one year. 1817, 190, § 12.

SECT. 14. When any minor, insane person, or spendthrift, residing without this state, shall be put under guardianship, in the state or country in which he resides, and shall have no guardian appointed in this state, the foreign guardian may file an authenticated copy of his appointment, in the probate court for any county, in which there may be any real estate of the ward; after which, he may be licensed by the probate court for the same county, or by either of the other two courts beforementioned, to sell the real estate of the ward in any county, in the same manner and upon the same terms and conditions, as are prescribed in this chapter, in the case of a guardian appointed in this state, excepting in the particulars hereinafter mentioned. Foreign guardian may be licensed to sell the estate of his ward. 1817, 182, § 1.

SECT. 15. Every foreign guardian, so licensed to sell real estate, shall take and subscribe the oath, required in the like case of guardians appointed in this state, and shall give notice of the time and place of sale, and conduct the same, in the manner prescribed for guardians appointed here, and may perpetuate the evidence of the notice in the same manner. Oath, notice of sale, and perpetuating evidence of notice.

SECT. 16. All the proceedings, required to be had in any probate court in this state, respecting such sale by a foreign guardian, shall be had in the court for the county, in which the authenticated copy of his appointment is filed. Proceedings in probate court to be had in the county, where copy of appointment is filed. 1817, 132.

SECT. 17. Upon every such sale by a foreign guardian, the proceeds of the sale, or as much thereof, as may remain upon the final settlement of the accounts of the guardianship, shall be considered as real estate of the ward, and shall be disposed of among the same persons, and in the same proportions, as the real estate would have been, according to the laws of this state, if it had not been sold; and the foreign guardian shall, in every case, before making the sale, give bond, with such sufficient surety or sureties, to the judge of probate, with condition to account for and dispose of the same accordingly. Residue of proceeds of such sale, to be disposed of as real estate; bond to be given to account therefor accordingly. 3 Mass. 518. 9 Pick. 130.

SECT. 18. If any person shall appear, and object to the granting of any license prayed for under the provisions of this chapter, and if it shall appear to the court, that either the petition, or the objection thereto, is unreasonable, they may in their discretion, award costs for the party prevailing in the case. Costs to be awarded on petitions for sale, in certain cases. 1783, 32, § 6.

SECT. 19. No action, for the recovery of any estate, sold by a guardian under the provisions of this chapter, shall be maintained by the ward, or by any person claiming under him, unless it be commenced within five years next after the termination of the guardianship; and no entry shall be made, unless by judgment of law, upon any lands sold as aforesaid, with a view to avoid the sale, after the expiration of the said five years; excepting only, that persons out of the state, and minors, and others under any legal disability to sue, at the time when the right of action or of entry shall first accrue, may commence their action or make their entry, at any time within five years after the removal of the disability, or after their return to the state. Actions for lands sold by guardians, limited to 5 years, unless, &c. 1817, 190, § 12.

Requisites of a valid sale, as against the ward.

SECT. 20. In case of an action relating to any estate, sold by a guardian under the provisions of this chapter, in which the ward, or any person claiming under him, shall contest the validity of the sale, the same shall not be avoided on account of any irregularity in the proceedings, provided it shall appear;

First, that the guardian was licensed to make the sale, by a court of competent jurisdiction:

Secondly, that he gave a bond, which was approved by the judge of probate, in case any bond were required by the court, upon granting the license:

Thirdly, that he took the oath prescribed in this chapter:

Fourthly, that he gave notice of the time and place of the sale, as prescribed herein: and

Fifthly, that the premises were sold accordingly by public auction, and are held by one who purchased them in good faith.

Guardians, liable for neglect or misconduct in the sale.

SECT. 21. If, in relation to such sale, there should be any neglect or misconduct in the proceedings of the guardian, by which any person interested in the estate shall suffer damage, such aggrieved party may recover compensation therefor, in a suit on the guardianship bond, or otherwise, as the case may require.

Requisites of a valid sale, as against claimants adverse to the ward.

SECT. 22. If the validity of any sale, made by a guardian under the provisions of this chapter, shall be drawn in question, by any person claiming adversely to the title of the ward, or claiming under any title, that is not derived from or through the ward, the sale shall not be held void, on account of any irregularity in the proceedings, provided it shall appear that the guardian was licensed to made the sale, by a court of competent jurisdiction, and that he did accordingly execute and acknowledge, in legal form, a deed for the conveyance of the premises.

CHAPTER 73.

OF TAKING LAND TO SATISFY EXECUTIONS FOR DEBT.

SECTION
1. Real estate, and rights thereto, may be taken in execution for debt.
2. Estates tail may be likewise taken, and held as estates in fee.
3. Real estate to be appraised: who may be appraisers, and how appointed and sworn.
4. Appraisers shall view the land, and sign a certificate of their appraisement.
5. Land, how to be described in the certificate or return.
6. Land in separate pieces, how and by whom appraised.
7. Certificate by two appraisers, in what case sufficient.
8. Estate to be valued as a fee simple, unless otherwise expressed.
9. Execution, how levied on the estate of a joint tenant or tenant in common.
10. How levied on estates incapable of division.
11. How, on estates for life.
12. Proceedings, when levied on the rents and profits of estates for life.
13. Lessee of land taken in execution, to pay the rent to the creditor, after notice.
14. When part only is taken, the rent to be apportioned.
15. Seizin to be delivered to the creditor, or right assigned to him.

SECTION
16. Momentary seizin, when the debtor has a right of entry only.
17. Execution and return to be recorded in the registry of deeds at the expense of the debtor.
18. Levy not so recorded, how far effectual.
19. Levy neither returned nor recorded, valid against the creditor, except, &c.
20. If void, the creditor may waive it, if not returned and recorded.
21. Alias execution to be granted on scire facias, if the levy is not effectual.
22. Debtor to have due notice. Levy to take effect from the seizure: return may be completed afterwards.
23. Matters to be contained in the officer's return.
24. The debtor may redeem the land within one year.
25. The amount due for redemption may be ascertained by three justices of the peace, and tender thereof made.
26. If the land is not released to the debtor, he may recover it in a writ of entry.
27. Debtor may bring a bill in equity instead of a writ of entry.
28. Proceedings in such suit.
29. Costs therein, how awarded.
30. Estate for life, how redeemed when the levy is on the rents and profits.
31. Right of redeeming mortgaged estates, may be taken and set off on execution.
32. When a mortgage is not fully allowed for, the creditor to hold the premises and have a new action.
33. Mortgaged estates, set off on execution, may be redeemed within one year.
34. Mortgage, if paid off by the creditor, how redeemed by debtor.
35. If the mortgage is not so redeemed, the creditor shall hold the premises.
36. So, if the right levied on is not redeemed.
37. Right of redeeming mortgaged estates may be sold on execution.
38. The sale, how to be made.
39. Notice of the time and place of sale, how given and published.
40. Officer may adjourn the sale, if he thinks proper.
41. Levy to take effect from the first notice; return may be completed afterwards.
42. Mortgaged estates, sold on execution, may be redeemed within one year.
43. Mortgage if paid by the purchaser, how redeemed by the debtor.
44. Estate, if not released, may be recovered by the debtor.
45. The fees and charges of the levy to be added to the debt.
46. Proceedings by the heirs, executors, administrators, &c., of the debtor.
47. Proceedings by the heirs, executors, administrators, &c., of the creditor.
48. Right of redeeming real estate set off on execution, may be taken and sold on another execution—Proceedings in such case.
49. The real estate of deceased persons may be taken in execution.
50. And redeemed as if taken during life.
51. After such redemption, it shall not be taken for other debts.
52. Real estate may be taken in execution in favor of an executor or administrator.
53. Widow, entitled to dower in lands taken in execution.
54. Executions in favor of the state, to be issued in the common form.
55. How served on real estate.
56. Redemption of lands so taken.

SECTION 1. All the real estate of a debtor, whether in possession, reversion or remainder, including lands fraudulently conveyed with intent to defeat, delay, or defraud his creditors, and also all rights of entry into lands, and rights of redeeming mortgaged lands, may be taken in execution for his debts, in the manner hereinafter provided.

Real estate, and rights thereto, may be taken in execution for debt. 1783, 57, § 2.

SECT. 2. All estates tail, which could be lawfully barred by the person entitled thereto, may be taken in execution in the same manner as estates in fee simple; and any person, lawfully holding such premises under the execution, shall have an estate in fee simple therein.

Estates tail may be likewise taken, and held as estates in fee. 4 Mass. 195. 1791, 60, § 2.

SECT. 3. When any judgment creditor shall think proper to levy his execution upon the debtor's real estate, the officer, authorized to serve the execution, shall cause the estate to be appraised by three

Estate to be appraised; who may be appraisers, and how

appointed and sworn.
17 Mass. 434.
11 Mass. 468. 515.
8 Mass. 113.
7 Mass. 71.
7 Greenl. 14.
2 Pick. 443.382.
1783, 57, § 2.

disinterested and discreet men, of whom one shall be appointed by the creditor, one by the debtor, whose land is to be taken, and the third by the officer; or, in case the debtor shall neglect to appoint one, the officer shall appoint one for him; and the three men thus appointed shall be sworn before a justice of the peace, faithfully and impartially to appraise such real estate as shall be shown to them as taken by force of the execution.

Appraisers shall view the land, and sign a certificate of their appraisement.
2 Pick, 382.564.
14 Mass. 28.

SECT. 4. The appraisers shall proceed with the officer to view the land, and shall examine it so far as may be necessary to form a just estimate of its value; and a certificate of their appraisement shall be indorsed on the execution, and signed by them.

Land, how to be described in the certificate or return.
9 Mass. 92.
11 Mass. 163.
9 Pick. 35.

SECT. 5. The land levied upon, whether it be an entire piece, or an undivided part thereof, and whether the debtor's estate therein be a fee simple or any less estate, and whether it be in possession, reversion or remainder, shall be described by metes and bounds, or otherwise, with as much precision as is necessary or proper in any common conveyance of land, and in such manner that the premises may be known and identified; and this description may be contained either in the certificate of the appraisers, or in the return of the officer; and the description contained in either of them may be referred to and adopted in the other.

Land in separate pieces, how and by whom appraised.
2 Pick. 382.
7 Mass. 71.
11 Mass. 515.

SECT. 6. If the execution is levied at the same time upon several pieces of land, each piece may be separately appraised, or the whole may be appraised together; and when several pieces are taken successively on the same execution, a distinct set of appraisers may be appointed for each piece, or the whole may be appraised by the appraisers first appointed.

Certificate by two appraisers, in what case sufficient.
2 Pick. 331.
14 Mass. 143.
8 Mass. 284.

SECT. 7. The dissent of any one of the appraisers, and his refusal to sign the certificate of appraisement, shall not vitiate the levy of the execution, provided he was sworn, and acted with the others under the appointment; but the certificate of the other two shall in such case be sufficient.

Estate to be valued as a fee simple, unless otherwise expressed.
14 Mass. 404.

SECT. 8. In estimating the value of the estate of the debtor, the appraisers shall always value it as an estate in fee simple in possession, unless it is expressly stated in the description, indorsed on the execution, to be a less estate; and in every case, all the freehold estate and interest, which the debtor may have in the premises, shall be taken and pass by the levy, unless it is a larger estate than is mentioned in the said description.

Execution, how levied on the estate of a joint tenant, or tenant in common.
12 Mass. 348.
13.Mass. 57.
1783, 57, § 2.

SECT. 9. When land is held by the debtor in joint tenancy, or in common with any other person, the part or share thereof, belonging to the debtor, may be taken on the execution, and shall be thereafter held in common with the co-tenant; and if the whole share of the debtor shall be more than sufficient to satisfy the execution, the levy shall be made upon an undivided portion of that share, to be determined by the appraisers, and to contain as much as they shall judge sufficient to satisfy the execution; the portion thus taken to be held in common with the debtor and the other co-tenant.

How levied on estates incapable of division.
1783, 57, § 3.
1818, 115, § 1.

SECT. 10. When the premises levied upon consist of a mill, mill-privilege, or other real estate, which cannot be divided without damage to the whole, and which is more than sufficient to satisfy the execution, the levy shall be made upon an undivided portion of the whole,

to be determined by the appraisers, and to contain as much as they shall judge sufficient to satisfy the execution; and the portion thus taken shall be held in common with the debtor.

How on estates for life. 10 Mass. 260. 15 Mass. 439.

SECT. 11. When the execution is levied on [*an*] estate for life, the value thereof may be estimated by the appraisers, and the same may be taken and set off to the creditor at the appraised value, like other real estate; or the execution may be levied on the rents and profits of the premises, at the election of the creditor.

Proceedings, when levied on rents and profits of estates for life.

SECT. 12. In the latter case, the annual value of the rents and profits shall be estimated by the appraisers, and the premises shall be set off to the creditor, for such length of time as shall be sufficient to satisfy the execution, at the rate of rents and profits, as estimated by the appraisers, if the life estate shall endure so long; computing lawful interest on the sum due on the execution, and deducting the rents and profits as so much paid, from time to time, when the rents and profits fall due; and if the life estate shall expire before the end of the term so fixed by the appraisers, the creditor may have a new action on the judgment, to recover the sum then remaining due thereon.

Lessee of land taken in execution to pay rent to the creditor after notice.

SECT. 13. When the premises levied upon are under lease to a third person, and the reversion of the whole is taken on the execution, the lessee shall be bound to pay to the creditor the rent accruing from the time of the levy, excepting such part thereof as he shall have paid before notice of the levy.

When part only is taken, the rent to be apportioned. 17 Mass. 440.

SECT. 14. When the premises are under lease as aforesaid, and the reversion of a part of them only is taken, it shall be ascertained and determined by the appraisers, what portion of the whole annual rent shall be paid to the creditor, in consequence of the levy; and the lessee shall be bound to pay the same accordingly.

Seizin to be delivered to creditor, or right assigned to him. 14 Mass. 27. 1783, 57, § 4.

SECT. 15. The officer, who serves the execution, shall deliver to the creditor, or to his attorney, seizin and possession of the premises taken, so far as the nature of the estate, and the title of the debtor, will admit; but when the estate so taken consists of a remainder, or reversion, or a right of redemption, the officer shall not oust the person, who is lawfully in possession of the land, but shall only assign to the creditor the right which the debtor had therein; and may make his return accordingly.

Momentary seizin, when debtor has a right of entry only. 3 Mass. 538, 9.

SECT. 16. When the execution shall be levied on land of which any person other than the debtor is actually seized, the officer shall deliver to the creditor, or to his attorney, a momentary seizin and possession of the land, so far as to enable the creditor to maintain an action therefor upon his own seizin; but he shall not actually expel and keep out the tenant then in possession, against his will.

Execution and return to be recorded at the expense of the debtor in registry of deeds. 5 Pick. 170. 15 Mass. 200. 11 Mass. 207. 1783, 57, § 2.

SECT. 17. The officer shall return the execution, with a certificate of his doings indorsed thereon, into the clerk's office, to which the same is returnable, and shall also, within three months after the levy is completed, cause the execution and return to be recorded in the registry of deeds, for the county in which the land lies; the expense of which recording shall be added to the charge of levying the execution.

Levy not so recorded, how far effectual.

SECT. 18. If the levy of the execution is not recorded in the registry of deeds, within the said three months, it shall be void, as

4 Mass. 402. 15 Mass. 137. 3 Pick. 331. 5 Pick. 170. 5 Greenl. 197.

against any creditor, who shall have attached the same premises, or taken them in execution, without notice of such levy, and also as against any person, who shall have purchased them in good faith and for a valuable consideration, without such notice; but if the levy is recorded, although after the expiration of the said three months, it shall be valid and effectual, as against any conveyance, attachment or levy, made after such recording.

Levy neither returned nor recorded, valid against the creditor, except, &c.

SECT. 19. The levy of the execution, although it should neither be returned nor recorded as aforesaid, shall nevertheless be so far valid and effectual as against the creditor, that he shall not be permitted to waive the levy, and to have a new execution of his judgment, excepting as is provided in the following section.

If void, the creditor may waive it, if not returned and recorded.

SECT. 20. If, before the execution is returned, and before it is recorded, it should appear that there is any defect or error in the proceedings, that would be sufficient to defeat and render void the levy, or that the estate levied upon was not the property of the debtor, or was not liable to be seized on the execution, or that, for any reason, it cannot be held thereby, the creditor may waive the levy, and it shall thereupon be considered null and void, and he may resort to any other remedy for the satisfaction of his judgment.

Alias execution to be granted on scire facias, if the levy is not effectual. 14 Mass. 57. 5 Greenl. 103. 1785, 6.

SECT. 21. If, after the execution is returned or recorded, it shall appear to the creditor that the estate levied upon was not the property of the debtor, or not liable to be seized on the execution, or that it cannot be held thereby, the creditor may sue out of the clerk's office of the court, from which the execution issued, a writ of scire facias to the debtor, requiring him to appear and show cause why an alias execution should not be issued on the same judgment; and if the debtor, after being duly summoned, shall not show sufficient cause to the contrary, the levy of the former execution may be set aside, and an alias execution shall be thereupon issued for the amount then due on the original judgment, without interest or further costs; but if it shall appear to the court that the creditor had no just cause for such suit, the debtor shall recover his costs.

Debtor to have due notice. 6 Greenl. 162.

SECT. 22. The officer, after taking the land in execution, shall give notice thereof to the debtor, if found within his precinct, and shall allow him a reasonable time to appoint an appraiser, and shall then proceed, without unnecessary delay, to have the estate appraised, and to complete the levy thereon; and the levy shall be considered as made at the time when the land is taken; and the subsequent proceedings, and the officer's return, shall be valid, although made and done after the return day, or after the removal, or other disability, of the officer.

Levy to take effect from the seizure: return may be completed afterwards. 11 Mass. 158.

Matters to be contained in the officer's return.

SECT. 23. The officer, in his return or certificate of his doings, indorsed on the execution, shall set forth substantially the following facts and circumstances, to wit:

First, the time when the premises were taken on the execution:

2 Mass. 155.

Secondly, that the appraisers were appointed by himself, and the creditor and debtor; or that the debtor neglected to appoint one, and the officer appointed one for him, as the case may be:

7 Mass. 74.

Thirdly, that the appraisers were duly sworn, unless a certificate of the oath shall be indorsed on the execution, and signed by the justice who administered it:

Fourthly, that they appraised and set off the premises at the price specified:

Fifthly, that the officer delivered seizin thereof to the creditor, or to some person as his attorney, or assigned the same to him, as prescribed in the case of a remainder, or of an incorporeal estate:

11 Mass. 207. 515. 13 Mass. 361. 2 Pick. 382.

Sixthly, the description of the premises; unless they are sufficiently described in the certificate of the appraisers, in which case, the officer may refer to and adopt that description: and

2 Pick. 443. 9 Mass. 92.

Seventhly, if the appraisement is signed by only two of the appraisers, the return shall show that all three of them were present and acted therein.

2 Pick. 331. 8 Mass. 284. 14 Mass. 143. 1783, 57, § 2.

SECT. 24. When lands are taken and set off to a creditor on execution, the debtor may redeem the same, at any time within one year after the levy, by paying or tendering to the creditor the sum for which the premises were set off, with interest thereupon from the time of the levy, all sums paid for lawful taxes and assessments, and such reasonable expenses as shall have been incurred in repairing and improving the premises; deducting from the amount of the said debt, interest and expenses, the rents and profits received by the creditor, or the rents and profits which he might have received, and with which he is justly chargeable; and the creditor shall thereupon execute, acknowledge, and deliver to the debtor a good and sufficient deed of release of the estate taken in execution; such deed to be prepared by the debtor, or at his expense.

The debtor may redeem the land within one year. 1783, 57, § 3.

SECT. 25. The debtor may in all cases cause the amount due for redemption to be ascertained, at his expense, by three justices of the peace for the county where the land lies, in the manner following; one of the said justices shall be chosen by the debtor, and one by the creditor, and the third by the two who are first chosen; or if the creditor shall neglect to choose one, the justice chosen by the debtor shall appoint the other two; and after a hearing and examination of the case before the three justices, they, or any two of them, shall make and sign a certificate of the sum, which they shall adjudge to be due and payable for the redemption of the premises, which certificate shall be final and conclusive between the parties; and the debtor may then make a tender of the sum so adjudged to be due, which shall be valid and effectual, notwithstanding he may have made a previous tender of a different sum.

The amount due for redemption may be ascertained by three justices of the peace, and tender thereof made. 1783, 57, § 3.

SECT. 26. If the debtor shall tender the sum justly due for redemption, whether there shall have been such an adjudication by three justices or not, and the creditor shall not release the premises, as before provided, within seven days after the tender, the debtor may recover them with his costs of suit, in a writ of entry on his own seizin, against the creditor as a disseizor; in which case he shall, before the judgment is entered, bring into court, for the use of the creditor, the sum so tendered.

If the land is not released to the debtor, he may recover it in a writ of entry. 1783, 57, § 3.

SECT. 27. The debtor may, instead of a writ of entry, bring a bill in equity for redemption, whether he has made a previous tender or not, provided the suit be commenced within one year after the levy of the execution; and the suit may be brought either in the supreme judicial court, or court of common pleas, for the county where the land lies; and it shall be conducted as provided in the two following sections.

Debtor may bring a bill in equity, instead of a writ of entry.

Proceedings in such suit.

SECT. 28. The debtor shall, in such bill for redemption, offer to pay such sum as shall be found due therefor, and he may also set forth his tender, if he shall have made any; and the court shall ascertain and determine the amount due for the redemption of the premises, unless the same shall have been already ascertained, upon an examination by three justices of the peace, as before provided, and shall require the debtor to bring into court the amount due for the redemption, or to deposite it with the clerk, within such time as they shall order, for the use of the creditor; and upon the debtor's bringing in the money, in pursuance of such order, he shall be entitled to judgment and execution, as at common law, for his seizin of the premises.

Costs therein, how awarded.

SECT. 29. The court may, upon such bill for redemption, award costs to either party, as equity may require; excepting, that the creditor shall in no case be required to pay costs, unless it shall appear that he has unreasonably neglected to render a just and true account, when requested, of the amount due on the judgment, and of the money, if any, expended in repairing and improving the premises, and also of the rents and profits thereof; or unless it shall appear that a sufficient sum was tendered to him for the redemption of the premises, and that he neglected for seven days thereafter to execute and deliver a release thereof, as before required; and excepting also, that if the creditor shall, before the commencement of the suit, have tendered such a deed of release, and shall plead such tender and bring the deed into court, to be delivered to the debtor, he shall recover his costs.

Estate for life, how redeemed, when the levy is on the rents and profits. 1783, 57, § 3.

SECT. 30. When an execution is levied on the rents and profits of an estate for life, the debtor may redeem the same, at any time before the debt, with interest thereon, shall be fully satisfied, by paying or tendering to the creditor the sum then remaining due to him; and the proceedings with regard to such redemption shall be in all other respects the same, as are prescribed for the redemption of other real estates.

Right of redeeming mortgaged estates may be taken and set off on execution. 11 Mass. 226. 16 Mass. 400. 1783, 57, § 4.

SECT. 31. All rights of redeeming mortgaged real estates may be taken and set off on execution, for debts of the mortgagor or owner, in the same manner as the land might be taken and set off, if it were unincumbered; excepting, that the appraisers shall deduct the value of the incumbrance, or the amount of the mortgage debt, when known, from the estimated value of the premises, and the sum so deducted shall be stated in the return of the execution.

When a mortgage is not fully allowed for, creditor to hold the premises and have a new action.

SECT. 32. If, after an execution is levied in the common form, there shall prove to be a mortgage on the premises, not known or not fully allowed for by the appraisers, the creditor shall nevertheless be entitled to hold the premises by force of the execution as against the debtor, and may recover, in a new action against the debtor, the amount which he shall lawfully pay on account of such mortgage, or so much thereof as shall not have been deducted and allowed for in the estimate of the appraisers.

Mortgaged estates, set off on execution, may be redeemed within one year.

SECT. 33. Any estate, taken and set off as provided in the two preceding sections, may be redeemed at any time within one year after the levy of the execution, in the same manner, and the debtor shall have the same remedies in that behalf, as are provided in this chapter, for the redemption of lands that are not mortgaged.

SECT. 34. If the creditor shall pay the debt due on the mortgage, the judgment debtor may redeem the mortgage from the creditor, at the same time and upon the same terms as are prescribed for redeeming the same from the mortgagee, in case the execution had not been levied thereon, and not otherwise.

Mortgage, if paid off by the creditor, how redeemed by debtor. 1815, 137.

SECT. 35. If the debtor shall not redeem the mortgage from the creditor, as provided in the preceding section, the creditor shall hold the premises as an assignee of the mortgage, and free from any right of redemption, notwithstanding the debtor may have redeemed, or offered to redeem, the right that was taken under the execution.

If the mortgage is not so redeemed, creditor shall hold the premises. 1815, 137.

SECT. 36. If the debtor shall not, within one year after the levy, redeem the right that was taken on the execution, the creditor shall hold the premises against the debtor, notwithstanding the debtor may have redeemed or offered to redeem the mortgage.

So if the right levied on is not redeemed. 1815, 137.

SECT. 37. All such rights of redeeming mortgaged real estates may, if the creditor prefer it, be taken and sold on the execution, in the manner hereinafter prescribed, instead of being appraised and set off to the creditor; and the officer shall return to the debtor the surplus of the proceeds of the sale, if any there be, after satisfying the execution, with the legal costs and charges.

Right of redeeming mortgaged estates may be sold on execution. 1798, 77, § 3.

SECT. 38. When the creditor shall elect to have the right of redemption sold, the officer authorized to serve the execution, shall sell the right of redemption by public auction to the highest bidder, and shall execute, acknowledge and deliver to the purchaser a sufficient deed thereof; which being recorded in the registry of deeds, for the county where the land lies, within three months after the sale, shall give to the purchaser all the right, title and interest in the premises, that the debtor had therein.

The sale, how made. 1798, 77, § 3.

SECT. 39. The officer shall give notice in writing of the time and place of the sale to the debtor, if found within his precinct, and shall also cause notifications thereof to be posted up in some public place in the town where the land lies, and also in two adjoining towns, if there be so many in the county; all which notices shall be given thirty days at least before the sale; and the officer shall moreover cause an advertisement of the time and place of sale to be published, three weeks successively before the sale, in some public newspaper printed in the county where the land lies, if any such newspaper is there printed.

Notice of the time and place of sale, how given and published. 12 Mass. 521. 1 Pick. 351. 7 Greenl. 376. 1798, 77, § 4.

SECT. 40. If, at the time appointed for the sale, the officer shall deem it expedient, and for the interest of all persons concerned therein, to postpone the sale, either for want of purchasers, or for other sufficient cause, he may adjourn it for any time not exceeding seven days, and so from time to time for like good cause, until the sale shall be completed, giving notice of every such adjournment by a public proclamation thereof, at the time and place previously appointed for the sale.

Officer may adjourn the sale, if he thinks proper. 4 Pick. 354. 1798, 77, § 4.

SECT. 41. The levy shall be considered as made at the time of first giving the notice, whether given to the debtor, or by posting up a notification thereof in any town, or by publishing the same, as before prescribed, and shall hold the estate by force of the attachment, if any, made thereon, although the levy should not be completed within thirty days after the judgment; and the subsequent proceedings, and the

Levy to take effect from the first notice; return may be completed afterwards. 1798, 77, § 7.

officer's return thereof, shall be valid, although made and done after the return day, or after the removal or other disability of the officer.

Mortgaged estates sold on execution may be redeemed within one year. 1 Pick. 485. 1815, 137, § 1.

SECT. 42. Any right of redemption, that is taken and sold as before provided, may be redeemed by the judgment debtor, from the purchaser or the person holding under him, at any time within one year after such sale, by paying or tendering to the purchaser, or to the person holding under him, the sum for which the premises were sold, with the same allowance for interest, repairs, improvements, and taxes, and the same deduction for rents and profits, as are provided in case of the redemption of land set off on execution; and the purchaser, or the person holding under him, shall thereupon execute, acknowledge and deliver to the debtor, a sufficient deed of release of the right of redemption so taken and sold; such deed to be prepared by the debtor, or at his expense.

Mortgage, if paid by the purchaser, how redeemed by the debtor. 1815, 137, § 1.

SECT. 43. If the purchaser shall pay the debt due on the mortgage, the judgment debtor may redeem the mortgage, and also the estate or right of redemption that was sold under the execution, in the same manner and upon the same terms, as are before prescribed, for redemption from the judgment creditor, when the right is set off to him and the mortgage debt paid by him, and not otherwise.

Estate, if not released, may be recovered by the debtor.

SECT. 44. If the purchaser, or the person holding under him, shall not, within seven days after a tender by the debtor, release the right of redemption, as before provided, or if there shall have been no tender, the debtor may have the like remedies, for recovering the right of redemption, as are before provided, in the like cases, for the redemption of land, that is not under mortgage.

The fees and charges of the levy to be added to the debt.

SECT. 45. The lawful fees and charges of levying an execution, in any of the modes before provided, shall, in all cases, be added to the amount due on the execution, and be considered as part thereof, in the setting off, and in the sale, of estates on execution, and also in the redemption thereof, and in every thing relating to the proceedings under the execution.

Proceedings by heirs, executors, administrators, &c. of the debtor.

SECT. 46. Every thing required in this chapter to be done by a debtor, in relation to the redemption of any estate taken and set off or sold by force of an execution, may be done by his heirs or assigns, or his executors or administrators, or by any person lawfully claiming under him or them, in like manner and with the like effect, as if done by himself; except, that in case of a recovery of the premises by an executor or administrator, the recovery shall operate only as a discharge of the lien or incumbrance on the land, and the heir or other person entitled thereto shall be deemed to be seized thereof accordingly.

Proceedings by heirs, executors administrators, &c. of the creditor.

SECT. 47. Every thing required in this chapter to be done by or to a creditor, in relation to such redemption, shall and may be done by or to his heirs or assigns, or his executors or administrators, as the case may be, or by or to any person lawfully claiming under him or them, in like manner and with the like effect, as if done by or to such creditor.

Right of redeeming real estate, set off on execution, may be taken and

SECT. 48. All rights of redeeming any real estate, which has been taken and set off on execution, may be taken and sold on another execution, in like manner as the right of redeeming mortgaged real estate may be taken and sold; and the debtor and those

claiming under him may redeem the right sold under such second execution, in like manner as if it had been a right of redeeming a mortgaged real estate; and all the proceedings in levying such second execution, and in the redemption of the right sold under it, and all the rights and obligations of the several parties, in relation to such levy and redemption, shall be substantially the same, as if the property so taken had been a right of redeeming a mortgaged real estate.

sold on another execution. Proceedings in such case. 12 Mass. 387. 1 Pick. 493.

SECT. 49. The real estate of any deceased testator or intestate may be taken in execution, on a judgment recovered against his lawful executor or administrator, for the proper debt of the deceased, with costs of suit, and the fees and charges of levying the execution, and shall be appraised and set off, or sold, in like manner as it might have been, if the judgment had been rendered, and the execution issued and served, against the testator or intestate in his life time.

The real estate of deceased persons may be taken in execution. 1783, 32, § 7.

SECT. 50. Any estate, taken as provided in the preceding section, may be redeemed by the executor or administrator, or by the heir of the deceased, or by any person lawfully claiming under him or them, in like manner as if the estate had been taken on an execution against the deceased in his life time.

And redeemed as if taken during life. 1783, 32, § 7.

SECT. 51. If any real estate of a deceased person, taken in execution as provided in the forty eighth [*ninth*] section, shall be redeemed by his heir or devisee, or by the assigns of either of them, as provided in the preceding section, the same estate shall not be again taken in execution for any other debts of the deceased, nor be in any way liable therefor.

After such redemption, it shall not be taken for other debts. 3 Mass. 542.

SECT. 52. When an executor or administrator shall recover judgment in right of his testator or intestate, the execution may be levied on the real estate of the debtor; and in such case, the executor or administrator shall be seized of the estate set off to him, upon the trusts in this behalf expressed in the sixty fifth chapter.

Real estate may be taken on execution in favor of an executor or administrator.

SECT. 53. Every widow shall be entitled to her dower in lands taken by execution from her husband, or by execution upon a judgment against his executor or administrator, in like manner as if the same had been conveyed by the husband in his life time, without any release of dower by her.

Widow entitled to dower in lands taken in execution. 1783, 57, § 4.

SECT. 54. Upon all judgments in favor of the Commonwealth in civil actions, executions shall issue in the common form, and shall be served and returned like executions in favor of any citizen, except as is provided in the following sections.

Executions in favor of the state, to be issued in the common form. 1783, 58, § 1.

SECT. 55. When real estate is taken to satisfy such an execution in favor of the Commonwealth, it shall not be appraised and set off, but shall be sold by public auction, in like manner as the right to redeem mortgaged lands is sold; and the officer, who serves the execution, shall proceed, in all respects, in the manner prescribed for the sale of such right of redemption.

—how served on real estate. 1783, 58, §§ 3 & 4.

SECT. 56. All lands, sold by force of the preceding section, may be redeemed within one year, in like manner and upon the same terms as are prescribed in the case of a sale on execution of the right of redeeming mortgaged lands.

Redemption of lands, so taken. 1783, 58, § 6.

TITLE VI.

CHAPTER 74.

OF PREVENTING FRAUDS AND PERJURIES IN CONTRACTS, AND IN ACTIONS FOUNDED THEREON.

SECTION
1. No action to be brought on certain contracts, unless made in writing.
2. The consideration need not be in writing.
3. No action on a representation of another's credit, &c., unless in writing,
4. Nor on contract for goods of the value of $50, unless, &c.
5. Goods mortgaged must be delivered, or the mortgage recorded
6. Exception as to bottomry, respondentia, and transfer of property at sea.
7. Town clerk to record such mortgages.
8. Suit against heirs, &c., for conveyance of lands according to the contract of the deceased.
9. Mode of proceeding therein.
10. Executors, administrators, or heirs, may be required to convey.
11. Such conveyance to be effectual.
12. If the defendant refuses to convey, the court may award a writ of seizin:
13. Or any other proper process.
14. The suit may be brought by the heirs, &c., of a deceased person.
15. Such conveyance may be authorized, without suit by the intended grantee:
16. Upon the suit of the heir, &c., of the intended grantor.
17. Effect of such conveyance, or of a tender thereof.

No action to be brought on certain contracts, unless made in writing. 1783, 37, § 2. 1788, 16, §§ 1 & 2.

SECTION 1. No action shall be brought in any of the following cases, that is to say:

First, to charge an executor or administrator, upon any special promise to answer damages out of his own estate: or

Secondly, to charge any person, upon any special promise to answer for the debt, default, or misdoings of another: or

Thirdly, to charge any person, upon an agreement made upon consideration of marriage: or

Fourthly, upon any contract for the sale of lands, tenements or hereditaments, or of any interest in or concerning them: or

Fifthly, upon any agreement that is not to be performed within one year from the making thereof:

Unless the promise, contract or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized.

The consideration need not be in writing. 17 Mass. 122. 5 Cranch, 142. 4 B. & A. 595.

SECT. 2. The consideration of any such promise, contract or agreement, need not be set forth or expressed in the writing, signed by the party to be charged therewith, but may be proved by any other legal evidence.

No action on representation of another's credit, &c., unless in writing. 1834, 182, § 5.

SECT. 3. No action shall be brought to charge any person, upon or by reason of any representation or assurance, made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance be made in writing, and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

SECT. 4. No contract for the sale of any goods, wares or merchandize, for the price of fifty dollars or more, shall be good or valid, unless the purchaser shall accept and receive part of the goods so sold, or shall give something in earnest to bind the bargain, or in part payment; or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

— nor on contract for goods of the value of $50, unless, &c. 1788, 16, § 2.

SECT. 5. No mortgage of personal property, hereafter made, shall be valid against any other person than the parties thereto, unless possession of the mortgaged property be delivered to, and retained by, the mortgagee, or unless the mortgage be recorded by the clerk of the town where the mortgagor resides.

Goods mortgaged must be delivered, or the mortgage recorded. 1832, 157, § 1.

SECT. 6. Nothing contained in the preceding section shall avoid or defeat any contract of bottomry or respondentia, nor any transfer, assignment, or hypothecation of any ship or goods, at sea or abroad, if the mortgagee shall take possession of such ship or goods, as soon as may be after the arrival thereof within this state.

Exception as to bottomry, respondentia, and transfer of property at sea. 1832, 157, § 1.

SECT. 7. The said clerk, upon payment of his fees, shall record all such mortgages of personal property, that shall be delivered to him, in a book to be kept for that purpose, noting in said book, and also on the mortgage, the time when the same is received; and every such mortgage shall be considered as recorded, at the time when it is left for that purpose in the clerk's office; and the fees for recording such mortgages, and for all other services relating thereto, shall be the same as are allowed to registers of deeds for the like services.

Town clerk to record such mortgages. 1832, 157, § 2.

SECT. 8. When any person, who is bound, by a contract in writing, to convey any real estate, shall die before making the conveyance, the other party may have a bill in equity, in the supreme judicial court, to enforce a specific performance of the contract by the heirs, devisees, or the executor or administrator of the deceased party.

Suit against heirs, &c., for conveyance of lands according to contract of deceased. 1783, 32, § 4.

SECT. 9. The court shall hear and determine every such case, according to the course of proceedings in chancery, and shall make such decree therein, as justice and equity shall require.

Mode of proceeding therein.

SECT. 10. If it shall appear that the plaintiff is entitled to have a conveyance, the court may authorize and require the executor or administrator of the deceased party to convey the estate, in like manner as the deceased person might and ought to have done, if living; and if his heirs or devisees, or any of them, are within the state and competent to act, the court may require them, or either of them, instead of the executor or administrator, to convey the estate in the manner before mentioned, or may require them, or either of them, to join in such conveyance with the executor or administrator.

Executors, administrators, or heirs may be required to convey.

SECT. 11. Every conveyance, made in pursuance of such decree, shall be effectual to pass the estate contracted for, as fully as if then made by the contracting party himself.

Such conveyance to be effectual.

SECT. 12. If the defendant in such suit shall refuse or neglect to make a conveyance, according to the decree, the court may enter a judgment that the plaintiff shall recover possession of the land contracted for, to hold according to the terms of the intended conveyance, and may issue a writ of seizin thereupon, in the form that is used upon a recovery in a real action; and the plaintiff having, by force of such writ, obtained possession of the premises, shall hold the

If defendant refuses to convey, the court may award a writ of seizin

same in like manner, as if they had been conveyed in pursuance of the decree.

— or any other proper process.

SECT. 13. The preceding section shall not prevent the court from enforcing their decree by any other proper process, according to the course of proceedings in chancery.

The suit may be brought by the heirs, &c., of a deceased person.

SECT. 14. If the person, to whom the conveyance was to be made, shall die before such suit is brought, or before the conveyance is completed, any person, who would have been entitled to the estate under him, as heir, devisee, or otherwise, in case the conveyance had been made according to the terms of the contract, may commence such suit, or may prosecute it if already commenced; and the conveyance shall thereupon be so made, as to vest the estate in the same persons, who would have been so entitled to it.

Such conveyance may be authorized, without suit by the intended grantee:

SECT. 15. If the party, to whom any such conveyance was to be made, or those entitled to claim under him, shall not commence and prosecute a suit, in the manner before provided, and if the heirs of the deceased person are not within the state, or are under age, or otherwise incompetent to make the conveyance, it may be made by the executor or administrator of the deceased person, upon a decree of the court to be obtained for that purpose, in manner following.

Upon the suit of the heir, &c., of the intended grantor.

SECT. 16. The executor or administrator of the deceased person, or any one or more of his heirs, may have a bill in equity, in the supreme judicial court, setting forth the contract, and the circumstances of the case, whereupon the court may, by their decree, authorize and require the executor or administer to convey the estate, in like manner as the deceased person might and ought to have done, if living.

Effect of such conveyance, or of a tender thereof.

SECT. 17. A conveyance, made or tendered in pursuance of such decree, shall be deemed a performance of the contract, on the part of the deceased person, so far as to hold the other contracting party, and his heirs, executors and administrators, to a performance thereof on his and their part.

TITLE VII.

Of the domestic relations.

CHAPTER 75. Of marriage and the solemnization thereof.

CHAPTER 76. Of divorce.

CHAPTER 77. General provisions concerning husband and wife.

CHAPTER 78. Of parents and children.

CHAPTER 79. Of guardians and wards.

CHAPTER 80. Of masters, apprentices and servants.

CHAPTER 75.

OF MARRIAGE, AND THE SOLEMNIZATION THEREOF.

SECTION
1, 2, 3. Marriage between certain relations, prohibited.
4. Polygamy forbidden.
5. Marriages between white and colored persons, or with an insane person, void.
6. Of persons marrying out of this state, in order to evade, &c.
7. Intention of marriage to be entered with the town clerk.
8. How to be published.
9 Certificate of publication, when, and for what purpose given.
10. If the banns are forbidden, the certificate to be withheld, and the objections to be submitted to two justices of the peace.
11. Who shall hear and determine the case, and certify their decision to the clerk.
12. The clerk shall conform to the certificate, if any, of the justices.
13. If the decision is against the marriage, the parties may appeal.
14. The person objecting, to pay cost, if the objections are not maintained.
15. Persons under certain ages not to be married, without the consent of parents or guardians.
16. Marriages, by whom to be solemnized, and in what place.
17. Certificates of marriages to be returned annually to the town clerk, and recorded.
18. Penalty for not returning such certificate.
19. Penalty on a justice or minister for solemnizing a marriage not authorized.
20. Penalty on a person not authorized, for solemnizing a marriage.
21. Penalty for defacing, &c., any notice of an intention of marriage.
22. Marriages among quakers.
23. The clerks of their meetings to return certificates annually to the town clerk.
24. Certain marriages valid, though irregularly solemnized.
25. The record of a marriage and certificate of record, to be presumptive evidence thereof.

SECTION 1. No man shall marry his mother, grandmother, daughter, granddaughter, step-mother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister. Marriage between certain relations prohibited. 1785, 69, § 1.

SECT. 2. No woman shall marry her father, grandfather, son, grandson, step-father, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother. Same subject. 1785, 69, § 1.

SECT. 3. In all the cases, mentioned in the two preceding sections, in which the relationship is founded on a marriage, the prohibition shall continue in full force, notwithstanding the dissolution of such marriage by death, or by a divorce, unless the divorce be for a cause, which shows the marriage to have been originally unlawful or void. Same subject.

SECT. 4. All marriages, contracted whilst either of the parties has a former wife or husband living, shall be void, unless the former marriage shall have been dissolved for some cause other than the adultery of the person contracting such second marriage. Polygamy forbidden. 1 Pick. 136. 8 Pick. 433. 1785, 69, § 2. 1784, 40, § 2.

SECT. 5. No white person shall intermarry with a negro, indian or mulatto; and no insane person or idiot shall be capable of contracting marriage. Marriages between white and colored persons, or with an insane person, void. 1786, 3 § 7. 7 Mass. 88. 12 Mass. 363.

— of persons marrying out of this state in order to evade, &c.
16 Mass. 157.
1 Pick. 506.

SECT. 6. When any persons, resident in this state, shall undertake to contract a marriage, contrary to the preceding provisions of this chapter, and shall, in order to evade those provisions, and with an intention of returning to reside in this state, go into another state or country, and there have their marriage solemnized, and shall afterwards return and reside here, such marriage shall be deemed void in this state.

Intention of marriage to be entered with town clerk.
1834, 177, § 2.

SECT. 7. All persons, intending to be joined in marriage, shall cause notice of their intention to be entered, fourteen days at least before their marriage, in the office of the clerk of the town in which they may respectively dwell, (if within this state ;) and if there be no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town.

How to be published.
1834, 177, § 2.

SECT. 8. The intention shall be published by the clerk, with whom the entry is made, either by posting up a written notice thereof, in some public place in the town of which he is the clerk, fourteen days at least before the marriage, or by making a public proclamation thereof, at three public religious meetings in the town, on different days ; the said meetings to be not less than three days distant from each other, exclusive of the days of the publication.

Certificate of publication, when and for what purpose given.
1834, 177, § 2.

SECT. 9. The clerk shall deliver to the parties a certificate, under his hand, specifying the time when notice of the intention of marriage was entered with him, and the time of the publication thereof ; which certificate shall be delivered to the magistrate or minister, in whose presence the marriage is to be contracted, before he shall proceed to solemnize the same.

If the banns are forbidden the certificate to be withheld, and the objection to be submitted to two justices of the peace.
1834, 177, § 3.

SECT. 10. After the intention of marriage is entered with the clerk, if any person shall forbid the banns, and shall assign his reasons therefor in writing, and leave the same with the clerk, the certificate shall not be issued, until the matter shall have been duly inquired into and determined, in the manner hereinafter mentioned ; provided the person forbidding the banns shall apply to two justices of the peace and of the quorum, of the same county, and shall, within seven days after the filing of his reasons, procure their decision thereon, or produce to the clerk their certificate that a further time is necessary for the consideration thereof ; in which case, the clerk shall withhold his certificate, until the expiration of such further time, unless the justices shall sooner make known their decision.

— who shall hear and determine the case, and certify their decision to the clerk.
1834, 177, § 3.

SECT. 11. The two justices, so applied to, shall proceed forthwith to give notice thereof to the persons who propose to be married, and after a full hearing of the parties, or of the person objecting to the marriage, if the others do not appear, the justices shall decide on the truth and sufficiency of the reasons assigned for forbidding the banns, and shall certify their decision thereon to the clerk, with whom the intention of marriage was entered.

The clerk shall conform to the certificate, if any, of the justices.
1834, 177, § 3.

SECT. 12. If the said two justices shall certify that the objections to the marriage are true and sufficient, the clerk shall not issue any certificate of the publication of the banns ; but if they shall certify that the objections are not proved, or are not sufficient, or if they shall not agree in a determination thereupon, the clerk shall forthwith issue his certificate, in the same manner as if no objection had been made thereto.

SECT. 13. If the said justices shall certify that the objections to the marriage are true and sufficient, the persons, who propose to be married, or either of them, may appeal from such decision to the court of common pleas, or the supreme judicial court, next to be held for the same county, and the determination of the court thereon shall be final in the case; and the clerk of the town shall issue, or withhold, his certificate of the publication of the banns, according to such final determination.

If the decision is against the marriage, the parties may appeal. 1834, 177, § 3.

SECT. 14. If the objections, so made to any marriage, shall not be proved, and adjudged to be sufficient, the person making the same shall pay all the costs, that shall have been incurred on account thereof, to be taxed by the justices or the court, as the case may be and execution therefor shall be issued accordingly.

The person objecting to pay costs, if the objections are not maintained. 1834, 177, § 3.

SECT. 15. When a male, under the age of twenty one years, or a female, under the age of eighteen years, is to be married, the magistrate or minister shall not proceed to solemnize the marriage, without the consent of the parent or guardian, having the custody of such minor, if there be any in the state competent to act.

Persons under certain ages not to be married without consent of parents or guardians. 1834, 177, § 2.

SECT. 16. Marriages may be solemnized by any justice of the peace, in the county for which he is appointed, when either of the parties resides in the same county; and they may be solemnized throughout the state by any minister of the gospel, who has been ordained according to the usage of his denomination, and who resides within the state, and continues to preach the gospel and to perform the other functions of his office; but all such marriages shall be solemnized in the town, in which the person solemnizing them may reside, or in which one or both of the persons to be married may reside.

Marriages by whom to be solemnized, and in what place. 1834, 177, § 1.

SECT. 17. Every justice and minister shall keep a record of all marriages solemnized before him, and in the month of April, annually, shall make a return, to the clerk of the town in which he resides, of a certificate, containing the christian and surnames, and places of residence, of all the persons who have been by him joined in marriage, within the year then last past, and also the time when, and the name of the town in which, such marriages were respectively solemnized; and when neither of the married persons belongs to or is resident in the town in which the justice or minister resides, then such justice or minister shall, within thirty days after such marriage, also return a like certificate to the clerk of the town in which one or both of the married persons may reside; and all marriages, so certified to the clerk, shall be forthwith recorded by him in a book to be kept for that purpose.

Certificate of marriages to be returned annually to the town clerk, and recorded. 1834, 177, § 5.

SECT. 18. Every justice of the peace and minister, who shall neglect to make such returns, shall, upon conviction thereof, forfeit for each neglect a sum, not less than twenty, nor more than one hundred dollars; one moiety thereof to the use of the county in which he resides, and the other moiety to the use of the person who shall prosecute therefor.

Penalty for not returning such certificate. 1834, 177, § 5.

SECT. 19. If any justice of the peace or minister shall join any persons in marriage, contrary to the provisions of this chapter, he knowing that the marriage is not duly authorized, he shall, upon conviction thereof, forfeit a sum not less than fifty, nor more than one

Penalty on a justice or minister for solemnizing a marriage not authorized.

1834, 177, § 4.

hundred dollars, one moiety thereof to the use of the county where the offence is committed, and the other moiety to the use of the person who shall prosecute therefor.

Penalty on a person not authorized, for solemnizing any marriage. 13 Pick. 111. 1834, 177, § 4.

SECT. 20. If any person shall undertake to join others in marriage, knowing that he is not lawfully authorized so to do, and shall be thereof convicted, upon indictment in any court of competent jurisdiction, he shall be imprisoned in the common jail, or confined to hard labor, for a term not exceeding six months, or shall pay a fine, not less than fifty, and not more than two hundred dollars.

Penalty for defacing, &c. any notice of intention of marriage. 1834, 177, § 4.

SECT. 21. If any person shall wilfully deface or take down any written notice of the intention of marriage, posted up as before prescribed, within fourteen days after it is so posted up, he shall, upon conviction thereof, forfeit a sum not less than two, or more than twenty dollars, to the use of the person who shall prosecute therefor.

Marriages among Quakers.

SECT. 22. The preceding regulations, so far as they relate to the manner of solemnizing marriages, shall not effect [*affect*] marriages among the people called friends or quakers, but such marriages may be solemnized, in the manner heretofore used and practised in their societies.

The clerks of their meetings to return certificates annually to the town clerk.

SECT. 23. The clerk or keeper of the records of the meeting, wherein any marriages among the said friends or quakers shall be solemnized, shall, in the month of April, annually, make and deliver to the clerk of the town in which such society usually meet and worship, a certificate, like that before prescribed to be returned by justices and ministers, of all marriages solemnized in the said meeting, within the year then last past, under the penalty of not less than twenty, nor more than one hundred dollars, for each neglect; which penalty shall be recovered in the manner, and to the uses, provided in the case of a like neglect by a justice or minister.

Certain marriages valid, though irregularly solemnized. 7 Mass. 48. 1 Pick. 235. 6 Greenl. 148.

SECT. 24. No marriage, solemnized before any person professing to be a justice of the peace, or a minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed justice or minister, or on account of any omission or informality in the manner of entering the intention of marriage, or in the publication of the banns; provided, that the marriage be in other respects lawful, and be consummated with a full belief, on the part of the persons so married, or of either of them, that they have been lawfully joined in marriage.

Record of a marriage, and certificate of record to be presumptive evidence thereof.

SECT. 25. The record of a marriage, made and kept as before prescribed, by a justice of the peace or minister, or by the clerk of any town, or a copy of any such record duly certified, shall be received, in all courts and places, as presumptive evidence of the fact of such marriage.

CHAPTER 76.

OF DIVORCE.

SECTION
1, 2. Certain marriages void, without any sentence.
3. Such marriages may be declared void by sentence of divorce or nullity.
4. A marriage may be declared valid by sentence.
5. A divorce from the bond of matrimony, for what causes decreed.
6. Divorce from bed and board, for what causes.
7, 8. Libels for divorce, in what courts to be brought.
9. No divorce, unless the parties have lived together, in this state.
10. Nor for any cause occuring before they lived together here.
11. Or occuring elsewhere, unless, &c.
12. Libel how to be signed.
13, 14. How to be filed, and notice thereof served.
15. How to be filed, and notice served, when the adverse party is out of the state.
16. Such course may be adopted in all cases.
17. The court may order further notice when necessary.
18. Guardian to be appointed for an insane respondent.
19. Penalty for cohabiting after a divorce from the bond of matrimony.
20. Of the issue of the marriage, in case of adultery of the wife.
21. Of the issue of a marriage, that is prohibited.
22. Of the issue of a marriage dissolved for nonage or insanity.
23. Of the issue of a marriage dissolved on account of a prior marriage.
24. Wife to be protected from restraint during the pendency of the libel.
25. Court may make order respecting the custody of the children, pending the libel.
26. Same, after a divorce.
27. Upon every divorce, except for adultery of the wife, she shall hold her real estate.
28. And such part of her personal estate, as the court shall order.
29. Court may appoint trustees of the property awarded to the wife.
30. Husband may be examined on oath, as to the personal estate of the wife.
31. In certain cases the wife may be allowed alimony, &c.
32. In what cases entitled to dower.
33. Upon a divorce for adultery of wife, her husband to hold her estate, &c.
34. Except what is necessary for her subsistence.
35. Security for payment of alimony.
36. Decree respecting alimony, &c., may be revised and altered.
37. Costs upon a petition for that purpose.
38. Course of proceedings in suits under this chapter.
39, 40. Effect of a divorce obtained out of this state.

SECTION 1. All marriages, which are prohibited by law, on account of consanguinity or affinity between the parties, or on account of either of them having a former wife or husband then living; all marriages, solemnized when either of the parties was insane or an idiot, and all marriages, between a white person and a negro, indian or mulatto, shall, if solemnized within this state, be absolutely void, without any decree of divorce, or other legal process.

Certain marriages void, without any sentence. 12 Mass. 363. 1785, 69, § 2.

SECT. 2. In case of a marriage, solemnized when either of the parties was under the age of consent, if they shall separate during such nonage, and shall not cohabit together afterwards, the marriage shall be deemed void, without any decree of divorce or other legal process.

Same subject.

Such marriage may be declared void by sentence of divorce or nullity.

SECT. 3. When a marriage is supposed to be void, or the validity thereof is doubted, for any of the causes mentioned in the two preceding sections, either party may file a libel for annulling the same; the libel to be filed in the manner hereinafter prescribed in the case of a libel for a divorce; and upon due proof of the nullity of the marriage, it shall be declared void, by a sentence of divorce, or nullity.

Marriage may be declared valid by sentence.

SECT. 4. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may file a libel, in manner aforesaid, for affirming the marriage, and upon due proof of the validity thereof, it shall be affirmed and declared valid by a decree or sentence of the court; and such decree shall be conclusive upon all persons concerned.

Divorce from the bond of matrimony, for what causes decreed. 1785, 69, § 3.

SECT. 5. A divorce from the bond of matrimony may be decreed for adultery or impotency in either party, or when either of them is sentenced to confinement to hard labor in the state prison, or in any jail or house of correction, for the term of life, or for seven years or more; and no pardon, granted to the party so sentenced, after a divorce for that cause, shall restore such party to his or her conjugal rights.

Divorce from bed and board, for what causes. 2 Mass. 150. 1785, 69, § 3. 1810, 119.

SECT. 6. A divorce from bed and board may be decreed for the cause of extreme cruelty or utter desertion in either of the parties; and a like divorce may be decreed on the libel of the wife, when the husband, being of sufficient ability to provide suitable maintenance for her, shall grossly or wantonly, and cruelly refuse or neglect so to do.

Libels for divorce, in what courts to be brought. 1785, 69, § 7. 1820, 14, § 10.

SECT. 7. All libels for divorce shall be heard and determined in the supreme judicial court, held for the county in which the parties, or one of them, live; and when heard before one justice alone, either party may except to the opinion of the justice, in the same manner, and with the same effect, as is provided in suits at common law.

Same subject.

SECT. 8. When the libellant shall have left the county in which the parties have lived together, the adverse party still living in the same county, the libel shall be heard and determined in the court held for that county.

No divorce, unless the parties have lived together in this state.

SECT. 9. No divorce shall be decreed for any cause, if the parties have never lived together, as husband and wife, in this state.

Nor for any cause occurring before they lived together here.

SECT. 10. No divorce shall be decreed for any cause, which shall have occurred in any other state or country, unless the parties had, before such cause occurred, lived together as husband and wife in this state.

—or occurring elsewhere, unless, &c.

SECT. 11. No divorce shall be decreed for any cause, which shall have occurred in any other state or country, unless one of the parties was then living in this state.

Libel, how to be signed. 4 Mass. 506. 13 Mass. 412. 7 Mass. 96.

SECT. 12. Every libel shall be signed by the libellant, if of sound mind, and of the age of legal consent to a marriage; otherwise, it may be signed by his or her guardian, or by any person, who shall be admitted by the court to prosecute the same, as next friend of the libellant.

How to be filed, and notice thereof served. 1785, 69, § 8.

SECT. 13. When the party complained of is within the state, the libel may be filed in vacation, in the office of the clerk of the court, which has jurisdiction of the cause; in which case, a summons to

appear and answer thereto shall be issued by the clerk, and served on the adverse party, fourteen days at least before the sitting of the court.

SECT. 14. The service, in the case aforesaid, shall be made by delivering to the adverse party an attested copy of the libel and of the summons, or by leaving such copy at the place of his or her abode; but no such service, by leaving a copy at the place of abode, shall be deemed sufficient, if it shall appear that the party had not been there after the same was left, unless it shall also appear that such party actually had personal notice of the suit.

Same subject. 7 Mass. 502. 8 Mass. 383. 1785, 69, § 8.

SECT. 15. If the party complained of is without the state, the libel may be presented to the supreme judicial court, in any county; and the adverse party shall, in such case, be summoned to appear and answer to the libel, at the court having jurisdiction of the cause, either by a publication of the libel, or the substance thereof, with the order of the court thereon, in one or more newspapers, to be designated in the order, or by delivering to the party an attested copy of the libel and summons, or in such other manner as the court, to which the libel is presented, shall, under the circumstances, consider to be most proper and effectual.

How to be filed, and notice served, when the adverse party is out of the state. 12 Mass. 312. 1785, 69, § 8.

SECT. 16. The libel may, in all cases, at the option of the libellant, be presented in the first instance to the court, in the manner prescribed in the preceding section, whether the adverse party is within or without the state; and in such case, the adverse party shall be summoned as therein provided.

Such course may be adopted in all cases.

SECT. 17. Whenever the party complained of shall not appear, and the notice of the pendency of the libel shall be considered by the court to be defective or insufficient, the court may order such further notice to be given, as they shall, under the circumstances, consider to be proper.

The court may order further notice, when necessary.

SECT. 18. If the respondent is insane, at any time during the pendency of the suit, the court shall appoint some suitable person as a guardian, to appear and answer for him or her, in like manner as a guardian is appointed for an infant defendant, in a suit at common law.

Guardian to be appointed for an insane respondent. 13 Mass. 412.

SECT. 19. If any persons, after being divorced from the bond of matrimony, for any cause whatever, shall cohabit as husband and wife, or shall live together in the same house, they shall be liable to all the penalties provided by the laws against adultery.

Penalty for cohabiting after a divorce from the bond of matrimony. 1785, 69, § 6.

SECT. 20. A divorce for the cause of adultery, committed by the wife, shall not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, shall be tried and determined according to the course of the common law.

Of the issue of the marriage in case of adultery of the wife. 1785, 69, § 6.

SECT. 21. Upon the dissolution, by a divorce or sentence of nullity, of any marriage, that is prohibited on account of consanguinity or affinity between the parties, or of any marriage between a white person and a negro, Indian or mulatto, the issue of the marriage shall be deemed to be illegitimate.

—of a marriage that is prohibited.

SECT. 22. Upon the dissolution of a marriage, on account of the nonage, insanity or idiocy of either party, the issue of the marriage shall be deemed to be in all respects the legitimate issue of the parent who, at the time of the marriage, was capable of contracting

—of a marriage dissolved for nonage or insanity.

—of a marriage dissolved on account of a prior marriage.

SECT. 23. When a marriage is dissolved on account of a prior marriage of either party, and it shall appear that the second marriage was contracted in good faith, and with the full belief of the parties that the former wife or husband was dead, that fact shall be stated in the sentence of divorce, or of nullity; and the issue of such second marriage, born or begotten before the commencement of the suit, shall be deemed to be the legitimate issue of the parent, who, at the time of the marriage, was capable of contracting.

Wife to be protected from restraint during the pendency of the libel. 1820, 56, § 1.

SECT. 24. After the filing of a libel for the dissolution of a marriage, or for a divorce, whether from the bond of matrimony, or from bed and board, the supreme judicial court, whether sitting in the county in which the libel is filed, or in any other county, may, on the petition of the wife, prohibit the husband from imposing any restraint on her personal liberty, during the pendency of the libel.

Court may make order respecting custody of the children, pending the libel. 1820, 56, § 1.

Same, after a divorce. 1820, 56, § 1.

SECT. 25. The court may, in like manner, on the application of either party, make such order concerning the care and custody of the minor children of the parties, during the pendency of the libel, as shall be deemed expedient, and for the benefit of the children.

SECT. 26. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony, or from bed and board, the court may make such further decree, as they shall deem expedient, concerning the care, custody and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain; and the court may, from time to time, afterwards, on the petition of either of the parents, revise and alter such decree, concerning the care, custody and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children shall require.

Upon every divorce, except for adultery of the wife, she shall hold her real estate. 1785, 69, § 5.

SECT. 27. Upon the dissolution of a marriage, by a divorce or sentence of nullity, for any cause excepting that of adultery committed by the wife, and also upon every divorce from bed and board, the wife shall be entitled to the immediate possession of all her real estate, in like manner as if her husband were dead.

—and such part of her personal estate, as the court shall order. 1785, 69, § 5. 1805, 57. 1810, 119. 1823, 73. 1828, 55.

SECT. 28. Upon every such dissolution of a marriage, as is specified in the preceding section, and also upon every divorce from bed and board, the court may make a further decree, for restoring to the wife the whole, or such part as they shall think just and reasonable, of the personal estate, that shall have come to the husband, by reason of the marriage, or for awarding to her the value thereof in money, to be paid by the husband.

Court may appoint trustees of the property awarded to the wife. 1824, 138.

SECT. 29. Upon every divorce, for adultery committed by the husband, and also upon every divorce from bed and board, for any cause whatever, when any personal estate of the wife, or money in lieu thereof, shall be awarded to her, as provided in the preceding section, the court, instead of ordering the same to be delivered or paid into the hands of the wife, may order it to be delivered or paid to a trustee or trustees, to be appointed by the court, upon trust to invest the same, and to apply the income thereof to the support and maintenance of the wife, and of the minor children of the marriage, or any of them, in such manner as the court shall direct, and also to pay over the principal sum to the wife and children of the marriage,

in such proportions and at such times, as shall be ordered by the final decree of the court, in the premises; regard being had, in the disposition of the said income, as well as of the principal sum, to the situation and circumstances of the wife and the children; and the said trustees shall give such bonds, as the court shall require, for the faithful performance of their trust.

Husband may be examined on oath as to personal estate of the wife. 1785, 69, § 5.

SECT. 30. Whenever the court shall think proper to award to the wife any of her personal estate, or any money in lieu thereof, they may require the husband to disclose, on oath, what personal estate has come to him by reason of the marriage, and how the same has been disposed of, and what portion thereof still remains in his hands.

In certain cases the wife may be allowed alimony, &c. 1785, 69, § 5. 1805, 57. 1810, 119. 1828, 55.

SECT. 31. Upon every divorce, for adultery committed by the husband, or on account of his being sentenced to confinement to hard labor, and also upon every divorce from bed and board, for any cause whatever, if the estate and effects, restored and assigned to the wife, shall be insufficient for the suitable support and maintenance of herself, and of such children of the marriage, as shall be committed to her care and custody, the court may further decree to her such part of the personal estate of the husband, and such alimony out of his estate, as they shall deem just and reasonable, having regard to the ability of the husband, and to the character and situation of the parties, and all the other circumstances of the case.

In what cases entitled to dower. 13 Mass. 231. 1785, 69, § 5.

SECT. 32. When a divorce shall be decreed, for the cause of adultery committed by the husband, or on account of his being sentenced to confinement to hard labor, the wife shall be entitled to her dower in his lands in the same manner as if he were dead; but she shall not be entitled to dower, in any other case of divorce from the bond of matrimony. A divorce from bed and board shall not bar her claim to dower.

Upon divorce for adultery of wife, her husband to hold her estate, &c. 1785, 69, § 5.

SECT. 33. When a divorce shall be decreed, for the cause of adultery committed by the wife, the husband shall hold her personal estate forever, and he shall also hold her real estate, so long as they shall both live; and if he shall survive her, and there shall have been issue of the marriage born alive, he shall hold her real estate, for the term of his own life, as a tenant by the curtesy.

—except what is necessary for her subsistence. 1785, 69, § 5.

SECT. 34. In the case last mentioned, the court may, by their decree, allow to the wife, for her subsistence, as much of her said personal or real estate, or of the income thereof, as they shall judge necessary.

Security for payment of alimony. 1820, 57, § 2.

SECT. 35. In all cases, when alimony or other annual allowance shall be decreed for the wife, or children, the court may require sufficient security to be given for the payment thereof, according to the terms of the decree.

Decree respecting alimony, &c., may be revised and altered. 1785, 69, § 5. 1824, 138.

SECT. 36. After any decree for alimony, or other annual allowance for the wife or children, and also after a decree for the appointment of trustees, to receive and hold any property, for the use of the wife or children, as before provided, the court may, from time to time, on the petition of either of the parties, revise and alter their decree, respecting the amount of such alimony or other annual allowance, and the payment thereof, and also respecting the appropriation and payment of the principal and income of the property, so held in

trust, and may make any decree, respecting any of the said matters, which they might have made in the original suit.

Costs upon a petition for that purpose. 1820, 56, § 2.

SECT. 37. Upon every petition to revise and alter any decree, made by force of this chapter, the court may award costs to either party, as justice and equity shall require.

Course of proceedings in suits under this chapter. 1785, 69, § 8. 1820, 56, § 1.

SECT. 38. The supreme judicial court may, in all cases, where the course of proceeding is not specially prescribed, hear and determine all matters, coming within the purview of this chapter, according to the course of proceeding in ecclesiastical courts, and in courts of chancery, and may issue process of attachment and of execution, and other proper process, necessary for the despatch and final determination of such causes.

Effect of a divorce obtained out of this state. 14 Mass. 227. 10 Mass. 266. 1 Johns. R. 424. 15 Johns. R. 121.

SECT. 39. When any inhabitant of this state shall go into any other state or country, in order to obtain a divorce for any cause, which had occurred here, and whilst the parties resided here, or for any cause, which would not authorize a divorce, by the laws of this state, a divorce so obtained shall be of no force or effect in this state.

Same subject.

SECT. 40. In all other cases, a divorce decreed in any other state or country, according to the law of the place, by a court having jurisdiction of the cause and of both of the parties, shall be valid and effectual in this state.

CHAPTER 77.

GENERAL PROVISIONS CONCERNING HUSBAND AND WIFE.

SECTION
1. Married woman, when abandoned by husband, may be authorized to sell, &c.
2. Also to demand her personal property, and give a discharge.
3. And she may dispose of it, as if she were unmarried.
4. She may be authorized to contract, and to sue and defend, &c.
5. And to execute all necessary deeds and instruments.
6. Such powers to continue during the absence of the husband.
7. Her contracts so made shall bind her and her husband.
8. Liable to be sued.
9. Husband, if he returns, may be admitted to prosecute or defend jointly with her.
10. If not so admitted, the suit to proceed; judgment, how confirmed.
11. Course of proceeding on a petition by a married woman, to sell, &c.
12. Wife of a convict in the state prison may be authorized to sell, &c.
13. Proceedings in such case.
14. Wife may release her dower on a sale by guardian of her husband.
15. Wife may join the guardian in a sale of her own real estate.
16. Proceeds of such sales, how disposed of.
17. Damages awarded for land of a married woman, how disposed of.
18. Married woman, coming into this state without her husband, shall be authorized and liable, as if unmarried.
19. Arrival of her husband afterwards, &c., how to affect her contracts.

Married woman, when

SECTION 1. When any married man shall absent himself from the state, abandoning his wife and not making sufficient provision for

her maintenance, if the wife is of the age of twenty one years, the supreme judicial court may, on her petition, authorize her to sell and convey her real estate or any part thereof, and also any personal estate, which shall at any time have come to the husband, by reason of the marriage, and which may remain within the state undisposed of by him.

abandoned by husband, may be authorised to sell, &c. 1787, 32, § 1.

SECT. 2. The court may also, upon the petition of such wife, authorize any person, holding money or other personal estate, to which the husband is entitled in her right, to pay and deliver the same to the wife, and may authorize her to give a discharge for the same, which discharge shall be as valid as if made by the husband.

— also to demand her personal property and give a discharge. 1833, 127.

SECT. 3. All the proceeds of such sales, and all other money and personal estate, which shall come to the hands of the wife, by force of this chapter, may be used and disposed of by her, during the absence of her husband, as her own property, in the same manner as if she were unmarried.

And she may dispose of it, as if she were unmarried.

SECT. 4. The court may further authorize such married woman to make any contract, under seal or otherwise, in her own name, and also to commence, prosecute and defend, any suit in law or equity, to final judgment and execution, in like manner as if she were unmarried.

She may be authorized to contract, and to sue and defend, &c. 1787, 32, § 1.

SECT. 5. Every woman so authorized may make and execute any deeds and other instruments, in her own name, and do all other lawful acts, that may be necessary or proper to carry into effect the powers so granted to her.

— and to execute all necessary deeds and instruments. 1787, 32, § 1.

SECT. 6. The power so granted to a married woman shall continue and may be exercised, until her husband shall return into the state and claim his marital rights.

Such powers to continue during the absence of the husband. 1787, 32, § 1.

SECT. 7. All contracts lawfully made by any married woman, by virtue of such power, shall be binding on her and her husband, in like manner as if their marriage had taken place after the making of such contracts; and she shall, during the absence of her husband from the state, be liable to be sued thereon as if she were unmarried.

Her contracts so made shall bind her and her husband. 1787, 32, § 2.

SECT. 8. She shall also be liable to be sued, in like manner, for all other acts and things, done by her during the continuance of the power so granted to her.

Liable to be sued. 1787, 32.

SECT. 9. No suit wherein such woman shall be a party, under the provisions of this chapter, shall be abated by the return of her husband into the state, but he may, on his application, be admitted to prosecute or defend the suit, jointly with her, in like manner, as if they had intermarried after the commencement of the suit.

Husband, if he returns, may be admitted to prosecute or defend jointly with her. 1787, 32, § 2.

SECT. 10. If the husband shall not be admitted as a party in the suit, it shall proceed to judgment and execution, as if he had not returned to the state; and any judgment, recovered against the wife, may be afterwards enforced against him in like manner as if it had been rendered against her before their intermarriage.

If not so admitted, the suit to proceed; judgment, how enforced. 1787, 32, § 2.

SECT. 11. Every such petition of a married woman, for any of the purposes before mentioned, may be filed, heard and determined in the supreme judicial court, in any county; and the petition shall be presented, and notice thereof given, in the manner prescribed in the seventy sixth chapter, for presenting and giving notice of libels for divorce, in cases when the adverse party is without the state.

Course of proceeding on a petition by a married woman to sell, &c. 1787, 32, §§ 1 & 3.

Wife of a convict in the state prison may be authorized to sell, &c.

SECT. 12. When any married man shall be sentenced to confinement in the state prison, his wife may, on her petition to the supreme judicial court, be authorized to sell and convey her estate, and to do any or all the other acts, which may, according to the provisions of this chapter, be done by a married woman, when authorized, as before provided, in the absence of her husband; and the authority, so granted to the wife of a convict, may continue and be exercised until the discharge of her husband from prison.

Proceedings in such case.

SECT. 13. The petition of the wife of such convict shall be presented, and the proceedings thereon shall be conducted, in the manner before prescribed in the case of a man, who has absented himself from the state; and she and her husband shall be bound, respectively, by all her lawful contracts, in the same manner as is before provided with respect to the contracts of a woman, who is authorized to act, during the absence of her husband; and all suits, relating to such contracts and other acts of the wife of such convict, whether brought by or against them or either of them, shall be conducted and disposed of accordingly.

Wife may release her dower, on sale by guardian of her husband. 1823, 146, § 2.

SECT. 14. When the guardian of any married man shall be duly licensed to sell the real estate of his ward, the wife of the ward may, if she thinks fit, join with the guardian in the conveyance, and thereby release her right of dower in the granted premises, in like manner as she might have done, by joining in a conveyance thereof, made by her husband, if he had been under no legal disability.

—may join the guardian in a sale of her own real estate. 1823, 146, § 1.

SECT. 15. When such guardian is licensed to sell the interest of the ward in any real estate of his wife, the wife may, if she thinks fit, join with the guardian in the conveyance, and thereby sell and convey all her estate and interest in the granted premises, in like manner as she might have done by a conveyance thereof made jointly with her husband, if he had been under no legal disability.

Proceeds of such sales, how to be disposed of. 1823, 146, § 1.

SECT. 16. In case of any such release by the wife, of her right of dower, or of any such conveyance of her own estate, the proceeds of the sale may be so invested and disposed of, as to secure to her the same right, use and benefit of and in the principal sum and the income thereof, that she would have had of and in the real estate and the income thereof, if it had not been sold; and any agreement, made between her and the guardian, for securing and disposing of the proceeds or any part thereof, for the purpose aforesaid, being approved and confirmed by the probate court for the county in which the guardian was appointed, or by the supreme court of probate, shall be valid and binding on all persons interested in the estate, and may be enforced in either of the said courts, or by an action at common law, as the case may require.

Damages, awarded for land of a married woman, how disposed of. 1835, 146.

SECT. 17. When the real estate of any married woman shall be taken for a rail road, turnpike, way, or other public use, or shall be damaged by the laying out of a rail road, turnpike, way, or by any other public works, the damages or compensation awarded therefor may be so invested and disposed of, as to secure to her the same right, use and benefit, of and in the sum so awarded, and the income thereof, that she would have had of and in the real estate and the income thereof, if it had not been so taken or damaged; and the supreme judicial court shall, on the application of any such woman, hear and determine the case, according to the course of proceedings

in chancery, and shall make such decrees and orders therein, as may be necessary and proper to enforce and secure her said rights and interests.

SECT. 18. When any married woman shall come from any other state or country into this state, without her husband, he having never lived with her in this state, she may transact business, make contracts, and commence, prosecute and defend suits, in her own name, and dispose of her property, which may be found here, in like manner, in all respects, as if she were unmarried; and she shall also be liable to be sued, as if she were unmarried, upon all contracts, and for all other acts made or done by her after her arrival in this state; and she may make and execute any deeds and other instruments, in her own name, and do all other lawful acts, that may be necessary or proper, to carry into effect the powers so granted to her.

Married woman, coming into this state without her husband, shall be authorized and liable, as if unmarried. 15 Mass. 31. 6 Pick. 89.

SECT. 19. If the husband of any such woman shall afterwards come into this state, and claim his marital rights, his arrival here shall have the same effect, with regard to any suit then pending, in which she is a party, and to any contract or business transacted by her under the power granted in the preceding section, as if they had been first married at the time of his arrival here, and shall have no other effect.

Arrival of her husband afterwards, &c. how to affect her contracts.

CHAPTER 78.

OF PARENTS AND CHILDREN.

SECTION
1. Parents and children bound to maintain each other, in certain cases.
2. Case of a child, having property of his own
3. Father may appoint a guardian by will.
4. Children may be bound as apprentices by their parents.
5. A mother may bind her illegitimate child.
6. The power of a mother ceases during a second marriage.

SECTION 1. Parents shall be bound to maintain their children, when poor and unable by work to maintain themselves, and children shall be bound to maintain their parents, in the like circumstances, according to the provisions contained in the forty sixth chapter.

Parents and children bound to maintain each other, in certain cases.

SECT. 2. If any minor, who has a father living, has property, the income of which is sufficient for his maintenance and education, in a manner more expensive than the father can reasonably afford, regard being had to the situation of the father's family, and to all the circumstances of the case, the expenses of the maintenance and education of such child may be defrayed out of the income of his own property, in whole or in part, as shall be judged reasonable by the probate court, and the charges therefor may be allowed accordingly, in the settlement of the accounts of his guardian.

Case of a child, having property of his own. 2 Mass. 113. 415. 4 Mass. 97. 6 Johns. R. 566.

SECT. 3. Every father may, by his last will, appoint a guardian for his minor children, as provided in the seventy ninth chapter.

Father may appoint a guardian by will.

Children may be bound as apprentices by their parents.

SECT. 4. Minor children may be bound as apprentices or servants by their father, and in case of his decease by their mother, in the manner provided in the eightieth chapter.

A mother may bind her illegitimate child. 2 Mass. 109. 12 Mass. 387. 433.

SECT. 5. The mother of an illegitimate child shall have power to bind him, during the life time of the putative father, as well as after his decease.

Power of a mother ceases during a second marriage. 4 Mass. 675.

SECT. 6. The power of a mother to bind her children, whether legitimate or illegitimate, shall cease in case of her subsequent marriage, and shall not be exercised during the continuance of such marriage, either by herself or her husband.

CHAPTER 79.

OF GUARDIANS AND WARDS.

SECTION
1. Guardians to be appointed by the judge of probate.
2. Guardian of a minor, by whom to be nominated.
3. Minor may nominate before a justice of the peace, &c., in case, &c.
4. Power and duty of the guardian of a minor.
5. A bond to be given by the guardian; and the condition thereof.
6. Guardian of minors may be appointed by the will of their father.
7. Testamentary guardian to give bond, unless, &c.
8. Guardian ad litem, and next friend, how appointed.
9. Guardian of an insane person, how appointed.
10. Power and duty of the guardian of an insane person.
11. Guardian of a spendthrift, how appointed.
12. Fourteen days notice to be given to spendthrift.
13. Contracts of the spendthrift, pending the proceedings, when void.
14. Expenses of the insane person, or spendthrift in opposing the complaint.
15. Assessors to act instead of overseers or selectmen, in certain cases.
16. Power and duty of the guardian of a spendthrift.
17, 18, 19. General powers and duties of all guardians.
20. Of the inventory of the estate, and of accounting therefor.
21. Courts may authorize sales and investments.
22. Guardians, when and how removable.
23. Wards, when and how discharged from guardianship.
24. Sureties may be discharged and new bond required.
25. Bond may be sued—Proceedings thereon.
26. Action against surety limited to four years, &c., unless, &c.
27. Proceedings for recovering effects concealed, &c.
28. Guardians may be appointed for persons out of the state.
29. Powers and duties of such guardians.
30. Bond to be given by them.
31. Guardianship first granted, to extend throughout the state.
32. Compensation of guardians.
33. Account may be allowed on the oath of one of two guardians.
34. Construction of the words "insane person" and "spendthrift."

Guardians to be appointed by the judge of probate. 1783, 38, § 1. 1817, 190, § 1.

SECTION 1. The judge of probate in each county, when it shall appear to him necessary or convenient, may appoint guardians to minors and others, being inhabitants of or residents in the same county, and also to such as shall reside without this state, and have any estate within the same.

Testamentary guardian to give bond, unless, &c.

SECT. 7. Every such testamentary guardian shall give bond, in like manner and with like condition, as is before required of a guardian appointed by the judge of probate; provided, that when the testator, in the will appointing the guardian, shall have ordered or requested that such bond shall not be given, the bond shall not be required, unless from a change in the situation or circumstances of the guardian, or for other sufficient cause, the judge of probate shall think proper to require it.

Guardian ad litem, and next friend, how appointed.

SECT. 8. Nothing contained in this chapter shall impair or affect the power of any court of common law, probate court, or court of a justice of the peace, to appoint a guardian to defend the interests of any minor impleaded in such court, or interested in any suit or matter there pending, nor their power to appoint or allow any person as next friend for a minor, to commence, prosecute or defend any suit in his behalf.

— of an insane person, how appointed. 14 Mass. 222. 1783, 38, § 2.

SECT. 9. When the relations or friends of any insane person, or the selectmen of the town, of which such person is an inhabitant, or in which he resides, shall apply to the judge of probate to have a guardian appointed for him, the judge shall cause notice to be given to the supposed insane person, of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed; and if, after a full hearing, it shall appear to the judge that the person in question is incapable of taking care of himself, the judge shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Power and duty of guardian of an insane person. 1783, 38, §§ 2 & 5.

SECT. 10. Every guardian, so appointed for an insane person, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged; and he shall give bond to the judge of probate, in like manner and with the like condition, as is before prescribed with respect to the guardian of a minor, excepting that the provision, relating to the education of the ward, shall be omitted in the condition of the bond.

Guardian of spendthrift how appointed. 12 Pick. 152. 1783, 38, § 7.

SECT. 11. When any person, by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his estate, as to expose himself or his family to want or suffering, or to expose the town to charge or expense, for the support of himself or his family, the selectmen of the town, of which such spendthrift is an inhabitant, or in which he resides, may present a complaint to the judge of probate, setting forth the facts and circumstances of the case, and praying to have a guardian appointed for him.

Fourteen days notice to be given to spendthrift. 1783, 38, § 7.

SECT. 12. The judge of probate shall cause notice to be given to such supposed spendthrift, of the time and place appointed for hearing the case, not less than fourteen days before the time so appointed; and if, after a full hearing, it shall appear to the judge that the person complained of comes within the description contained in the preceding section, he shall appoint a guardian of his person and estate, with the powers and duties hereinafter specified.

Contracts of the spendthrift, pending the proceedings, when void. 3 Pick. 229. 1783, 38, § 7.

SECT. 13. After the order of notice has been issued, the complainants may cause a copy of the complaint, with the order of notice, to be filed in the registry of deeds for the county; and if a guardian shall be appointed upon such application, all contracts, excepting for necessaries, and all gifts, sales or transfers of real or personal estate,

made by such spendthrift, after such filing of the complaint in the registry of deeds, and before the termination of the guardianship, shall be null and void. 1818, 69. 1826, 63, § 1.

SECT. 14. When a guardian shall be appointed for an insane person or a spendthrift, the judge shall make an allowance, to be paid by the guardian, for all reasonable expenses incurred by the ward in defending himself against the complaint. Expenses of the insane person or spendthrift in opposing the complaint. 1826, 63, § 2.

SECT. 15. When any insane person, or any person liable to be put under guardianship, as a spendthrift, shall reside on lands not included within any incorporated town or city, all the acts authorized or required to be done, respecting the guardianship of such person, by the selectmen, shall and may be done by the assessors of the district or tract of land, on which such person resides, if there be any such assessors, and if not, by the selectmen of the oldest adjoining town in the same county. Assessors to act instead of overseers or selectmen, in certain cases. 1833, 30, § 2.

SECT. 16. Every guardian, so appointed for a spendthrift, shall have the care and custody of the person of the ward, and the management of all his estate, until the guardian shall be legally discharged, and he shall give bond to the judge of probate, in like manner and with the like condition, as is before directed with respect to the guardian of an insane person. Power and duty of guardian of a spendthrift. 5 Mass. 427. To give bond. 1784, 38, § 7.

SECT. 17. Every guardian, appointed under the provisions of this chapter, whether for a minor or any other person, shall pay all just debts due from the ward, out of his personal estate, if sufficient, and if not, out of his real estate, upon obtaining a license for the sale thereof, as provided in the seventy second chapter; he shall also settle all accounts of the ward, and demand, sue for, and receive all debts due to him, or may, with the approbation of the judge of probate, compound for the same, and give a discharge to the debtor, upon receiving a fair and just dividend of his estate and effects; and he shall appear for and represent his ward, in all legal suits and proceedings, unless where another person is appointed for that purpose, as guardian or next friend. General powers and duties of all guardians. 1783, 38, § 4. 1806, 102.

SECT. 18. The guardian shall also manage the estate of the ward frugally and without waste, and apply the income and profits thereof, so far as may be necessary, for the comfortable and suitable maintenance and support of the ward and his family, if there be any; and if the income and profits shall be insufficient for that purpose, the guardian may sell the real estate, upon obtaining a license therefor as provided by law, and shall apply the proceeds of such sale, so far as may be necessary, for the maintenance and support of the ward and his family. Same subject. 1783, 38, § 4. 1806, 102.

SECT. 19. The guardian may join in, and assent to, a partition of the real estate of the ward, either upon a petition for partition, or otherwise; and he may assign and set out dower in the said estate to any widow entitled thereto, and may appoint an appraiser of real estate on any execution either against, or in favor of, his ward. Same subject. 1783, 38. 1783, 41.

SECT. 20. Upon the taking of any inventory, required by this chapter, the estate and effects comprised therein shall be appraised by three suitable persons, to be appointed and sworn, in like manner as is required with respect to the inventory of the estate of a deceased testator or intestate; and every guardian shall account for, and dispose Of the inventory of the estate, and of accounting therefor. 1817, 190, § 34.

of, the personal estate of the ward, in like manner as is directed with respect to executors and administrators, in the first five sections of the sixty seventh chapter.

Courts may authorize sales and investments. 1817, 190, § 35. 1820, 54, § 3.

SECT. 21. The judges of probate in their respective counties, and also the supreme judicial court, on the application of a guardian, or of any person interested in the estate of any ward, after notice to all other persons interested therein, may authorize or require the guardian to sell and transfer any stock in the public funds, or in any bank, insurance company, or other corporation, or any other personal estate or effects, held by him as guardian, and to invest the proceeds of such sale, and also all other moneys in his hands, in real estate, or in any other manner, that shall be most for the interest of all concerned therein; and the said courts, respectively, may make such further order, and give such directions, as the case may require, for managing, investing, and disposing of the estate and effects, in the hands of the guardian.

Guardians, when and how removable. 1817, 190, §§ 36 & 39.

SECT. 22. When any guardian, appointed either by a testator or by the judge of probate, shall become insane or otherwise incapable of discharging his trust, or evidently unsuitable therefor, the judge, after notice to such guardian, and to all others interested, may remove him; and every guardian may, upon his request, be allowed to resign his trust, when it shall appear to the judge of probate proper to allow the same; and upon every such resignation or removal, and also upon the death of any guardian, the judge of probate may appoint another in his stead.

Wards, when and how discharged from guardianship.

SECT. 23. The marriage of any female, who is under guardianship as a minor, shall operate as a legal discharge of her guardian; and the guardian of any insane person or spendthrift may be discharged by the judge of probate, when it shall appear to him, on the application of the ward or otherwise, that such guardianship is no longer necessary.

Sureties may be discharged and new bond required. 1816, 94, § 2.

SECT. 24. The supreme judicial court and the probate court may require a new bond to be given by any guardian, and may discharge the existing sureties from future responsibility, in the like cases, and upon the like terms and conditions, as are prescribed in the seventieth chapter, with regard to executors and administrators.

Bond may be sued. Proceedings thereon. 1786, 55.

SECT. 25. Any bond given by a guardian may be put in suit by order of the judge of probate, for the use and benefit of the ward, or of any person interested in his estate; and the proceedings in such suit shall be conducted in like manner, as is provided with respect to suits on the bonds of executors or administrators.

Action against surety limited to four years, &c. unless, &c. 1835, 11 & 133.

SECT. 26. No action shall be maintained against the sureties in any bond, given by a guardian, unless it be commenced within four years from the time when this chapter shall take effect, or within four years from the time when the guardian shall be discharged; provided, that if at the time of such discharge, the person, entitled to bring such action, shall be out of the state, the action may be commenced at any time within four years after his return to the state.

Proceedings for recovering effects concealed, &c. 1783, 38, § 3.

SECT. 27. Upon complaint made to the judge of probate by any guardian, or by the ward, or by any creditor or other person interested in his estate, or by any person having claims thereto in expectancy as heir or otherwise, against any one suspected of having concealed,

embezzled, or conveyed away any of the money, goods or effects of the ward, the judge may cite and examine such suspected person, and proceed with him as to such charge, in the same manner as is provided respecting persons suspected of concealing or embezzling the effects of a deceased testator or intestate.

Guardians may be appointed for persons out of the state. 1783, 38.

SECT. 28. When any minor or other person, liable to be put under guardianship, according to the provisions of this chapter, shall reside without this state, and shall have any estate therein, any friend of such person, or any one interested in his estate, in expectancy or otherwise, may apply to the judge of probate for any county in which there may be any estate of such absent person, and after notice to all persons interested, to be given in such manner as the judge shall order, and after a full hearing and examination, if it shall appear to him proper, he may appoint a guardian for such absent person.

Powers and duties of such guardians.

SECT. 29. Every guardian, appointed according to the provisions of the preceding section, shall have the same powers and duties, with respect to any estate of the ward, that shall be found within this state, and also with respect to the person of the ward, if he shall come to reside therein, as are prescribed with respect to any other guardian, appointed by force of this chapter.

Bond to be given by them.

SECT. 30. Every such guardian shall give bond to the judge of probate, in like manner and with the like condition, as is above provided with respect to other guardians; excepting that the provisions respecting the inventory, the disposal of the estate and effects, and the account to be rendered by the guardian, shall be confined to such estate and effects, as shall come to his hands in this state, and that the provisions, respecting the custody of the ward, shall not be applicable, unless the ward shall come to reside within this state.

Guardianship first granted to extend throughout the state.

SECT. 31. The guardianship, which shall be first lawfully granted, of any person residing without the state, shall extend to all the estate of the ward within the same, and shall exclude the jurisdiction of the probate court in every other county.

Compensation of guardians.

SECT. 32. Every guardian shall be allowed the amount of all his reasonable expenses, incurred in the execution of his trust, and he shall also have such compensation for his services, as the court, in which his accounts are settled, shall consider to be just and reasonable.

Account may be allowed on the oath of one of two guardians.

SECT. 33. When an account is rendered by two or more joint guardians, the judge of probate may, in his discretion, allow the same, upon the oath of any one of them.

Construction of the words "insane person" and "spendthrift."

SECT. 34. The words "insane person" are intended to include every idiot, non compos, lunatic, and distracted person, and the word "spendthrift" is intended to include every one who is liable to be put under guardianship, on account of excessive drinking, gaming, idleness, or debauchery; and these words shall be so construed in all the provisions relating to guardians and wards, contained in this or any other statute.

CHAPTER 80.

OF MASTERS APPRENTICES AND SERVANTS.

SECTION
1. Minors may be bound as apprentices or servants.
2. How bound, when under fourteen years.
3. How, when above fourteen,
4. To be bound by an indenture of two parts, &c.
5. One part to be kept for the minor.
6. Overseers of the poor may bind children of paupers, and pauper children.
7. Until what age and upon what terms.
8. By indenture of two parts, one to be kept for the minor.
9. Money, &c. paid by any master, to be for the use of the apprentice.
10. Parents, selectmen, &c. to inquire into the treatment of children.
11. And may file a complaint for misconduct of the master in C. C. Pleas.
12. The court may thereupon discharge the apprentice, &c.
13. Or may award costs for the master.
14. Master also liable to an action on the indenture,
15. By whom such action may be brought.
16. Proceedings therein, when brought by the overseers.
17. Limitation of such action by the apprentice.
18. In case of judgment for the plaintiff, the court may discharge the apprentice.
19. Apprentice absconding may be arrested and returned or imprisoned.
20. Proceedings in such case.
21. Costs therein, of whom recoverable.
22. Master may file a complaint for misconduct of the apprentice, and proceedings thereon.
23. Master may be thereupon discharged from the contract.
24. Apprenticeship discharged by the death of the master.
25. Minor may be bound to a mistress, to whom the foregoing provisions shall apply.
26. Common law right not affected.
27. Powers and duties under this chapter, in Boston, in whom vested.

Minors may be bound as apprentices or servants. 1794, 64, § 1

SECTION 1. All children, under the age of fourteen years, may be bound as apprentices or servants, until that age, and all minors, above the age of fourteen years, may be bound as apprentices or servants, females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty one years, in the manner prescribed in this chapter.

How bound when under fourteen years. 2 Mass 109. 12 Mass. 387 1794, 64, § 1

SECT. 2. Children, under the age of fourteen years, may be bound by their father, or in case of his death or incompetency, by their mother, or by their legal guardian, and if illegitimate, they may be bound by their mother; and if they have no parent competent to act, and no guardian, they may bind themselves, with the approbation of the selectmen of the town where they reside.

How, when above fourteen. 1794, 64, § 1.

SECT. 3. Minors, above the age of fourteen years, may be bound in the same manner, provided, that when they are bound by their parent or guardian, the consent of the minor shall be expressed in the indenture, and testified by his signing the same.

To be bound by indenture of two parts, &c. 1794, 64, § 1.

SECT. 4. No minor shall be bound as aforesaid, unless by an indenture of two parts, sealed and delivered by both parties; and when made with the approbation of the selectmen, their approbation shall be certified in writing, signed by them, upon each part of the indenture.

— one part to be kept for the minor. 1794, 64 § 1.

SECT. 5. One part of the indenture shall be kept for the use of the minor, by his parent or guardian, when executed by them respec-

tively; and when made with the approbation of the selectmen, it shall be deposited with the town clerk, and be safely kept in his office for the use of the minor.

SECT. 6. The overseers of the poor may bind, as apprentices or servants, the minor children of any poor person, who has become actually chargeable to their town, as having a lawful settlement therein, or who is supported there, in whole or in part, at the charge of the Commonwealth, and also all minor children, who are themselves chargeable to the town, as having a lawful settlement therein, or as poor persons supported by the Commonwealth.

Overseers of the poor may bind children of paupers, and pauper children. 2 Pick. 451. 7 Greenl. 457. 4 N. Hamp. R. 139. 179, 93, 5 § 4.

SECT. 7. Such children, whether under or above the age of fourteen years, may be bound, females to the age of eighteen years, or to the time of their marriage within that age, and males to the age of twenty one years; and provision shall be made in the contract, for teaching such children to read, write and cypher, and for such other instruction, benefit and allowance, either within or at the end of the term, as the overseers may think reasonable.

— until what age, and upon what terms. 5 Pick. 250. 1793, 59, § 4.

SECT. 8. No minor shall be so bound by the overseers, unless by an indenture of two parts, sealed and delivered by the overseers and by the master, one part of which shall be deposited with the town clerk, and be safely kept by him for the use of the minor.

— by indenture of two parts; one to be kept for the minor.

SECT. 9. All considerations, of money or other things, paid or allowed by the master, upon any contract of service or apprenticeship, made in pursuance of this chapter, shall be paid or secured to the sole use of the minor thereby bound.

Money, &c., paid by any master, to be for the use of the apprentice. 1794, 64, § 1.

SECT. 10. Parents and guardians, and selectmen and overseers, shall inquire into the treatment of all children, bound by them respectively, or with their approbation, and of all who shall have been bound by their predecessors in office, and defend them from all cruelty, neglect, and breach of contract, on the part of their masters.

Parents, selectmen, &c., to inquire into the treatment of children. 1793, 59, § 5. 1794, 64, § 2.

SECT. 11. In case of any such misconduct or neglect of the master, a complaint may be filed by the parents, guardian, selectmen, or overseers, in the court of common pleas for the county in which the master resides, setting forth the facts and circumstances of the case, and the court, after having duly notified the master, shall proceed to hear and determine the cause, with or without a jury, as the allegations of the parties may require.

— and may file a complaint for misconduct of the master in C. C. P. 1793, 59, § 5. 1794, 64, § 2.

SECT. 12. After a full hearing of the parties, or of the complainants alone, if the master shall neglect to appear, the court may render a judgment or decree, that the minor be discharged from his apprenticeship or service, and for the costs of the suit against the master, and may award execution accordingly, and the minor may be thereupon bound out anew.

The court may thereupon discharge the apprentice, &c. 1793, 59, § 5. 1794, 64, § 2.

SECT. 13. If the complaint shall not be maintained, the court shall award costs for the master against the complainants, and shall issue execution accordingly; excepting, that in case of such a complaint by selectmen or overseers, the court shall not award costs against them, unless it shall appear that the complaint was made without any just or reasonable cause.

— or may award costs for the master. 1793, 59, § 5. 1794, 64, § 2.

SECT. 14. Every master shall moreover be liable, whether such complaint shall have been filed or not, to an action on the indenture, for the breach of any covenant on his part therein contained; and all

Master also liable to an action on the indenture. 1793, 59, § 5.

damages recovered in such action, after deducting the necessary charges in prosecuting the same, shall be the property of the minor, and may be applied and appropriated to his use, by the person who shall recover the same, and the residue, if any, shall be paid to the minor, if a male, at his age of twenty one years, and if a female, at her age of eighteen years, or at the time of her marriage within that age.

By whom such action may be brought. 1793, 59, § 5.

SECT. 15. Such action may be brought, either by the parent or his executors or administrators, or by the guardian, or any one who shall succeed him in that trust, or by the overseers or their successors in that office, or it may be brought, in the name of the minor, by his guardian or next friend, as the case shall require, or by himself, after the expiration of the term of apprenticeship or service.

Proceedings therein, when brought by the overseers. 1793, 59, § 5

SECT. 16. If the action is brought by the overseers, it shall not abate by the death of any of them, or by their being succeeded in office, but shall proceed in the names of the original plaintiffs, or the survivor of them, or the executors or administrators of the survivor; and the money recovered therein shall be deposited in the town treasury, to be applied and disposed of as provided in the fourteenth section.

Limitation of such action by the apprentice. 1793, 59, § 5.

SECT. 17. No such action shall be maintained by the apprentice or servant, unless it be commenced during the term of apprenticeship or service, or within two years after the expiration thereof.

In case of judgment for the plaintiff, the court may discharge the apprentice. 1793, 59, § 5.

SECT. 18. If judgment in such action, by whomsoever brought, shall be rendered for the plaintiff, in the court of common pleas, or the supreme judicial court, the court may also, upon the motion of the plaintiff, discharge the minor from his apprenticeship or service, if it shall not have been already done in the manner before provided, and the minor may be thereupon bound out anew.

Apprentice absconding may be arrested, and returned, or imprisoned. 1793, 59, § 5. 1794, 64, § 3.

SECT. 19. If any apprentice or servant, bound as aforesaid, shall unlawfully depart from the service of his master, any justice of the peace, upon complaint on oath made to him by the master, or by any one in his behalf, may issue his warrant to apprehend the apprentice or servant, and bring him before the said justice; and if the complaint shall be supported, the justice may order the offender to be returned to his master, or may commit him to the common jail or house of correction, there to remain for a term not exceeding twenty days, unless sooner discharged by his master.

Proceedings in such case. 1794, 64, § 3.

SECT. 20. The justice's warrant, when directed to any officer or other person by name, shall authorize him to convey the offender to the place of residence of the master, although it may be in any other county in the state.

Costs therein, of whom recoverable. 1794, 64, § 3.

SECT. 21. All the costs, incurred in any such process against a servant or apprentice, shall be paid, in the first instance, by the complainant; and if the complaint shall be supported, the amount of the costs may be recovered by the master, in an action on the indenture, if the same were executed by a parent or guardian, and if recovered against a guardian, the amount paid by him in such action may be charged by him in his guardianship account; and if the indenture were executed by overseers of the poor, or by the minor with the approbation of the selectmen, the amount of such costs may be recovered in an action against the minor, after he shall arrive at full age.

SECT. 22. If any such apprentice or servant shall be guilty of any gross misbehavior, or refusal to do his duty, or wilful neglect thereof, his master may file his complaint in the court of common pleas, for the county in which he resides, setting forth the facts and circumstances of the case, and the court, after having duly notified the apprentice or servant, and all persons who have covenanted on his behalf, and also the selectmen, who shall have approved of the indentures, or their successors in that office, shall proceed to hear and determine the cause, with or without a jury, as the allegations of the parties may require.

Master may file a complaint for misconduct of the apprentice, and proceedings thereon. 2 Pick. 451. 1793, 59. 1794, 64, § 4.

SECT. 23. After a full hearing of the parties, or of the complainant alone, if the adverse parties shall neglect to appear, the court may render a judgment or decree, that the master be discharged from the contract of apprenticeship or service, and for the costs of the suit; such costs to be recovered of the parent or guardian of the minor, if there be any who executed the indenture, and execution therefor to be issued accordingly; and if there be no parent or guardian liable for such costs, the amount thereof may be recovered in an action against the minor, after he shall arrive at full age; and any minor discharged as aforesaid, may be bound out anew.

Master may be thereupon discharged from the contract. 1793, 59, § 5. 1794, 64, § 4.

SECT. 24. No indenture of apprenticeship or service, made in pursuance of this chapter, shall bind the minor after the death of his master, but the apprenticeship or service shall be thenceforth discharged, and the minor may be bound out anew.

Apprenticeship discharged by the death of the master. 1794, 64, § 5.

SECT. 25. Any indenture of apprenticeship or service, made in pursuance of this chapter, by or in behalf of a minor, may be made either with a woman or a man, and all the foregoing provisions shall apply as well to mistresses as to masters.

Minor may be bound to a mistress, to whom all the foregoing provisions shall apply.

SECT. 26. Nothing contained in this chapter shall prevent or affect the right of a father, by the common law, to assign, or contract for, the services of his children for the term of their minority, or of any part thereof.

Common law right not affected. 7 Mass. 147. 1 Mason, 78. 8 Johns. R. 328. 3 B. & A. 586. 1 Ashm. 267.

SECT. 27. Everything, which is prescribed in this chapter to be done by the selectmen of any town, shall and may be done by the mayor and aldermen of the city of Boston; and everything, prescribed to be done by the overseers of the poor of any town, shall and may be done by the overseers of the poor of the said city, or by the directors of the house of industry therein, or by such other officers as shall have the care and charge of the poor in said city.

Powers and duties under this chapter, in Boston, in whom vested.

PART III.

OF COURTS AND JUDICIAL OFFICERS, AND PROCEEDINGS IN CIVIL CASES.

TITLE I.

Of courts, and judicial officers.

CHAPTER 81. Of the supreme judicial court.
CHAPTER 82. Of the court of common pleas.
CHAPTER 83. Of the probate court.
CHAPTER 84. Of county commissioners.
CHAPTER 85. Of justices of the peace, jurisdiction in civil actions.
CHAPTER 86. Of the municipal court of the city of Boston.
CHAPTER 87. Of police courts.
CHAPTER 88. Of clerks, attorneys, and other officers of courts.
CHAPTER 89. General provisions concerning courts and judicial officers.

CHAPTER 81.

OF THE SUPREME JUDICIAL COURT.

SECTION
1. Appointment, and number of justices.
2. Civil jurisdiction of the court.
3. Criminal jurisdiction.
4. General superintendence of inferior courts.
5. Power to issue writs of error, certiorari, &c.
6. To frame new writs when necessary.
7. The justices to be conservators of the peace.
8. Jurisdiction in cases in equity.
9. General powers of the court.
10. To establish general rules of practice.
11. Three justices to constitute a quorum.
12. The court may be held by one justice.
13, 14. Exclusive powers of the full court.
15. One justice may arraign in capital cases, and pass sentence, in case, &c.
16. May assign counsel, &c.
17. The criminal jurisdiction of the court in Suffolk.
18. Appeals from the municipal court of Boston, when to be entered.
19. Capital indictments in other counties.
20, 21. Power of one justice in suits in equity.
22. No proceedings in vacation without notice.
23. Parties may transmit their arguments in writing.
24. Decrees made in vacation to be filed with the clerk, &c.
25. And may be revised and altered by the full court.
26. Questions of law may be reserved by one justice, without motion.
27. Or upon a report, on a motion for a new trial.
28. Or upon exceptions taken to the opinion of the justice—Proceedings if justice refuses to sign exceptions.
29. If exceptions are frivolous, &c., execution may be awarded, &c.

SECTION
30. All questions reserved shall be heard and determined by the full court.
31. Proceedings when the exceptions are frivolous.
32. Judgment, when entered notwithstanding exceptions, may be vacated by the full court.
33. Trial by jury, not to be delayed by the allowance of exceptions.
34. Appeal omitted, &c., may be entered on petition.
35. Complaint by respondent may be entered in like manner.
36. Petition for such entry not to be received after one year.
37. Attachments and bail in such cases to remain discharged.
38. Case of the attendance of more justices than are required, or of less.
39. Adjournment in the absence of the justices.
40. Directions therefor may be given in writing by any one of the justices.
41. Full courts to be held for capital trials, in counties where there is no law term.
42. How to be convened.
43. Special term, when to be held for that purpose.
44. Notice of such special term; and proceedings thereat.
45. What business may be transacted at such term.
46. Capital indictments in Duke's county, to be tried at a full court in Barnstable.
47. Provisions for a special term in such case.
48. Appeals to the supreme court may be entered at any adjourned session.
49. The duties of the chief justice, by whom performed in his absence, &c.
50. Law terms, when and where held.
51. The court at Lenox may be commenced by one justice.
52. Jurisdiction of the court when held for two or more counties.
53. Course of proceedings at such terms.
54, 55. Duties of the respective clerks.
56. Particular provision for Duke's county.
57. Judgments how entered in actions continued *nisi*.
58. Liability of bail and of property attached to be computed from the time of such entry.
59. Times and places of holding the court by one justice.
60. The first day of the term, how designated.
61. Salaries of the justices.

Appointment and number of justices. 1782, 9. 1823, 98.

SECTION 1. The justices of the supreme judicial court shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur, they shall be filled in the manner provided by the constitution, so that there shall always be one chief justice, and three other justices of the said court.

Civil jurisdiction of the court 1782, 9.

SECT. 2. They shall have cognizance of all pleas, real, personal and mixed, and of all civil actions between party and party, and between the Commonwealth and any of the subjects thereof, which shall be legally brought before them, by original writ, by appeal, writ of error or otherwise.

Criminal jurisdiction. 1782, 9.

SECT. 3. They shall have cognizance of all capital crimes, and all other crimes, offences and misdemeanors, which shall be legally brought before them.

General superintendence of inferior courts. 1782, 9.

SECT. 4. They shall have the general superintendence of all courts of inferior jurisdiction, to prevent and correct errors and abuses therein, where no other remedy is expressly provided by law.

Power to issue writs of error, certiorari, &c. 1782, 9.

SECT. 5. They shall have power to issue writs of error, certiorari, mandamus, prohibition and quo warranto, and all other writs and processes, to courts of inferior jurisdiction, to corporations and individuals, that shall be necessary to the furtherance of justice, and the regular execution of the laws.

To frame new writs, when necessary. 3 Mass. 196.

SECT. 6. When there shall be occasion for any writ or process, for which no form is prescribed by statute, the court shall frame a new writ, in conformity with the principles of law, and the usage and practice of the state.

The justices to be conservators of the peace. 1792, 9.

SECT. 7. The justices of the said court shall, by virtue of their office, be severally conservators of the peace throughout the state.

Jurisdiction in cases in equity. 1798, 77. 1817, 87. 1823, 140. 1827, 88. 1832, 162.

SECT. 8. The said court shall also have power to hear and determine in equity all cases of the kinds hereafter mentioned, when the parties have not a plain, adequate and complete remedy at the common law; that is to say,

All suits for the redemption of mortgages, or to foreclose the same:

All suits and proceedings for enforcing and regulating the execution of trusts, whether the trusts relate to real or personal estate:

All suits for the specific performance of any written contract:

All suits to compel the re-delivery of any goods or chattels whatsoever, taken or detained from the owner thereof, and secreted or withheld, so that the same cannot be replevied:

All suits for contribution by or between devisees, legatees or heirs, who are liable for the debts of a deceased testator or intestate, and by or between any other persons, who are respectively liable for the same debt or demand, when there is more than one person liable at the same time for such contribution:

All other cases in which there are more than two parties having distinct rights or interests, which cannot be justly and definitively decided and adjusted in one action at the common law:

All suits between co-partners, joint tenants and tenants in common, and their legal representatives, and between joint trustees, co-executors and co-administrators:

6 Pick. 376. 13 Pick. 169.

All suits concerning waste and nuisance, whether relating to real or personal estate: and

All suits or bills for discovery relating to any of the cases above-mentioned, or to any other case, when a discovery may be lawfully required, according to the course of proceedings in chancery.

General powers of the court. 1782, 9. 1817, 87.

SECT. 9. The said court shall have power to make and award all such judgments, decrees, orders and injunctions, to issue all such executions and other writs and processes, and to do all such other acts, as may be necessary or proper to carry into full effect all the powers, which are or may be given to them by the laws of the Commonwealth.

To establish general rules of practice. 1782, 9.

SECT. 10. They shall, from time to time, make rules for regulating the practice and conducting the business of said court, in all cases not expressly provided for by law, and they shall, within two years after this act shall take effect, and once at least in every seven years thereafter, revise the said rules, with a view to the attainment, as far as may be practicable, of the following improvements in the practice:

First, simplifying and shortening the pleadings and other proceedings:

Secondly, presenting more distinctly the questions to be tried by the jury, particularly in some of the actions on promises, by a more full and precise statement in the declaration, or by a bill of particulars, and by a more definite statement of the ground of defence:

Thirdly, expediting the decision of causes:

Fourthly, the diminishing of costs: and,

Fifthly, the remedying of all abuses and imperfections that may be found to exist in the practice.

SECT. 11. Any three of the said justices shall constitute a quorum for the transaction of any business that might be done by the whole court.

Three justices to constitute a quorum. 1782, 9, § 1.

SECT. 12. The said court may also be held by any one of the said justices, at the times and places designated by law for that purpose, and when so held, shall have and exercise all the power that is not expressly reserved to the full court, when held by three or more justices.

The court may also be held by one justice. 1804, 105, § 6.

SECT. 13. All trials of indictments for any capital crime, all motions for new trials, all questions of law on exceptions from the court of common pleas, on cases stated by the parties, and on special verdicts, and all issues in law, shall be heard and determined exclusively in the full court.

Exclusive powers of the full court. 1804, 105, § 6. 1820, 14, § 10.

SECT. 14. The power of appointing clerks, and establishing general rules of practice, shall be exercised exclusively by the said full court, except that any one justice, when sitting alone, may appoint a clerk pro tempore, in case of the death or absence of the standing clerk.

Same subject. 1804, 105, § 9. 1815, 37.

SECT. 15. Any person indicted for a capital crime may be arraigned before the said court, when held by one justice, and if he shall plead guilty, the same court may award sentence against him according to law.

One justice may arraign in capital cases, and pass sentence, in case, &c. 2 Mass. 303. 1820, 14, § 8. 1832, 130, § 6.

SECT. 16. If the prisoner in such case shall plead not guilty, stand mute, or otherwise put himself on trial, the said court may assign him counsel, and take all other measures, preparatory to the trial, which shall afterwards be had before three or more of the said justices.

May assign counsel, &c. 1820, 14, § 8. 1832, 130, § 6.

SECT. 17. The said court, when held in the county of Suffolk, shall have original and exclusive jurisdiction of all capital crimes committed in said county, and shall also have original jurisdiction, concurrently with the municipal court of the city of Boston, of all other crimes, offences and misdemeanors, committed in the same county; and grand jurors shall be selected for, and required to attend at, the supreme judicial court, when held in the county of Suffolk, in the manner prescribed in the ninety fifth chapter.

The criminal jurisdiction of the court in Suffolk. 1812, 133.

SECT. 18. All appeals from the municipal court of the city of Boston shall be entered at the supreme judicial court, then next to be held in the county of Suffolk, in the manner prescribed in the eighty sixth chapter.

Appeals from the municipal court of Boston, when to be entered. 1799, 81, § 7.

SECT. 19. All indictments for capital crimes, in any county except Suffolk, shall be found and presented in the courts of common pleas for the respective counties, and transmitted to the supreme judicial court, in the manner prescribed in the eighty second chapter; and no grand jurors shall attend the supreme judicial court in any county, except the county of Suffolk.

Capital indictments in other counties. 1832, 130, §§ 1 & 6.

SECT. 20. When any suit in equity shall be pending in the supreme judicial court, any one of the said justices may, as well in vacation as in term time, and in any county, hear and determine all such motions, and make all such interlocutory orders and decrees, as may be necessary or proper to prepare the case for a final hearing.

Power of one justice in suits in equity. 1826, 109, § 1.

SECT. 21. When any decree or order shall have been made, in any suit in equity pending in the said court, any one of the said jus-

Same subject 1827, 26.

tices, as well in vacation as in term time, and in any county, may make such further orders and issue such writs and processes, as may be necessary to carry into effect such principal decree or order.

No proceedings in vacation without notice. 1826, 109, § 2.

SECT. 22. No motion shall be heard, and no decree or order shall be made in vacation, as provided in the two preceding sections, until reasonable notice shall have been given to the adverse party, or his counsel, to appear and object thereto.

Parties may transmit their arguments in writing. 1826, 109, § 2

SECT. 23. The parties, or either of them, in such a case, may transmit to the said justice their reasons, in writing, for or against the application, and the said justice shall examine the same and proceed thereon, in like manner as if the parties were present.

Decrees made in vacation to be filed with the clerk, &c. 1826, 109, § 1.

SECT. 24. Every order or decree, so made in vacation, shall be transmitted, as soon as may be, to the clerk for the county in which the suit is pending, to be there filed or recorded, as if made in term time.

— and may be revised and altered by the full court. 1826, 109, § 2.

SECT. 25. All such orders and decrees, made in vacation, may be revised by the full court, at the next succeeding law term for the county, and may be reversed or altered, as to the court shall seem just and reasonable.

Questions of law may be reserved by one justice without motion.

SECT. 26. When any question of law shall arise, in any trial or other proceeding, either of a civil or criminal nature, at law or in equity, before the said court, when held by one justice, he may reserve the same for the consideration of the full court, to be held for the same county, and shall report the case, or as much thereof as may be necessary for a full understanding of the question.

— or upon a report, on a motion for a new trial.

SECT. 27. Any case may be reported and reserved in like manner, upon the motion of either party, for a new trial, on account of any opinion, direction or order of the justice, in any matter of law.

— or upon exceptions taken to the opinion of the justice. 1804, 105, § 5.

SECT. 28. If any party shall think himself aggrieved by any such opinion, direction or order of the court, and the justice shall not think fit to reserve the case upon his motion, the party may allege exceptions to such opinion, direction or order, and the same, being reduced to writing in a summary mode, and presented to the court, before the adjournment thereof without day, and being found conformable to the truth, shall be allowed and signed by the justice; and if said justice shall refuse to allow and sign said exceptions, the truth of the allegations therein contained may nevertheless be established before the full court, and the exceptions allowed by them.

Proceedings, if justice refuse to sign exceptions. 10 Pick. 252.

If exceptions are frivolous, &c., execution may be awarded, &c. 1804, 105. § 5.

SECT. 29. Upon the allowance of such exceptions, the question arising thereon shall be considered by the full court, to be held for the same county; if however, the exceptions shall appear to the justice, before whom the trial is had, to be frivolous, immaterial, or intended for delay, the judgment may be entered, and execution may be awarded or stayed, on such terms as the court shall deem reasonable, notwithstanding the allowance of the exceptions.

All questions reserved shall be heard and determined by the full court. 1804, 105, § 6.

SECT. 30. In all cases of questions reserved in any of the modes before provided, the same shall be heard and determined by the full court held for the same county, and such judgment or other proceedings shall be had therein, as to law and justice shall appertain.

Proceedings, when the exceptions are frivolous.

SECT. 31. When, upon the hearing of a case, brought before the court, upon exceptions alleged as before provided, it shall appear that the exceptions are frivolous, or immaterial, or were intended for de-

lay, the court may award, against the party taking the exceptions, double costs from the time when the same were alleged, and also interest from the same time, at the rate of twelve per cent. a year, on the sum, if any, found due for debt or damages, or may award any part of such additional costs and interest.

Judgment when entered, notwithstanding exceptions, may be vacated by the full court.

SECT. 32. If judgment shall have been rendered in any case, in which exceptions shall be allowed as aforesaid, the judgment may be vacated by the full court, without any writ of error, and in like manner, as if it had been entered by mistake, at the same term at which it is so vacated, and thereupon such further proceedings shall be had in the case, as to law and justice shall appertain.

Trial by jury, not to be delayed by the allowance of exceptions. 1804, 105, § 5.

SECT. 33. No trial by jury shall be prevented or delayed, by the filing or allowance of such exceptions, but the verdict shall be received, and such further proceedings shall be had in the case, as shall be ordered by the court, where the trial is had, in pursuance of the foregoing provisions.

Entry of appeal omitted, &c., may be allowed on petition. 1791, 17, § 1.

SECT. 34. When an appeal shall be claimed from the judgment of the court of common pleas, in any civil action, and by reason of any mistake or accident, the appeal shall not be duly entered at the supreme judicial court, the court may, on the petition of the appellant, allow the appeal to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and if the appeal be so entered, they shall proceed therein as if it had been entered at the proper term.

Complaint by respondent may be entered in like manner. 1791, 17, § 1.

SECT. 35. When an appeal, claimed as aforesaid, shall not be duly entered, and the adverse party shall, by reason of any mistake or accident, fail to enter his complaint for obtaining an affirmance of the judgment, the supreme judicial court may, on his petition, allow the complaint to be entered at any other term of the court, held for the same county, upon such terms as they may deem just and reasonable; and if the complaint be so entered, they shall proceed therein, as if it had been entered at the proper term.

Petition for such entry not to be received after one year. 1791, 17, § 1.

SECT. 36. No petition for the entry of any such appeal or complaint shall be maintained, unless it be presented to the court, or filed in the clerk's office, within one year after the term, at which the same ought to have been entered.

Attachments and bail, in such cases, to remain discharged. 1791, 17, § 1.

SECT. 37. No attachment made, and no bail taken, in the original action, shall be revived or continued in force by the entry of any appeal or complaint of the original plaintiff, which shall be allowed by force of the three preceding sections; but such attachment and bail shall remain discharged.

Case of the attendance of more justices than are required, or of less.

SECT. 38. Whenever, at any term appointed to be held by one justice, three or more of the said justices are present, they shall have and exercise the like power and authority, as if they had been assembled at a stated law term; and when, at a term appointed to be held by three or more justices, one only shall be present, he shall have and exercise the like power and authority, as if the court had been appointed to be held by one justice alone.

Adjournment in case of the absence of the justices. 1804, 105, § 8. 1820, 14, § 5.

SECT. 39. When no one of the said justices is present, at the time and place appointed for holding a court, whether at the beginning of a term, or at any adjournment thereof, the sheriff of the county, or either of his deputies, shall adjourn the court from day to

day, until one of the justices shall attend, or until an order in writing shall be received from one of them, respecting such adjournment.

Directions therefor may be given in writing by any one of the justices. 1782, 9 § 5.

SECT. 40. In the case mentioned in the preceding section, any one of the said justices shall have power, by an order in writing, under his hand, to require the sheriff or his deputy to adjourn the court without day, or to such time, as shall be expressed in the order, and the officer shall adjourn the court accordingly, by public proclamation, in the court house; and, if required by the order, he shall also give public notice of the adjournment, by advertisement in some newspaper, or in such other manner as shall be directed.

Full court to be held for capital trials, in counties where there is no law term.

SECT. 41. When an indictment for a capital offence is pending and for trial, in any county, in which there is no law term established, the said justices shall form a full court in such county for the trial thereof.

—how to be convened.

SECT. 42. The chief justice of the court, upon receiving notice of the pendency of such an indictment in any county, in which there is no law term established, shall take measures for convening three or more of the justices, for the trial thereof, at the stated term of the court, in the same county, or at any adjournment thereof; such trial to be had, as soon after the finding of the indictment, as the other official duties of the justices will admit, and the circumstances of the case may require.

Special term, when to be held for that purpose.

SECT. 43. If there shall not be, within six months after the finding of the indictment, any session of the said court, to be held in the same county, a special term may be held for that purpose, by three or more of the said justices, at such time and place, as they shall direct by an order in writing, under their hands, addressed to the sheriff of the county.

Notice of such special term, and proceedings thereat.

SECT. 44. The sheriff shall give notice of the intended special term of the court, by posting a copy of the order on the door of the court house, and by publishing the same, in such other manner as shall be therein directed; and the clerk of the county shall issue venires for jurors, and he, and all other officers shall do all such other things, as may be necessary or proper, in relation to such special term, in like manner as if it had been a stated term of the same court.

What business may be transacted at such term.

SECT. 45. The court, assembled at any such special term, shall have and exercise the same powers, as they might exercise, at any stated term, except that no party in any civil action, pending in the court, shall be required to attend, or shall be defaulted, or suffer any other penalty, for not attending thereat.

Capital indictments in Duke's county to be tried at a full court in Barnstable. 1832, 130, § 6.

SECT. 46. When an indictment for any capital offence shall be found in the county of Duke's county, it shall be tried at a full court, to be held in the county of Barnstable; and the court, for that purpose, shall be convened and held, and all the proceedings in relation thereto shall be conducted, in like manner as is or may be provided, with respect to such courts, when held in the county in which an indictment is found.

Provisions for a special term in such case.

SECT. 47. If a special term shall be required to be held in the county of Barnstable, for the trial of an indictment found in the county of Duke's county, an order of the court shall be sent to the sheriff of each of the said counties and each of them shall be required to

do, in his own county, whatever may be necessary or proper in relation to such special term of the court.

SECT. 48. All appeals in civil actions, from the court of common pleas, may, at the option of the appellant, be entered at any session of the supreme judicial court, held within the proper county, by adjournment, if any such session be held before the next stated term, and the appeals so entered shall be there heard and determined, in like manner, as if such adjourned session had been a stated term of the court; provided that the appellant, at the time of claiming the appeal, give to the adverse party written notice of his intention so to enter the appeal.

Appeals to the supreme court may be entered at any adjourned session. 1820, 14, § 9.

SECT. 49. In case of the absence or sickness of the chief justice, or of a vacancy in that office, all the duties thereof shall be performed by the senior justice, who is qualified to act in the case.

Case of the absence, &c. of the chief justice.

SECT. 50. The law terms of the supreme judicial court shall be held by three or more justices thereof, in every year, at the times and places following, that is to say:

Law terms, when and where held.

At Boston, in the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March:

Suffolk and Nantucket.

At Lenox, within and for the county of Berkshire, on the second Tuesday of September:

Berkshire.

At Northampton, in the county of Hampshire, and for the counties of Hampshire, Franklin and Hampden, on the Monday next preceding the fourth Tuesday of September:

Hampshire, Franklin, and Hampden.

At Worcester, within and for the county of Worcester, on the first Tuesday next after the fourth Tuesday of September:

Worcester.

At Cambridge, within and for the county of Middlesex, on the third Tuesday next after the fourth Tuesday of September:

Middlesex.

At Taunton, in the county of Bristol, and at Plymouth, in the county of Plymouth, alternately, beginning at Taunton, for the counties of Bristol, Plymouth, Barnstable and Duke's county, on the fourth Tuesday next after the fourth Tuesday of September:

Bristol, Plymouth, Barnstable and Dukes.

At Dedham, within and for the county of Norfolk, on the fifth Tuesday next after the fourth Tuesday of September: and

Norfolk.

At Salem, within and for the county of Essex, on the sixth Tuesday next after the fourth Tuesday of September.

Essex.

SECT. 51. The term of the court, as above established at Lenox, may be commenced by any one of the said justices, and he shall proceed in the trial of causes by jury, and in all other business, that may be performed by one justice, for the first week of the said term, and until three or more of the justices shall be present.

The court at Lenox may be commenced by one justice 1820, 14.

SECT. 52. The court, when held for two or more counties, shall have cognizance of all suits and other matters, which require the consideration of a full court, and which may arise or be pending in either of the said counties, in like manner as if the court were held in the county, in which the matter is pending, except that no issue shall be tried by a jury, in any county other than that in which the suit is pending, unless by consent of parties.

Jurisdiction of the court, when held for two or more counties.

SECT. 53. All writs and processes, in suits cognizable by such full court, except original writs, shall be sued out of the clerk's office of the county, in which the matter is pending, but shall be returnable to the full court, then next to be held for the same county; and all

Course of proceedings at such terms.

appeals and other matters, cognizable by such full court, may be entered thereat, if not previously entered in the county in which they are pending; and all such writs, processes, appeals, and other matters, shall be heard and determined, in like manner, as if the court were held in the county in which the same were respectively pending.

Duties of the respective clerks. 1814, 171. 1820, 14.

SECT. 54. At all such courts, held for two or more counties, a separate docket shall be kept for the matters pending in each county, and all the proper entries therein shall be made by the clerk of the county in which the court is held, unless the clerk of the county, in which the matter is pending, shall be present; and said last mentioned clerk shall prepare a docket of the matters, pending in his county, and attend the court and make all the proper entries therein, or transmit such docket, with all papers relating to the matters pending in the said court, to the clerk of the county in which the court is held; and all fees, due to the clerk for services at such court, shall be received and retained by the clerk, by whom the services are performed.

Same subject. 1814, 171. 1820, 14.

SECT. 55. The said dockets and papers shall, immediately after the rising of the court, be returned to the county to which they pertain, and the clerk thereof shall enter and record all judgments and proceedings of the court, relating to suits pending in his county, and shall issue executions and other proper processes thereon, in like manner, as if the court had been held in the same county.

Particular provision for Duke's county.

SECT. 56. Nothing contained in the four preceding sections shall apply to any suit, matter or thing, arising or pending in the county of Duke's county, and which is cognizable by the court, when held by one justice, but all such matters shall be entered, heard, tried and determined at the supreme judicial court, held in the county of Barnstable, in like manner, in all respects, as if the same courts were held in the county of Duke's county; and all matters cognizable by the full court, which may arise or be pending in the county of Duke's county, shall be heard and determined, as above provided, at the full court held alternately at Taunton and Plymouth, for the counties of Bristol, Plymouth, Barnstable and Duke's county.

Judgments how entered in actions continued nisi. 1815, 92.

SECT. 57. When an action shall be continued nisi from any law term, either for argument or advisement, and shall be determined by the court before the next law term in the same county, the judgment may, by order of the court, on the motion or at the request of the party prevailing, be entered as of the then last term of the court, in the county where the action is pending, whether it be a law term or not.

Liability of bail and of property attached, to be computed from the time of such entry.

SECT. 58. The clerk in such case shall note on his docket the time of receiving such order, and when such order is for final judgment in favor of the plaintiff, the bail in the suit, and all goods and estate attached in the suit, shall be held for the same time thereafter, that they would be held, after the entry of judgment in the usual manner.

Times and places of holding the court by one justice.

SECT. 59. The court for the trial of jury causes, and for such other matters, as are cognizable by one justice thereof, shall be held in every year, at the times and places following, that is to say:

Norfolk,

At Dedham, within and for the county of Norfolk, on the third Tuesday of February:

At Concord, within and for the county of Middlesex, on the second Tuesday of April: Middlesex,

At Worcester, within and for the county of Worcester, and at Greenfield, within and for the county of Franklin, on the sixth Tuesday next after the first Tuesday of March: Worcester, Franklin,

At Northampton, within and for the county of Hampshire, and at Taunton, within and for the county of Bristol, on the seventh Tuesday next after the first Tuesday of March: Hampshire, Bristol,

At Ipswich, within and for the county of Essex, and at Springfield, within and for the county of Hampden, on the eighth Tuesday next after the first Tuesday of March: Essex, Hampden,

At Barnstable, in the county of Barnstable, and for the counties of Barnstable and Duke's county, on the ninth Tuesday next after the first Tuesday of March: Barnstable and Dukes,

At Lenox, within and for the county of Berkshire, and at Plymouth, within and for the county of Plymouth, on the tenth Tuesday next after the first Tuesday of March: Berkshire, Plymouth,

At Nantucket, within and for the county of Nantucket, on the first Tuesday of July: Nantucket,

At Springfield, within and for the county of Hampden, on the first Tuesday of September: Hampden,

At Greenfield, within and for the county of Franklin, on the second Tuesday of September: Franklin,

At Boston, within and for the county of Suffolk, on the seventh Tuesday next after the fourth Tuesday of September; and Suffolk,

At New Bedford, within and for the county of Bristol, on the second Tuesday of November. Bristol,

SECT. 60. In all writs, processes, records and judicial proceedings, civil and criminal, the day on which any term is to commence may be designated as the first, second, or other Monday or Tuesday, as the case may be, of the month in which the same shall happen. The first day of the term, how designated. 1820, 14, § 7.

SECT. 61. The chief justice of the court shall receive an annual salary of three thousand five hundred dollars, and each of the other justices shall receive an annual salary of three thousand dollars, and the said salaries shall be paid in quarterly payments, out of the treasury of the state, and in the same proportion for any part of a quarter. Salaries of the justices. 1806, 3. 1809, 13.

CHAPTER 82.

OF THE COURT OF COMMON PLEAS.

SECTION
1. Appointment and number of justices.
2, 3, 4, 5. Jurisdiction of the court in civil actions.
6. Appeal to the supreme court in civil cases.
7. May be entered at a law term, in case.
8. Appellant to recognize;
9. And to carry up papers.
10. Complaint by the respondent, upon the default of the appellant.
11. Appeal from judgment upon a case stated.

SECTION
12. Bill of exceptions may be presented, and allowed.
13. But trial not to be prevented.
14. Case to be removed to the supreme court.
15. Proceedings after such removal.
16. Liability of party alleging frivolous exceptions.
17. Costs in cases removed on bill of exceptions.
18. Proceedings therein not to discharge attachment, or bail.
19. C. C. P. may grant new trials.
20. Judgments may be revised in supreme court, on writ of error.
21. Entry of appeal from justice of the peace, when omitted, &c., may be allowed on petition.
22. Complaint by respondent may be entered in like manner.
23. Petition for such entry not to be received after one year.
24. Attachments and bail in such cases to remain discharged.
25. Jurisdiction of the C. C. P. in criminal cases.
26. Indictments for capital crimes to be transmitted to the supreme court.
27. Proceedings thereon in C. C. P.
28. Appeal to the supreme court in certain criminal cases.
29. Case may be removed to the supreme court on a bill of exceptions.
30. C. C. P. may grant new trials in criminal cases.
31. Writ of error in criminal cases.
32. C. C. P. may be held by one justice.
33. Grand jurors to attend, except in Suffolk.
34. Jurisdiction of criminal cases in Suffolk.
35. Writs in the C. C. P. how signed, &c.
36. The court may frame and issue all necessary writs.
37. May establish general rules of practice.
38. The justices to arrange and distribute their duties.
39. Adjournment in case of the absence of the justices.
40. Times and places of holding the courts.
41. Worcester district, terms for civil and for criminal business.
42. Business, how conducted at those terms.
43. Grand jurors, when to attend.
44. First day of the term, how designated.
45. Salaries of the justices.

Appointment and number of justices. 1820, 79, § 2.

SECTION 1. The justices of the court of common pleas shall continue to hold their offices, according to the tenor of their commissions; and, as vacancies occur, they shall be filled in the manner provided by the constitution, so that there shall always be one chief justice and three other justices of the said court.

Jurisdiction of the court in civil actions. 1820, 79, § 1.

SECT. 2. The said court shall have original jurisdiction of all civil actions, except those of which the supreme judicial court, or justices of the peace, have original and exclusive jurisdiction.

Same subject. 1783, 42, § 6. 1820, 79, § 1.

SECT. 3. They shall also have jurisdiction of all civil actions, that shall be legally brought before them, by appeal or otherwise, from a justice of the peace, or police court.

Same subject. 10 Pick. 473. 16 Mass. 448. 7 Mass. 476. 4 Pick. 169. 1807, 123. 1820, 79.

SECT. 4. No action shall be commenced in the court of common pleas, wherein the debt or damages demanded do not exceed twenty dollars, except real actions, actions of trespass on real estate, actions on the case for disturbance of a right of way or of any other easement, and all other actions, in which the title to real estate may be concerned.

Same subject.

SECT. 5. The preceding section shall not affect the provisions of any statute, by which jurisdiction may be given in any case to the court of common pleas.

Appeal to the supreme court in civil cases. 1784, 28, § 8. 1820, 79, § 4.

SECT. 6. Any party, aggrieved by the judgment or final decision of the court of common pleas, in any personal action, wherein the debt or damages demanded shall exceed ~~one~~ # hundred dollars, or in any of the actions before mentioned, in which the title to real estate may be concerned, or in any civil action, suit or proceeding whatever, when the judgment or decision therein is founded on matter of

Ch 165.

three.

law apparent on the record, may appeal therefrom to the supreme judicial court, then next to be held for the county where the judgment is rendered, whether it be a stated term of the court, or a session by adjournment, according to the provisions contained in the preceding chapter; and in case of a judgment for the plaintiff, on a plea in abatement or a demurrer, the appeal may be claimed as from a final judgment, without any further proceedings in the court of common pleas.

May be entered at a law term, in case.

SECT. 7. If upon any appeal, the action is prepared, by an issue in law or otherwise, to be decided on a question of law, without a trial by jury, and if a law term of the supreme judicial court is to be held for the said county, after such appeal and before any session of the same court to be held within the county, the appeal may, at the option of the appellant, be made directly to such law term, and shall be there entered accordingly.

Appellant to recognize.

SECT. 8. The appellant shall, before the allowance of his appeal, recognize, with sufficient surety or sureties, to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and to pay all such costs as may arise after the appeal.

—and to carry up papers.

SECT. 9. The appellant shall produce in the supreme judicial court attested copies of the writ, pleadings and judgment, and of all papers filed in the case, at the court of common pleas, except that when depositions, or other written evidence or documents are so filed, the originals shall be produced in the supreme judicial court, instead of copies.

Complaint by respondent, upon the default of the appellant. 1820, 79.

SECT. 10. No execution shall issue on the judgment appealed from; and if the appellant shall fail to enter his appeal, and to produce the necessary papers, the supreme judicial court may, upon the complaint of the adverse party, affirm the former judgment, or render such other judgment as law and justice shall require.

Appeal from judgment, upon a case stated. 1820, 79, § 4.

SECT. 11. When an action is submitted to the determination of the court of common pleas, upon a case stated by the parties, either party may appeal from the judgment, unless it is agreed that the judgment of the court of common pleas shall be final.

Bill of exceptions may be presented and allowed. 1820, 79, § 5. 1835, 101.

SECT. 12. Any party, aggrieved by any opinion, direction, or judgment of the court of common pleas, in matter of law, in any civil action, suit, or proceeding whatever, whether it be according to the course of the common law or otherwise, may allege exceptions thereto, which, being reduced to writing in a summary mode, and presented to the court, before the adjournment thereof without day, and being found conformable to the truth, shall be allowed and signed by the judge presiding at the court.

But trial not to be prevented.

SECT. 13. No trial shall be prevented or delayed by the allowance of such exceptions, and judgment shall be entered according to the opinion and direction of the court, but no execution shall issue on such judgment.

Case to be removed to the supreme court. 1 Pick. 171. 1820, 79, § 5.

SECT. 14. Every case, in which exceptions shall be so allowed, shall be removed to, and entered at, the supreme judicial court, by the party taking the exceptions, in like manner as in case of an appeal; and if he shall fail so to enter the same, and to produce the papers required by law, the supreme judicial court may, upon the complaint

of the adverse party, affirm the former judgment, in like manner as is provided when an appeal is claimed and not entered.

Proceedings, after such removal. 1820, 79.

SECT. 15. All cases, so entered, shall be heard and determined by the full court for the county in which the original judgment was rendered, and shall be disposed of in like manner, as if they had been brought before the supreme judicial court by appeal; and the court may affirm the former judgment with additional damages, at the rate of six per cent. a year, or may reverse the same in whole or in part, and after a decision of all the questions of law raised thereon, may remit the case to the court of common pleas for trial, or may order a new trial to be had in the supreme judicial court, and may enter such judgment, order, or decree, and take such other order therein, as the court of common pleas ought to have done, and shall cause such other proceedings to be had in the case, as to law and justice shall appertain.

Liability of party, alleging frivolous exceptions. 1820, 79.

SECT. 16. When it shall appear to the supreme judicial court, that any exceptions alleged as aforesaid are frivolous, immaterial, or intended for delay, they may award against the party taking the exceptions, double costs, from the time when the exceptions are alleged, and also interest from the same time, at the rate of twelve per cent. a year, on the sum, if any, found due for debt or damages, or may award any part of such additional costs and interest, as shall appear to the court to be just and reasonable.

Costs in cases removed on bill of exceptions.

SECT. 17. In all cases, brought before the supreme judicial court by exceptions, as before provided, the party prevailing shall be entitled to his costs, although the debt or damages recovered, or originally demanded, should be less than one hundred dollars.

Proceedings therein not to discharge attachment, or bail.

SECT. 18. No attachment made on the original writ shall be dissolved, and no bail taken in the original suit shall be discharged, in any case, which shall be carried to the supreme judicial court upon exceptions taken as aforesaid, but they shall continue responsible, upon the final judgment in the supreme judicial court, or in the court of common pleas, if the case should be remitted there for trial.

C. C. P. may grant new trials. 1820, 79.

SECT. 19. The court of common pleas may, at any time before judgment in any civil action, set aside the verdict, and order a new trial, for any cause for which by law a new trial may and ought to be granted.

Judgments may be revised in supreme court, on writ of error. 1820, 79.

SECT. 20. Final judgments in civil actions, in the court of common pleas, may be re examined upon a writ of error, and reversed or affirmed, in the supreme judicial court held for the same county, for any error in law or in fact; and when the judgment shall be reversed, the supreme judicial court shall render such judgment as the court of common pleas should have rendered.

Entry of appeal from justice of the peace, when omitted, &c., may be allowed on petition. 1791, 17, § 1.

SECT. 21. When an appeal shall be claimed from the judgment of a justice of the peace in any civil action, and by reason of any mistake or accident, the appeal shall not be duly entered at the court of common pleas, the said court may, on the petition of the appellant, allow the appeal to be entered at any other term of the court in the same county, upon such terms as they may deem just and reasonable; and if the appeal be so entered, they shall proceed therein, as if it had been entered at the proper term.

Complaint by

SECT. 22. When an appeal, claimed as aforesaid, shall not be

duly entered, and the adverse party shall, by reason of any mistake or accident, fail to enter his complaint for obtaining an affirmance of the judgment, the said court may, on his petition, allow the complaint to be entered at any other term in the same county, upon such terms as they may deem just and reasonable; and if the complaint be so entered, they shall proceed therein as if it had been entered at the proper term.

respondent may be entered in like manner. 1791, 17.

SECT. 23. No petition for the entry of any such appeal or complaint shall be maintained, unless it be presented to the court, or filed in the clerk's office, within one year after the term, at which the same ought to have been entered.

Petition not to be received after one year. 1791, 17.

SECT. 24. No attachment made, and no bail taken, in the original action, shall be revived or continued in force by the entry of any appeal or complaint of the original plaintiff, which shall be allowed by force of the three preceding sections; but such attachment and bail shall remain discharged.

Attachments and bail in such cases to remain discharged. 1791, 17.

SECT. 25. The court of common pleas shall, in all the counties, except the county of Suffolk, have original jurisdiction of all crimes, offences and misdemeanors whatsoever, committed within such counties, respectively, and appellate jurisdiction of all offences, which shall be tried and determined before a justice of the peace; and in criminal cases, legally brought before them, their jurisdiction shall be final, excepting as is hereinafter otherwise provided.

Jurisdiction of C. C. P. in criminal cases. 1832, 130, § 1.

SECT. 26. When an indictment is found in the court of common pleas, for any crime that is punishable with death, the party charged shall not be tried nor arraigned in that court, but the indictment shall be transmitted by the clerk to the supreme judicial court, to be there heard, tried and determined, in the manner provided in the one hundred and thirty sixth chapter; and the said clerk shall forthwith give notice of such indictment to the chief justice of the supreme judicial court.

Indictments for capital crimes. to be transmitted to the supreme court. 1832, 130, § 6.

SECT. 27. If the party, charged in such indictment for a capital crime, is not already in custody, the court of common pleas shall issue a warrant to arrest him, and shall take such further order in the case as is prescribed in the one hundred and thirty sixth chapter.

Proceedings thereon in C. C. P. 1832. 130, § 6.

SECT. 28. Any person, convicted in the court of common pleas, upon indictment for a libel, nuisance, or conspiracy, or for any offence, which is or may be punishable by confinement to hard labor, for a term exceeding five years, may appeal therefrom to the supreme judicial court, then next to be held for the same county, in the manner and upon the terms prescribed in the one hundred and thirty eighth chapter.

Appeal to the supreme court, in certain criminal cases. 1832, 130, § 3.

SECT. 29. When any person, convicted in the court of common pleas, shall think himself aggrieved by any opinion, direction or judgment of the court, in any matter of law, he may allege exceptions thereto, in the manner provided in the said one hundred and thirty eighth chapter, and the case shall thereupon be removed to the supreme judicial court, and be there disposed of, as provided in the same chapter.

Case may be removed to the supreme court on bill of exceptions. 1832, 130, § 5.

SECT. 30. The court of common pleas may, at any time, within one year after judgment in any criminal prosecution, grant a new trial, for any cause, for which by law a new trial may or ought to be

C. C. P. may grant new trials in criminal cases. 1832, 130, § 4.

granted, in the manner provided in the one hundred and thirty eighth chapter.

Writ of error in criminal cases. 1832, 130, § 5.

SECT. 31. Final judgments in the courts of common pleas, in all criminal cases, may be re examined upon a writ of error, and reversed or affirmed, in the supreme judicial court held for the same county, for any error in law or in fact.

C. C. P. may be held by one justice. 1820, 79, § 1.

SECT. 32. The court of common pleas may be held by any one or more of the justices thereof, and when held by one alone, shall have and exercise all the power and jurisdiction, that is or may be committed to the said court.

Grand jurors to attend, except in Suffolk. 1832, 130.

SECT. 33. Grand jurors shall be selected, and required to attend the courts of common pleas, in all the counties, except the county of Suffolk, in the manner prescribed in the one hundred and thirty sixth chapter.

Jurisdiction of criminal cases in Suffolk.

SECT. 34. All crimes, offences, and misdemeanors, committed within the county of Suffolk, shall be heard and determined by the supreme judicial court in that county, and by the municipal court, and the police court of the city of Boston, as is provided in the several chapters concerning those courts.

Writs in the C. C. P how signed, &c. 1820, 79, § 3.

SECT. 35. All writs and processes, except original writs, issuing from the court of common pleas, shall be signed by the clerk for the county where the suit or matter is pending, or to which the writ or process is returnable, and may run into any county, and shall be obeyed and executed throughout the state.

The court may frame and issue all necessary writs.

SECT. 36. The said court shall issue all writs and processes, that may be necessary or proper, to carry into effect the powers granted to them, and when no form for any such writ or process is prescribed by statute, the court shall frame one, in conformity with the principles of law, and the usual course of proceedings in the courts of this state.

May establish general rules of practice. 1782, 11, § 3. 1820, 79, § 7.

SECT. 37. The said court shall, from time to time, make rules for regulating the practice and conducting the business therein, in all cases, not expressly provided for by law, provided, that such rules be not repugnant to the laws of the Commonwealth, nor to the rules established by the supreme judicial court; and, in every thing relating to simplifying, shortening and expediting the pleadings, proceedings and decision of causes, and presenting distinctly and fully the point in issue, on trials by jury, the said rules shall be in conformity with those of the supreme judicial court, on the same subjects.

The justices to arrange and distribute their duties. 1821, 23, § 1.

SECT. 38. The justices of the court of common pleas or a majority of them, shall, from time to time, make such arrangements for the attendance of some one of them, at the several times and places appointed for holding the said courts, as will be most convenient for themselves, and ensure a punctual and prompt discharge of their duties.

Adjournment in case of the absence of the justices. 1820, 79, § 2.

SECT. 39. When no justice of the said court is present, at the time and place appointed for holding a court, whether at the beginning of a term, or at any adjournment thereof, the sheriff of the county or either of his deputies may adjourn the court, from day to day, or from time to time, as the circumstances may require, or as may be ordered by any of the said justices, and he shall give notice of such adjournment, by making public proclamation thereof in the court house, and by a notification thereof, posted on the door of the court house, or published in some newspaper.

SECT. 40. The court of common pleas shall be held in every year, at the times and places following, that is to say: Times and places of holding the courts.

At Boston, within and for the county of Suffolk, on the first Tuesdays of January, April, July and October. Suffolk. 1812, 28.

At Ipswich, within and for the county of Essex, on the third Mondays of March and December; at Salem within and for the same county, on the third Monday of June; and at Newburyport within and for the same county, on the third Monday of September: Essex. 1812, 28.

At Concord, within and for the county of Middlesex, on the second Mondays of March, June and September; and at Cambridge, within and for the same county, on the second Monday of December: Middlesex. 1812, 28.

At Northampton, within and for the county of Hampshire, on the fourth Monday of March, and the third Mondays of August and November: Hampshire. 1815, 8.

At Greenfield, within and for the county of Franklin on the third Monday of March, and the second Mondays of August and November: Franklin. 1815, 8. 1831, 44.

At Springfield, within and for the county of Hampden, on the third Mondays of February and June, and the second Monday of October: Hampden. 1830, 40.

At Lenox, within and for the county of Berkshire, on the fourth Mondays of February, June and October: Berkshire.

At Dedham, within and for the county of Norfolk, on the fourth Monday of April, and the third Mondays of September and December: Norfolk. 1812, 28.

At Plymouth, within and for the county of Plymouth, on the second Mondays of April and August, and on the first Monday of December: Plymouth. 1812, 28. 1830, 22.

At Taunton, within and for the county of Bristol, on the second Mondays of March and September; and at New Bedford, within and for the same county, on the second Mondays of June and December: Bristol. 1812, 28. 1827, 135.

At Barnstable, within and for the county of Barnstable, on the Tuesday next after the first Monday of April, and on the first Tuesday of September: Barnstable. 1812, 28. 1833, 51.

At Nantucket, within and for the county of Nantucket, on the first Mondays of June and October: and Nantucket. 1825, 107. 1833, 51.

At Edgartown, within and for the county of Duke's county, on the last Mondays of May and September. Duke's county. 1827, 18. 1833, 51.

SECT. 41. The court of common pleas, for the county of Worcester, shall be held, for the transaction of all the civil business of the said court, at Worcester, in said county, on the first Monday of March, the third Monday of June, the Monday next after the fourth Monday of August, and the first Monday of December, in every year; and the same court shall be held, for the transaction of all the criminal business thereof, at said Worcester, on the third Monday of January, the last Monday of May, and the fourth Monday of September, in every year. Worcester, distinct terms for civil and for criminal business. 1835, 116.

SECT. 42. The civil business of the said court shall be transacted, exclusively, at the said four annual terms, established for the transaction of civil business, and the criminal business thereof shall be transacted, exclusively, at the said three annual terms, established for Business, how conducted at those terms. 1835, 116.

the transaction of criminal business; and all continuances of civil or criminal cases shall, without any special order therefor, be had to the next term of the said court, to be held for the transaction of business of the same description.

Grand jurors, when to attend. 1835, 116.

SECT. 43. The grand jurors of the said county of Worcester shall be required to attend only at the said terms established for the transaction of criminal business.

First day of the term, how designated.

SECT. 44. In all writs, processes, records and judicial proceedings, civil and criminal, the day on which any of the said terms is to commence may be designated as the first, second or other Monday, or other day of the week in the month in which the same shall happen.

Salaries of the justices. 1820, 79, § 10.

SECT. 45. The chief justice of the court shall receive an annual salary of two thousand one hundred dollars, and each of the other justices shall receive an annual salary of eighteen hundred dollars; and the said salaries shall be paid in quarterly payments out of the treasury of the Commonwealth, and in the same proportion for any part of a quarter.

CHAPTER 83.

OF THE PROBATE COURT.

SECTION
1. Appointment of judges of probate.
2. Courts to be held at fixed times and places.
3. Adjournment of probate courts.
4. Certain acts may be done in vacation.
5, 6. General jurisdiction of the probate court.
7. What decrees shall be in writing, and what papers shall be recorded.
8. Rules of practice, how and by whom established.
9. The judge may frame and issue all necessary warrants, &c.
10. May punish contempts.
11. Sheriffs and other officers to execute process.
12, 13. Presumption in favor of jurisdiction, in what cases conclusive.
14. Exclusive jurisdiction of the judge who first takes cognizance, &c.
15. Jurisdiction when a judge is interested.
16, 17, 18. Provisions for such case in Nantucket.
19. Provision for the like cases in Duke's county.
20. Appointment of registers of probate.
21. Oath and bond of register.
22. Register to have custody of the books, &c.
23. Judges of probate may appoint a register during a vacancy.
24. Further provision in that case.
25. Appointment, &c. of register pro tem. to be recorded.
26. Judge of probate not to be counsel in matters transacted in his court—Oath of judge of probate.
27. Register not to be counsel, nor executor, &c., nor to be interested in fees, in cases within the jurisdiction of his court.
28. Clerks, &c. not to be commissioners, &c. in the like case.
29. Executors and other accountants may be sworn out of court, in case, &c.
30. Oaths of other persons, how administered.
31. The court may revoke commissions, &c. and issue new ones.
32. All bonds in probate matters must be approved and certified by the judge.
33. The supreme judicial court to be the supreme court of probate.
34. Appeal allowed to the supreme court.

SECTION
35. Appeal may be entered at a session by adjournment.
36. Must be claimed within thirty days.
37. Reasons of appeal to be filed, &c.
38. Exception as to Nantucket.
39. Appeal omitted by mistake, &c. may be allowed on petition.
40, 41, 42. Proceedings on such petition.
43. Proceedings in the probate court, suspended by an appeal.
44. Proceedings in the supreme court upon an appeal.
45. When the appellant fails to enter it, &c.
46. Facts may be tried by a jury in supreme court.
47. Power of the courts as to costs.
48. Executions may issue therefor.
SECTION
49. Salaries of the judges of probate.
50. Salaries of the registers of probate.
51. Salaries to be paid out of the state treasury.
52. No judge or register to receive any fees, except, &c.
53. What copies, register shall make, free of charge, and for what he may receive pay.
54. Books and stationary, how paid for.
55. Times and places of holding probate courts.
56. Places of holding courts in the different towns.
57. Public notice thereof to be given by the judges.

Appointment of judges of probate. 1817, 190, § 1.

SECTION 1. The judges of probate shall continue to hold their offices according to the tenor of their commissions, and as vacancies occur, they shall be filled in the manner provided by the constitution.

Courts to be held at fixed times and places. 1817, 190, § 3.

SECT. 2. Every judge of probate shall hold a probate court in his county, at the times and places established by law.

Adjournment of probate courts. 1829, 110, § 2.

SECT. 3. He may adjourn his court as occasion shall require; and when he shall be absent at the time appointed for holding a court, the register shall adjourn it as he shall think necessary, or as shall be ordered by the judge.

Certain acts may be done in vacation.

SECT. 4. All orders of notice and other official acts, which are passed as matters of course, and which do not require a previous notice to an adverse party, may be made and done in vacation, as well as at a stated court.

General jurisdiction of the probate court. 5 Pick. 20. 370. 519. 1817, 190, § 1.

SECT. 5. The judge of probate for each county shall have power to take the probate of wills, and to grant administration of the estates of all persons deceased, who were, at the time of their decease, inhabitants of or resident in the same county, and of all who shall die without the state, leaving any estate to be administered within such county; and also to appoint guardians to minors and others, in the cases prescribed by law.

Same subject. 1817, 190, § 1.

SECT. 6. He shall have jurisdiction of all matters relating to the settlement of the estates of such deceased persons, and of such minors and others under guardianship.

What decrees, &c. shall be in writing, and what papers shall be recorded.

SECT. 7. All his decrees and orders shall be made in writing, and the register of probate shall record, in books to be kept for that purpose, all such decrees and orders, and also all wills proved in the court, with the probate thereof, all letters testamentary and of administration, all warrants, returns, reports, accounts and bonds, and all such other acts and proceedings, as he shall, by the rules of the court, or by any special order of the judge, be required to record.

Rules of practice, how and by whom established.

SECT. 8. The several judges of probate shall, from time to time, make rules for regulating the practice and conducting the business in their respective courts, in all cases not expressly provided for by law; and they shall within one year after this act shall take effect, return a statement of their rules and course of proceedings to the supreme judicial court, and shall make a like return of all their rules thereaf-

ter made, as soon as conveniently may be, after making the same; and the supreme judicial court shall have power to alter and amend all such rules, and to make other and further rules, from time to time, for regulating the proceeding in all the probate courts of the Commonwealth, as they shall judge necessary, in order to introduce and maintain regularity and uniformity in the said proceedings.

The judge may frame and issue all necessary warrants, &c 1817, 190, § 1.

SECT. 9. The judge of probate for each county shall make and issue all warrants and processes, that may be necessary or proper to carry into effect the powers granted to him; and when no form for any such warrant or process is prescribed by statute, or by the rules of the court, he shall frame one in conformity with the principles of law, and the usual course of proceedings in this state.

—may punish contempts. 1817 190, § 1.

SECT. 10. He shall have power to keep order in his court, and to punish any contempt of his authority, in like manner as such contempt might be punished in the court of common pleas.

Sheriffs and other officers to execute process. 1817, 190, § 1.

SECT. 11. All sheriffs, deputy sheriffs, coroners and constables, shall serve and execute all legal warrants and processes to them directed by the judge of probate.

Presumption in favor of jurisdiction, in what cases conclusive 5 Pick. 20. 370. 9 Mass. 543.

SECT. 12. The jurisdiction assumed in any case by a judge of probate, so far as it depends on the place of residence of any person, shall not be contested in any suit or proceeding whatever, except in an appeal from the probate court in the original case, or when the want of jurisdiction appears on the same record.

Same subject.

SECT. 13. When the validity of any decree of the probate court shall be drawn in question in any other suit or proceeding, every thing necessary to have been done or proved, in order to render the decree valid, and which might have been proved by parol evidence at the time of making the decree, and was not required to be recorded, shall, after twenty years from such time, be presumed to have been done or proved, unless the contrary appears on the same record.

Exclusive jurisdiction of the judge who first takes cognizance, &c. 1817, 190, § 16.

SECT. 14. When a case shall be originally within the jurisdiction of the probate court in two or more counties, the court which shall first take cognizance thereof by the commencement of proceedings, shall retain the same throughout.

Jurisdiction, when a judge is interested. 1817, 190, § 5.

SECT. 15. When a judge of probate shall be interested in any case within his jurisdiction, the case shall be transferred to the probate court of the most ancient adjoining county, and shall be there disposed of and settled, in the same manner as if it had originally occurred within the latter county; excepting only, that when such a case shall occur in the county of Nantucket or Duke's county, it shall be transferred to the county of Barnstable, and be there disposed of and settled in manner aforesaid.

Provision for such case in Nantucket. 1830, 125.

SECT. 16. When a case is so transferred from Nantucket to Barnstable, the register of probate for Barnstable shall transmit to the register of probate for Nantucket, copies of the record of all proceedings had in the case, and copies of all papers filed therein, within thirty days after the same shall be respectively had or filed, and the same shall be recorded and filed in the registry of probate in Nantucket, in like manner as if the case had been pending in the probate court for that county.

Same subject. 1830, 125.

SECT. 17. When an appeal is claimed from the probate court in Barnstable, in any case so transferred from Nantucket, the time lim-

ited for claiming the appeal, and for all other proceedings relating thereto, shall be computed from the expiration of the thirty days mentioned in the preceding section, in like manner as if the decree or other proceeding appealed from had taken place at that time.

Same subject. 1830, 125.

SECT. 18. All appeals, in the cases mentioned in the preceding section, shall be made to the supreme judicial court, for the county of Nantucket, and there prosecuted, heard and determined, in like manner as if the original proceeding had been had in the probate court in Nantucket.

Provision for the like case in Duke's county. 1817, 190, § 5.

SECT. 19. When a case is transferred, as provided in the fifteenth section, from Duke's county to Barnstable, all the proceedings upon the appeal, if there be an appeal, as well as in the original case, shall be conducted in the same manner as if the case had been originally within the jurisdiction of the probate court, in Barnstable.

Appointment of registers of probate. 1817, 190, § 2.

SECT. 20. The registers of probate shall continue to hold their offices, according to the tenor of their commissions, and as vacancies occur, there shall be appointed, in the manner provided by the constitution, a suitable person in each county, to be register of probate for the same county; and no probate court shall be held, either by adjournment or otherwise, unless such register, or a temporary register, as provided for in the twenty third section, shall be present.

Oath and bond of register. 1786, 57, § 2. 1817, 190, § 2.

SECT. 21. Every register of probate, before entering upon his office, shall make oath that he will faithfully discharge the duties thereof, and that he will not, during his continuance in office, directly or indirectly, be interested in or benefitted by the fees or emoluments arising from any suit or matter, pending in the court of which he is register, and such oath, being subscribed by such register, shall be filed in the probate office; and shall give bond to the treasurer of the county, for which he is appointed, in a sum not less than two hundred, and not exceeding one thousand dollars, as shall be ordered by the judge, with one or more sufficient sureties, with condition for the faithful discharge of the duties of his office.

Register to have custody of the books, &c. 1817, 190, § 2.

SECT. 22. He shall also have the care and custody of all books, documents and papers, appertaining to the probate office, and filed or deposited therein, and shall carefully preserve the same, to be delivered to his successor.

Judge of probate may appoint a register during a vacancy. 1817, 190, § 2.

SECT. 23. In case of the death or absence of the register, the judge of probate shall appoint a suitable person to officiate as register, until the standing register shall be able to perform his duty, or until another shall be appointed by the governor and council.

Further provision in that case. 1817, 190, § 2.

SECT. 24. Every person, so appointed by the judge of probate, shall be sworn before the same judge to the faithful discharge of the duties of the said office, and so long as he shall perform the said duties, he shall be entitled to the same compensation therefor, as if he had been the standing register; and such compensation shall be paid by the standing register, when his absence is the cause of appointing such temporary register, provided such standing register shall again enter upon the discharge of the duties of his office.

Appointment, &c. of register pro tem. to be recorded.

SECT. 25. The appointment of such temporary register, and a certificate of the oath of office administered to him, shall, in every case, be recorded with the other proceedings of the probate court at which such appointment shall be made.

Judge of probate not to be counsel in matters transacted in his court. 1815, 49. 1817, 190, § 4.

SECT. 26. No judge of probate shall be retained or employed, as counsel or attorney, either in or out of court, in any suit or matter whatever, which may depend on, or in any way relate to, any sentence or decree, made or passed by him ; nor shall he be of counsel or attorney, for or against any executor, administrator, or guardian, appointed within his jurisdiction, in any suit brought by or against the executor, administrator, or guardian, as such, nor in any suit, relating to the official conduct or duty of such party ; and every judge of probate shall, before entering upon his office, in addition to his present oath of office, make oath that he will faithfully discharge the duties thereof, and that he will not, during his continuance in office, directly or indirectly, be interested in or benefitted by the fees and emoluments, arising from any suit or matter pending in the court of which he is judge ; and such oath, being subscribed by such judge, shall be filed in the probate office.

Oath of judge of probate.

Register not to be counsel, nor executor, &c., nor to be interested in fees, in cases within the jurisdiction of his court. 1817, 190, § 4.

SECT. 27. No register of probate shall be of counsel or attorney either in or out of court, in any suit or matter whatever, pending in the court of which he is register, nor in any appeal therefrom, nor shall he be executor, administrator, guardian, commissioner of insolvency, appraiser or divider, of or upon any estate, or in any case that is within the jurisdiction of the court, of which he is register, nor be in any manner interested in the fees or emoluments arising from any of the said offices.

Clerks, &c. not to be commissioners, &c. in the like case.

SECT. 28. No clerk or other person employed in the office of any court of probate, shall be commissioner of insolvency, appraiser, or divider of any estate, in any case, that is within the jurisdiction of such court.

Executor and other accountants may be sworn out of court, in case, &c. 1817, 190, § 20.

SECT. 29. When any executor, administrator, guardian, or trustee, who is required to make oath to an account, is unable, by reason of sickness or otherwise, to attend personally in the probate court, for that purpose, the judge may either proceed himself to administer the oath to the accountant, out of court, or may by his commission authorize any justice of the peace to administer it ; and a certificate of the oath, with the account and the vouchers produced therewith, and the commission, if any, shall be returned into the registry of probate and be there filed and recorded.

Oaths of other persons, how administered.

SECT. 30. All other oaths, required to be taken by executors, administrators, guardians, and trustees, and all oaths required of commissioners of insolvency, appraisers, and dividers of estates, or of any other persons, in relation to any proceeding in the probate court, may be administered, either by the judge of probate, or by any justice of the peace, and a certificate thereof, when taken out of court, shall be returned into the registry of probate, and be there filed and recorded.

The court may revoke commissions, &c. and issue new ones.

SECT. 31. Any warrant or commission, for the appraisement of any estate, for examining the claims on insolvent estates, for the partition of real estate, or for the assignment of dower, may be revoked by the judge of probate, for sufficient cause, and the judge may thereupon issue a new commission, or proceed otherwise therein, as the circumstances of the case shall require.

All bonds in probate matters must be ap-

SECT. 32. No bond, required by law to be given to the judge of probate, or to be filed in the probate office, shall be deemed sufficient,

unless it shall have been examined and approved by the judge, and his approval thereof, under his official signature, written thereon.

proved and certified, by the judge. 1817, 190, § 23.

SECT. 33. The supreme judicial court shall be the supreme court of probate, and shall have appellate jurisdiction of all matters determinable by the respective judges of probate.

Supreme judicial court to be the supreme court of probate. 1817, 190, § 6.

SECT. 34. Any person, aggrieved by any order, sentence, decree, or denial, of a judge of probate, may appeal therefrom to the supreme judicial court, to be held within or for the same county, next after the expiration of thirty days from the date of the proceeding appealed from.

Appeal allowed to the supreme court. 1817, 190, § 7.

SECT. 35. If there shall be any session of the supreme judicial court, held in the proper county by adjournment, after the expiration of the said thirty days, and before the next stated term of the same court, the appeal may, at the option of the appellant, be entered at such adjourned session, provided he give to the adverse party written notice of his intention so to enter it, fourteen days at least before the session of the court.

May be entered at a session by adjournment.

SECT. 36. Such appeal shall be claimed, and notice thereof given, at the probate office, within thirty days after the date of the act appealed from.

Must be claimed within thirty days. 1817, 190, § 7.

SECT. 37. The appellant shall file, in the probate office, his reasons of appeal, and cause an attested copy thereof to be served on the adverse party, fourteen days at least before the time when the appeal is to be entered.

Reasons of appeal to be filed, &c. 1817, 190, § 7.

SECT. 38. Nothing contained in the four preceding sections shall be understood to repeal the provisions of this chapter respecting the county of Nantucket.

Exception as to Nantucket.

SECT. 39. If any person, aggrieved by any act of the judge of probate, shall, from any cause, without default on his part, have omitted to claim or prosecute his appeal, according to law, the supreme court of probate, if it shall appear to them that justice requires a revision of the case, may, on the petition of the party aggrieved, and upon such terms as they shall think reasonable, allow an appeal to be entered and prosecuted, with the same effect as if it had been done seasonably.

Appeal omitted by mistake, &c. may be allowed on petition. 1817, 190, § 8.

SECT. 40. No such appeal shall be allowed, without due notice to the party adversely interested, nor unless the petition therefor be filed within one year after passing the decree or order complained of, except as provided in the following section.

Proceedings on such petition. 1817, 190, § 8.

SECT. 41. If the petitioner were without the United States, at the time of passing the decree or order, he may file his petition at any time within three months after his return, provided it be done within two years after the act complained of.

Same subject. 1817, 190, § 7.

SECT. 42. The petition may, in all cases, be filed in the clerk's office in vacation, as well as in the court in term time, and the clerk shall note on it the time when it is filed.

Same subject.

SECT. 43. After an appeal is claimed, and notice thereof given at the probate office, all further proceedings in pursuance of the order, sentence, decree or denial appealed from, shall cease, until the determination of the supreme court of probate shall be had thereon.

Proceedings in probate court, suspended by an appeal. 1817, 190, § 9.

SECT. 44. The supreme court of probate may reverse or affirm, in whole or in part, the sentence or act appealed from, and may pass

Proceedings in the supreme court upon an appeal.

such decree thereon, as the judge of probate ought to have passed, and may remit the case to the probate court for further proceedings, or may take any order therein, as law and justice shall require.

When the appellant fails to enter it, &c. 1817, 190, § 7.

SECT. 45. If the appellant, in any case, shall fail to enter and prosecute his appeal, the supreme court of probate may, upon the complaint of any person interested in the case, affirm the former sentence, or take such other order therein, as law and justice shall require.

Facts may be tried by a jury in supreme court. 1817, 190, § 7. 1823, 24.

SECT. 46. If, upon the hearing of an appeal in the supreme court of probate, any question of fact shall occur, that is proper for a trial by jury, the court may cause it to be so tried, upon an issue to be formed for the purpose, under the direction of the court.

Power of the courts as to costs. 1817, 190, § 7.

SECT. 47. In all cases that are contested, either before the judge of probate, or in the supreme court of probate, the said courts respectively may, in their discretion, award costs to either party, to be paid by the other, or to either or both parties, to be paid out of the estate which is the subject of the controversy, as justice and equity shall require.

Executions may be issued therefor. 1817, 190, § 7.

SECT. 48. When costs are awarded to one party, to be paid by the other, the said courts, respectively, may issue execution therefor, in like manner as is practised in the courts of common law.

Salaries of the judges of probate.

SECT. 49. The several judges of probate shall receive, for their services, an annual salary, as specified in the following table, that is to say:

Suffolk,	The judge of probate for the county of Suffolk, the sum of one thousand dollars;
Middlesex,	for the county of Middlesex, eight hundred dollars;
Essex,	for the county of Essex, seven hundred dollars;
Worcester,	for the county of Worcester, seven hundred dollars;
Plymouth,	for the county of Plymouth, four hundred dollars;
Bristol,	for the county of Bristol, four hundred and twenty five dollars;
Barnstable,	for the county of Barnstable, three hundred dollars;
Duke's County,	for the county of Duke's county, sixty dollars;
Nantucket,	for the county of Nantucket, one hundred and twenty dollars;
Berkshire,	for the county of Berkshire, four hundred and fifty dollars;
Norfolk,	for the county of Norfolk, five hundred dollars;
Hampden,	for the county of Hampden, two hundred and eighty dollars;
Hampshire,	for the county of Hampshire, two hundred and eighty dollars;
Franklin. 1823, 141, § 1. 1833, 173.	for the county of Franklin, two hundred and eighty dollars.

Salaries of registers of probate.

SECT. 50. The several registers of probate shall receive, for

their services, an annual salary, as specified in the following table, that is to say:

The register of probate for the county of Suffolk, the sum of two thousand dollars; — Suffolk,
for the county of Essex, fifteen hundred dollars; — Essex,
for the county of Middlesex, fifteen hundred dollars; — Middlesex,
for the county of Worcester, fourteen hundred dollars; — Worcester,
for the county of Plymouth, seven hundred and fifty dollars; — Plymouth,
for the county of Bristol, seven hundred dollars; — Bristol,
for the county of Barnstable, five hundred dollars; — Barnstable,
for the county of Duke's county, one hundred dollars; — Duke's county,
for the county of Nantucket, one hundred and fifty dollars; — Nantucket,
for the county of Berkshire, six hundred dollars; — Berkshire,
for the county of Norfolk, seven hundred dollars; — Norfolk,
for the county of Hampden, four hundred and sixty dollars; — Hampden,
for the county of Hampshire, four hundred and sixty dollars; — Hampshire,
for the county of Franklin, four hundred and sixty dollars. — Franklin. 1823, 141. 1833, 173.

SECT. 51. The said salaries shall be paid in quarterly payments, out of the treasury of the Commonwealth, on the first days of January, April, July and October, in every year, and in the same proportion, for any part of a quarter. — Salaries to be paid out of the state treasury. 1823, 141, § 2.

SECT. 52. No judge of probate, or register of probate, shall receive any fee or compensation whatever, in addition to the salaries above provided, for any thing done by them, respectively, in their official capacities, except as provided in the following section. — No judge or register to receive any fees, except, &c. 1823, 141, § 3.

SECT. 53. The register of probate shall make, without any charge, one copy of all wills proved, inventories returned, and accounts settled, of all partitions of real estate, and assignments of dower, and of all orders and decrees of the court, and shall deliver the same, when demanded, to the executor, administrator, guardian, widow, heir, or other party principally interested therein; and for any additional copies of the same documents, and for copies of all other papers, he shall be paid by the person demanding the same, at the rate of twelve cents a page. — What copies register shall make, free of charge; and for what he may receive pay. 1823, 141, § 3.

SECT. 54. Each county shall provide all books necessary for keeping the records, in the registry of probate, and all printed blanks, used in probate proceedings; but all other stationary, and all the incidental expenses of the office, shall be paid by the register. — Books and stationary, how paid for. 1823, 141, § 4.

SECT. 55. There shall be a probate court held every year, in — Times and places of holding probate courts.

the several counties, at the times and places, mentioned in the following table, that is to say :

Suffolk, For the county of Suffolk, at Boston, on every Monday except the first Monday of each month ;

Essex, For the county of Essex, at Ipswich, on the first Tuesdays of February, March, May, June, August, September, November and December ; at Salem, on the first Tuesdays of January, April, July and October, and on the third Tuesdays of February, May, August and November ; at Newburyport, on the second Tuesdays of March, June, September and December ; at Gloucester, on the second Tuesdays of May and November ; at Marblehead, on the Wednesdays next after the first Tuesdays of April and October ; at Lynn, on the Wednesdays next after the first Tuesdays of January and July ; at Haverhill, on the third Tuesdays of April and October ; at Andover, on the third Tuesday of January and on the third Tuesday of July :

Middlesex, For the county of Middlesex, at Cambridge, on the second Tuesdays of January and October, on the third Tuesdays of March, May and November, and on the first Tuesday of September ; at Concord, on the second Tuesdays of February, April, August and November ; at Charlestown, on the third Tuesdays of February and August ; at Framingham, on the last Tuesdays of June and October ; at Groton, on the first Tuesdays of May and November ; at Lowell, on the first Tuesdays of June and December ; and at Woburn, on the fourth Tuesday of April :

Worcester, For the county of Worcester, at Brookfield, on the second Tuesday of April and the fourth Tuesday of October ; at Lancaster, on the third Tuesdays of May and November ; at Templeton, on the third Tuesday of October, and the Thursday next after the third Tuesday of May ; at Barre, on the third Tuesdays of August and January ; at Mendon, on the fourth Tuesday of May ; at Uxbridge, on the fourth Tuesday of November ; and at Worcester, on the first Tuesday of every month :

Hampshire, For the county of Hampshire, at Northampton, on the first Tuesday of every month ; at Amherst, on the second Tuesdays of January and August ; at Belchertown, on the second Tuesdays of May and November ; and at Chesterfield, on the third Tuesdays of May and October :

Hampden, For the county of Hampden, at Springfield, on the first Tuesdays of January, February, March, April, May, July, September, November and December ; at Westfield, on the first Tuesdays of June, and October ; and at Monson, on the second Tuesdays of June and September :

Franklin, For the county of Franklin, at Greenfield, on the first Tuesday of November, on the second Tuesdays of February, March, May and October, on the third Tuesday of December, and on the fourth Tuesday of August ; at Conway, on the first Tuesday of February, and the third Tuesday of July ; at Charlemont, on the third Tuesdays of May and October ; at Wendell, on the last Tuesday of April, and the third Tuesday of September ; and at Warwick, on the Wednesdays next after the last Tuesday of April and the third Tuesday of September :

For the county of Berkshire, at Lenox, on the first Tuesdays and the Wednesdays next after the first Tuesdays of every month; at Great Barrington, on the second Tuesdays of February, May, August and November; at Lanesborough, on the second Tuesdays of January, April, July and October; and at Adams, on the Wednesdays next after the second Tuesdays of January, April, July and October: Berkshire,

For the county of Norfolk, at Dedham, on the first Tuesday of every month; at Quincy, on the second Tuesdays of February, May and August; at Roxbury, on the fourth Tuesdays of February, May, August and November; at Wrentham, on the third Tuesdays of May, August and November; and at Medway, on the Mondays next before the third Tuesdays of February and November: Norfolk,

For the county of Bristol, at Taunton, on the Friday next after the first Tuesday of January, on the first Tuesdays of March and November, on the Friday next after the third Monday of June, and on the Friday next after the first Tuesday of August; at New Bedford, on the first Tuesday of February, on the third Mondays of June and December; at Freetown, on the first Tuesday of January; at Rehoboth, on the first Tuesday of April; at Dighton, on the Fridays next after the first Tuesdays of April and October; at Norton, on the first Tuesday of July; at Westport, on the first Tuesday of August; at Seekonk, on the first Tuesday of September; at Fall River, on the first Tuesday of October; and at Attleborough, on the first Tuesday of May: Bristol,

For the county of Plymouth, at Plymouth, on the third Mondays of January, February and May, on the second Mondays of April and August, and on the first Monday of December; at Scituate, on the first Tuesdays of March and June, and on the last Tuesdays of August and November; at East Bridgewater, on the first Tuesdays of April, July and October; at Middleborough, on the last Tuesday of May, and on the first Tuesdays of August and November; and at Rochester, on the Wednesday next after the last Tuesday of May, and on the Wednesday next after the first Tuesday of November: Plymouth,

For the county of Barnstable, at Barnstable, on the second Tuesdays of January, March, September and December, and on the third Tuesdays of May and June; at Sandwich, on the second Tuesday of November; at Falmouth, on the Wednesday next after the second Tuesday of November; at Yarmouth, on the second Tuesday of August; at Harwich, on the third Monday of April, and the last Monday of October; at Brewster, on the Tuesday next after the third Monday of April, and on the Tuesday next after the last Monday of October; at Orleans, on the Wednesday next after the third Monday of April, and on the Wednesday next after the last Monday of October; at Wellfleet, on the Thursday next after the last Monday of October; and at Truro, on the Thursday next after the third Monday of April: Barnstable,

For the county of Duke's County, at Tisbury, on the third Mondays of January and April; and at Edgartown, on the third Mondays of July and October: Duke's County,

For the county of Nantucket, at Nantucket, at such times as the judge of probate shall appoint. Nantucket.

Places of holding courts in the different towns.

SECT. 56. The several probate courts shall be held at such parishes or other places, in the several towns mentioned in the preceding section, as the respective judges of probate shall from time to time appoint.

Public notice thereof to be given by the judges.

SECT. 57. Every judge of probate shall cause sufficient public notice to be given, of the places so appointed by him, by advertisement in some newspaper, or by posting the same in some public place; and such notice shall be renewed as often as any change takes place.

CHAPTER 84.

OF COUNTY COMMISSIONERS.

SECTION
1. Powers and duties of commissioners.
2. Their power to punish for contempts.
3. Sheriffs and other officers to execute their processes.
4. Compensation of the commissioners.
5. Appointment and duty of clerk.
6. Times and places for the meetings of the commissioners.
7. Regulation of highways and licensed houses in Chelsea.
8. Of licensed houses in Boston.
9. Of highways in Boston.

Powers and duties of commissioners.

SECTION 1. The county commissioners in each county shall continue to exercise, in their respective counties, the several powers given to them by the provisions of the fourteenth chapter.

Their power to punish for contempt.

SECT. 2. The commissioners, when assembled for the performance of their duties, may punish any disorderly conduct which shall cause an actual interruption to the business of their meeting, or shall amount to an open and direct contempt of their authority or persons, by fine not exceeding five dollars, or by confinement, in the custody of the sheriff, or any deputy sheriff, coroner, or constable, for a time not exceeding twelve hours.

Sheriffs and other officers to execute their processes.

SECT. 3. All sheriffs, deputy sheriffs, coroners and constables, shall serve and execute all legal warrants and processes, to them directed by the said commissioners.

Compensation of the commissioners. 1827, 77, § 10.

SECT. 4. For all services, performed by the standing commissioners, or special commissioners, they shall receive, each at the rate of one dollar for every ten miles actually travelled by them, and three dollars a day for the time employed in discharging the duties of their office; provided, that they shall not receive pay by the day for the time employed in travelling, nor shall they be paid for services on more than one petition, or one case, at the same time.

Appointment and duty of clerk. 1827, 77, § 3. 1830, 120, § 2.

SECT. 5. The clerk of the commissioners shall be appointed by the supreme judicial court, as provided in the eighty eighth chapter, and shall record, in books to be kept for that purpose, all the proceedings of the commissioners, which require to be recorded, and shall have the care and custody of all the books and papers appertaining to their business.

SECT. 6. There shall be a meeting of the commissioners held in each county, at the times and places mentioned in the following table, that is to say; Times and places for the meetings of the commissioners.

In the county of Essex, at Ipswich, on the second Tuesday of April, at Salem, on the second Tuesday of July, and at Newburyport, on the second Tuesday of October; and there shall also be a meeting on the fourth Tuesday of December, at Ipswich, Salem, or Newburyport, as the commissioners shall order at the next preceding term. Essex. 1820, 27. 1828, 103.

In the county of Middlesex, at Cambridge, on the first Tuesday of January, and at Concord, on the second Tuesday of May, and the first third Tuesday of September. at Cambridge. Stat 1842 Ch. 1. Middlesex. 1818, 120.

In the county of Worcester, at Worcester, on the fourth Tuesday of March, the third Tuesday of June, the second Tuesday of September, and the fourth Tuesday of December. Worcester. 1818, 120. 1819, 134. 1828, 103.

In the county of Hampshire, at Northampton, on the first Tuesdays of March, June, September and December. Hampshire. 1818, 120.

In the county of Franklin, at Greenfield, on the first Tuesdays of March and September, and the second Tuesdays of June and December. Franklin. 1818, 120. 1821, 3. 1828, 103.

In the county of Hampden, at Springfield, on the second Tuesday of April, the first Tuesday of October, and the fourth Tuesdays of June and December. Hampden. 1828, 103. 1830, 42.

In the county of Berkshire, at Lenox, on the last Tuesdays of April and September. Berkshire. 1818, 120.

In the county of Norfolk, at Dedham, on the third Tuesday of April, and the fourth Tuesdays of June and September. & last Wednesday of December Norfolk. 1818, 120.

In the county of Plymouth, at Plymouth, on the first Tuesday of January, the third Tuesday of March, and the first Tuesday of August. Plymouth. 1818, 120. 1828, 103.

In the county of Bristol, at Taunton, on the fourth Tuesdays of March and September. Bristol. 1818, 120.

In the county of Barnstable, at Barnstable, on the second Tuesdays of April and October. Barnstable. 1823. 145.

In the county of Nantucket, at Nantucket, on the third Monday of April, and the second Monday of October. Nantucket.

In Duke's county, at Edgartown, on the Wednesday next after the third Monday of May, and the Wednesday next after the second Monday of November. Duke's county. 1820, 41.

SECT. 7. The court of common pleas, when sitting in the county of Suffolk, shall exercise and perform all the powers and duties of county commissioners, relating to highways and licensed houses in the town of Chelsea, and to all other matters concerning the said town, which, in other counties, are committed to the control and direction of county commissioners. Regulation of highways and licensed houses in Chelsea. 1821, 109.

SECT. 8. The mayor and aldermen of the city of Boston shall exercise and perform all the powers and duties of county commissioners, relating to licensed houses in the said city, as is prescribed in the forty seventh chapter. Of licensed houses in Boston. 1821, 110.

SECT. 9. The powers and duties of county commissioners, relating to highways and other ways in the city of Boston, shall be exercised and performed by the mayor and aldermen of the said city, Of highways in Boston. 1821, 109 & 110.

and by the court of common pleas, when sitting in the county of Suffolk, severally and respectively, as prescribed in the twenty fourth chapter.

CHAPTER 85.

OF JUSTICES OF THE PEACE.

SECTION

JURISDICTION IN CIVIL ACTIONS.

1. Original and exclusive jurisdiction in certain civil actions
2. Concurrent jurisdiction with C. C. P. in certain others.
3. Cases concerning real estate may be removed to C. C. Pleas.
4. But if party does not recognize, the justice shall try the case.
5. Proceedings in the C. C. P. on such appeal.
6. Appeal allowed to the supreme court.
7. Forms of writs issued by justices.
8. Within what time to be served.
9. Judgment for plaintiff, on default, &c.
10. Judgment for the defendant.
11. Pleas before a justice may be oral or in writing.
12. Pleadings in such case, on appeal.
13. Appeal allowed to C. C. Pleas.
14. Appellant to recognize.
15. " to produce papers, &c. or on failure, the former judgment may be affirmed.
16. Justices may issue scire facias against executors, &c. and against bail.
17. The writ, within what time to be served.
18. Proceedings thereon.
19, 20. Proceedings on a judgment after the death of the justice who rendered it.
21. Execution how issued thereon.
22. Justices' power to continue, after commission expired, for certain purposes.
23. Case of a commission expired and renewed.

JURISDICTION IN CRIMINAL CASES.

24. Justices to punish breaches of the peace;
25. Or bind over offenders to C. C. Pleas.
26. To arrest all offenders, being within their counties; to examine into treason, felonies, &c.
27. To be severally conservators of the peace.
28. Appeal allowed to C. C. Pleas.

GENERAL POWERS AND DUTIES.

29. Justices to frame and issue all necessary writs, &c.
30. Sheriffs and other officers to execute them.
31. At what places, causes may be heard.
32. Courts may be adjourned.
33. Power to punish for contempts.
34. Justice not to be of counsel or attorney, &c.
35. To keep a record.
36. Justices to administer oaths in all cases.
37. To account for all fines, &c. received.
38. To grant summonses for witnesses in all civil actions, &c.
39. Also in criminal cases.
40. This chapter not to affect police courts

JURISDICTION IN CIVIL ACTIONS.

Original and exclusive jurisdiction in certain civil actions. 1783, 42. 1797, 21. 1807, 123.

SECTION 1. Every justice of the peace shall have power to hold a court within his county, and they shall, severally, have original and exclusive jurisdiction of all civil actions, wherein the debt or damages demanded do not exceed twenty dollars, excepting real actions, actions of trespass on real estate, actions for disturbance of a right of way or of any other easement, and all other actions in which the title to real estate may be concerned.

Concurrent jurisdiction, with C. C. P. in certain others.

SECT. 2. In all the personal actions mentioned in the exception contained in the preceding section, when the sum demanded does not

exceed twenty dollars, justices of the peace shall have original jurisdiction concurrently with the court of common pleas.

Cases concerning real estate may be removed to C. C. P. 1783, 42.

SECT. 3. When it shall appear, by the pleadings or otherwise, in any action pending before a justice of the peace, that the title to real estate is concerned or brought in question, the fact shall, if not otherwise appearing, be stated on the record, and the case shall, at the request of either party, be removed to the court of common pleas, to be there tried and determined in like manner as if it had been originally commenced in that court.

But if party does not recognize, justice shall try the case. 1783, 42.

SECT. 4. The party, requiring the case to be removed as aforesaid, shall recognize to the other party in a reasonable sum, with sufficient surety or sureties, with condition to enter the action at the court of common pleas, next to be held in the same county, and if he shall fail so to recognize, the justice shall hear and determine the case, as if there had been no such request to remove it.

Proceedings in C. C. P. on such appeal. 1783, 42.

SECT. 5. The party so recognizing shall produce, at the said court of common pleas, a copy of the record, and all such papers as are required to be produced by an appellant, and if he shall fail so to do, or to enter the action as before provided, he shall, upon the complaint of the adverse party to the court of common pleas, be there defaulted or nonsuited, as the case may be, and such judgment shall be thereupon rendered, as law and justice shall require.

Appeal allowed to the supreme court. 4 Pick. 169. 1783, 42.

SECT. 6. In every case so removed to the court of common pleas, either party may appeal from the judgment of the court, in like manner as if the action had been originally commenced there.

Forms of writs issued by justices. 1783, 42.

SECT. 7. The original writ, in all civil actions commenced before a justice of the peace, shall be a summons or a capias and attachment, and shall be signed by the justice, and the forms thereof shall be regulated as is provided in the ninetieth chapter; and no such writ shall run into any other county than that in which it is returnable.

Within what time to be served. 1783, 42.

SECT. 8. No person shall be held to appear and answer to any such action, unless the writ shall have been duly served not less than seven nor more than sixty days before the day therein appointed for trial.

Judgment for plaintiff on default, &c. 1783, 42. 1807, 123.

SECT. 9. If any person, duly served with such process, shall fail to appear and answer thereto, his default shall be recorded, and the charge against him in the declaration shall be taken to be true; and upon such default, and also when the plaintiff maintains his action upon a trial, the justice shall award and enter judgment for such sum, not exceeding twenty dollars, as he shall upon inquiry find the plaintiff is entitled to recover, with costs.

Judgment for the defendant. 1783, 42.

SECT. 10. If the plaintiff shall fail to enter and prosecute his action, or if upon a trial he shall not maintain the same, the defendant shall recover judgment for his costs, to be taxed by the justice.

Pleas before a justice may be oral or in writing.

SECT. 11. In civil actions before justices of the peace, the trial may be had, at the election of the defendant, either upon pleadings in writing, as heretofore used, or the defendant, without filing any written plea, may orally deny the plaintiff's right to maintain his action; in which case an entry shall be made on the record, that the defendant appears and denies the plaintiff's right to maintain his action, and puts himself on trial, or in words to that effect; and upon

1 Mass. 234. 6 Mass. 1. 11 Mass. 313.

the issue so joined, a trial may be had, and any matter may be given in evidence by either party, which would have been admissible, if the defence had been made under any general or special plea in bar.

Pleadings in such case on appeal.

SECT. 12. If any such case shall be carried by appeal to the court of common pleas, it may be there tried upon the issue so joined before the justice, or the court may, in their discretion, order the defendant to plead in the usual manner, and the case shall then be tried upon such issue as shall be joined therein.

Appeal allowed to the court of common pleas. 1783, 42.

SECT. 13. Any party aggrieved by the judgment of a justice of the peace in any civil action, may, at any time within twenty four hours after the entry of the judgment, appeal therefrom to the court of common pleas, then next to be held in the same county; in which case, no execution shall issue on the judgment appealed from, and the case shall be entered, tried, and finally determined in the court of common pleas, in like manner as if it had been originally commenced there.

Appellant to recognize.

SECT. 14. The appellant shall, before the allowance of his appeal, recognize with sufficient surety or sureties to the adverse party, if required by him, in a reasonable sum, with condition to prosecute his appeal with effect, and to pay all such costs, as may arise after the appeal.

— to produce papers, &c., or on failure, the former judgment may be affirmed. 1783, 42.

SECT. 15. The appellant shall produce at the court appealed to a copy of the record, and of all the papers filed in the case, except that when depositions, or other written evidence or documents, are so filed, the originals shall be produced in the court of common pleas, instead of copies; and if the appellant shall fail to produce such copies or papers, or to enter and prosecute his appeal, the court may, on the complaint of the adverse party, affirm the former judgment, or render such other judgment as law and justice shall require.

Justices may issue scire facias against executors, &c., and against bail. 1783, 42. 1803, 132.

SECT. 16. Every justice of the peace may issue writs of scire facias against executors and administrators, upon a suggestion of waste, after judgment against them, and also against the bail, taken in any civil action before him, and proceed therein to judgment and execution, in the same manner as the court of common pleas might do in the like cases.

The writ, within what time to be served.

SECT. 17. Every such writ of scire facias shall be served, not less than seven days, nor more than sixty days, before the time when it is returnable, and it may run into any county, in which the defendant may be found.

Proceedings thereon. 1803, 132.

SECT. 18. It shall be no bar to any such suit, that the debt and costs, on the original judgment, do together exceed the sum of twenty dollars; but judgment and execution may be awarded by the justice, for the whole sum due to the plaintiff, with the costs of the new suit.

Proceedings on a judgment after the death of the justice, who rendered it. 1783, 42.

SECT. 19. When any justice of the peace shall die, whilst a judgment rendered by him remains unsatisfied, any other justice in the same county may, upon the application of the creditor, cause the record of the judgment to be brought before him, and shall thereupon transcribe the same upon his own book of records, and shall deliver the original to the person who produced it, noting on the original that he has so transcribed it.

Same subject. 1783, 42.

SECT. 20. The justice applied to in such case shall, when ne-

cessary, issue a summons to the executor or administrator of the deceased justice, or to any other person, who is supposed to have the custody of the record, requiring him to produce the same, or to submit to an examination on oath, as to the place where it may be found; and the justice may commit such person, as for a contempt, until he shall submit to such examination, if required, and produce the record, if within his custody or control.

Execution, how issued thereon. 1783, 42.

SECT. 21. After the record has been so transcribed by the justice, he may issue execution on the judgment, as if it had been rendered by himself, changing the form, as the circumstances shall require; and any copy of the record, certified by him, shall have the same effect as an authenticated copy of the original.

Justice's power to continue, after commission expired, for certain purposes.

SECT. 22. When the commission of any justice of the peace shall expire, whilst a judgment rendered by him remains unsatisfied, he shall nevertheless be authorized to issue execution thereon, with the same effect, as if his commission had continued in force.

Case of a commission expired and renewed. 1788, 19.

SECT. 23. When any justice of the peace shall be commissioned and qualified anew, at or before the expiration of his former commission, his authority shall be considered as having continued without interruption; and all business, commenced by or before him under the former commission, may be prosecuted and completed, in the same manner as if that commission had continued in force.

JURISDICTION IN CRIMINAL CASES.

Justices to punish breaches of the peace. 1783, 51. 1794, 26.

SECT. 24. Every justice of the peace, within his county, may punish by fine, not exceeding ten dollars, all assaults and batteries, and other breaches of the peace, when the offence is not of a high and aggravated nature, and cause to be stayed and arrested all affrayers, rioters, disturbers and breakers of the peace, and all who go armed offensively, to the terror of the people, and such as utter menaces or threatening speeches, or are otherwise dangerous and disorderly persons.

— or bind over offenders to C. C. Pleas.

SECT. 25. All persons, arrested for any of the said offences, shall be examined by the justice, before whom they are brought, and may be tried before him, and if found guilty, may be required to find sureties of the peace, and be further punished by fine as before provided; or, when the offence is of a high and aggravated nature, they may be committed or bound over, for trial before the court of common pleas, or other court having jurisdiction of the case, as is provided in the one hundred and thirty fourth and one hundred and thirty fifth chapters.

— to arrest all offenders, being within their counties; to examine into treasons, felonies, &c.

SECT. 26. The said justices shall cause to be arrested all persons found within their counties, charged with any offences, and all persons who, after committing any offence within the county, shall escape out of the same. They shall also examine into all treasons, felonies, high crimes, and misdemeanors, and commit or bind over, for trial, all persons who appear to be guilty thereof. They shall also try all offences within their jurisdiction, committed within their respective counties, and sentence all persons convicted thereof, according to law.

— to be severally conservators of the peace.

SECT. 27. Every justice of the peace may, as a conservator of the peace, upon view of any affray, riot, assault or battery, within his

1783, 51.
1794, 26.

county, without any warrant in writing, command the assistance of every sheriff, deputy sheriff, and constable, and of all other persons present, for suppressing the same, and for arresting all who are concerned therein as provided in the two last mentioned chapters.

Appeal allowed to C. C. Pleas.
1783, 51.

SECT. 28. Every person, convicted before a justice of the peace, of any offence whatever, in any county except Suffolk, may appeal from such sentence to the court of common pleas, then next to be held in the same county, as provided in the one hundred and thirty eighth chapter.

GENERAL POWERS AND DUTIES.

Justices to frame and issue all necessary writs, &c.

SECT. 29. Justices of the peace may issue all writs, warrants and processes, that may be necessary or proper to carry into effect the powers granted to them; and when no form is prescribed therefor by statute, they shall frame one, in conformity with the principles of law, and the usual course of proceedings in the courts of this state.

Sheriffs and other officers to execute them.

SECT. 30. All sheriffs, deputy sheriffs, coroners and constables are required duly to serve and execute all legal writs, warrants and other processes, to them directed by any justice of the peace.

At what places causes may be heard.
1828, 64.

SECT. 31. All actions and suits before justices of the peace may be heard and determined, either at their own dwelling houses, or at any other convenient and suitable places, and their writs and processes may be made returnable accordingly.

Courts may be adjourned.

SECT. 32. Every justice may adjourn his court, in all cases, civil or criminal, on trial before him, to any other time or place, as occasion shall require.

Power to punish for contempts.

SECT. 33. Every justice may punish such disorderly conduct, as shall interrupt any judicial proceedings before him, or be a contempt of his authority or person, by fine not exceeding ten dollars, or by imprisonment in the common jail of the county, not exceeding fifteen days.

Justice not to be of counsel or attorney, &c.
1815, 49.

SECT. 34. No justice shall be retained or employed as counsel or attorney, before any court, upon appeal or otherwise, in any suit or action, which shall have been previously determined before himself, nor shall he try any civil action, commenced by himself, or by his order or direction; and every civil action, so commenced, shall be dismissed, with costs for the defendant.

— to keep a record.
1783, 42.

SECT. 35. Every justice of the peace shall keep a record of all his judicial proceedings, both in civil and criminal cases.

— to administer oaths in all cases.

SECT. 36. Every justice of the peace may administer oaths, in all cases in which an oath is or shall be required, unless a different provision shall be expressly made by law.

— to account for all fines, &c. received.
1783, 51.
1791, 53, §4.

SECT. 37. Every justice of the peace shall, twice in every year, account with the respective treasurers of the county, and of the towns, for all fines, forfeitures and costs, received upon convictions, or other proceedings before himself, and shall pay over to the said treasurers, respectively, all moneys due and payable to them on such account.

— to grant summonses for witnesses in civil actions.

SECT. 38. Every justice of the peace may issue summonses for witnesses, in all cases pending before himself, and in all civil cases, pending before any court whatever, or before any magistrates, arbitrators, or other persons authorized to examine witnesses.

SECT. 39. He may also grant summonses for witnesses, in all criminal cases pending before any court whatever, when requested by the attorney general, or other person acting in the case, in behalf of the Commonwealth, and also when requested by the party, who is prosecuted; provided, that in the latter case it shall be expressed in the summons, that it is granted at the request of the party prosecuted; and the witness shall not be required to attend, unless upon payment or tender of his legal fees. — also in criminal cases. 1791, 53.

SECT. 40. Nothing contained in this chapter shall control the regulations concerning the police court of the city of Boston, or of any other town, whereby a different provision is made for the exercise of any of the powers of justices of the peace. This chapter not to affect police courts.

CHAPTER 86.

OF THE MUNICIPAL COURT OF THE CITY OF BOSTON.

SECTION
1. Appointment of the judge.
2. Times and places of holding the court.
3. How adjourned in the absence of the judge.
4. Jurisdiction of the court.
5. Court to issue all writs, &c., like C. C. Pleas.
6. Grand jurors, how appointed for the court.
7. Traverse jurors.
8. The judge to appoint his clerk.
9. Fines, &c., to be paid and accounted for, as in C. C. Pleas.
10. Appeal allowed to the supreme court, in certain cases—how conducted.
11. Court may grant new trials, and allow exceptions.
12. Salary of the judge.
13. Clerk to keep and render an account of fees.
14. Salary of clerk.

SECTION 1. The judge of the municipal court of the city of Boston shall continue to hold his office, according to the tenor of his commission, and when a vacancy occurs, it shall be filled in the manner prescribed by the constitution. Appointment of the judge. 1799, 81. 1822, 13.

SECT. 2. The said court shall be held in the city of Boston, on the first Monday of every month, and may be adjourned from time to time, as occasion shall require. Times and places of holding the court. 1799, 81.

SECT. 3. If the judge shall be absent, at a time appointed for holding a court, whether at the beginning of a term, or at any adjournment thereof, the clerk shall adjourn the court, either without day, or to such time and place, as the public convenience may in his judgment require, and notice of such adjournment shall be given by proclamation, to be made in the court house by the sheriff or his deputy, and in such other manner as the court may by any general rule direct. How adjourned in the absence of the judge. 1799, 81. 1822, 13.

SECT. 4. The said court shall have original jurisdiction, concurrent with the supreme judicial court, of all crimes, offences and misdemeanors committed in the county of Suffolk, which are not capital, and of all offences against the by-laws of the city of Boston, Jurisdiction of the court. 1799, 81. 1812, 133. 1800, 44. 1821, 109.

and appellate jurisdiction of all offences, which shall be tried and determined before the police court of the city of Boston, or before any justice of the peace for the county of Suffolk.

Court to issue all writs, &c. like C. C. P. 1799, 81. 1800, 44.

SECT. 5. The said judge shall issue all such writs and processes, and exercise all such powers, as may be necessary or proper for the discharge of his duty, in like manner as may be done by the court of common pleas; and all such writs and processes may run into any county, and shall be obeyed and executed throughout the state.

Grand jurors how appointed for the court. 1800, 44.

SECT. 6. The grand jurors, who are from time to time appointed to serve in the supreme judicial court for the county of Suffolk, shall serve as grand jurors in the municipal court, until others are appointed in their place.

Traverse jurors. 1822, 13.

SECT. 7. The traverse jurors of the municipal court shall be drawn and returned from the city of Boston, and from the town of Chelsea, in the manner provided in the ninety fifth chapter, and writs of venire facias shall be issued for that purpose, returnable at the terms held in January, April, July and October in each year; and the jurors, so returned at each of those four terms, respectively, shall also serve at the two next succeeding terms.

The judge to appoint his clerk. 1799, 81. 1815, 37.

SECT. 8. The said judge shall from time to time appoint the clerk of said court, who shall be sworn to the faithful discharge of his duty, and shall hold his office during the pleasure of the court; and in case of the absence or inability of the clerk, the court may appoint a clerk pro tempore, who shall be sworn to the faithful discharge of his duty.

Fines, &c. to be paid and accounted for as in C. C. P. 1799, 81.

SECT. 9. All fines, forfeitures and costs, accrued or allowed upon any judgment or other proceeding in said court, shall be paid, received and accounted for, in like manner as is provided in the case of criminal prosecutions in the court of common pleas.

Appeal allowed to the supreme court, in certain cases.

SECT. 10. Any person, convicted in the said court upon indictment for a libel, nuisance or conspiracy, or for any offence which is or may be punishable by confinement to hard labor, for a term exceeding five years, may appeal therefrom to the supreme judicial court for the county of Suffolk, in the same manner that is provided, in the one hundred and thirty eighth chapter, for appeals by a person convicted in the court of common pleas; and such appeal from the municipal court shall be prosecuted, conducted and determined, in all respects, in the manner provided in the last mentioned chapter, with respect to the said appeals from the court of common pleas.

—how conducted.

Court may grant new trials and allow exceptions.

SECT. 11. The said municipal court may grant new trials in the like cases, and upon the same terms and conditions as are provided, in the one hundred and thirty eighth chapter, for the granting of new trials by the court of common pleas; and exceptions may be taken to any decision or direction of the court in matter of law, in the same manner, and with the same limitations, as are provided in said chapter.

Salary of the judge. 1799, 81. 1834, 180.

SECT. 12. The judge of the said municipal court shall receive a stated annual salary from the city of Boston, which shall be established by the city council, and shall not be diminished during his continuance in office; he shall also receive from the Commonwealth a further sum of twelve hundred and fifty dollars a year, to be paid in quarterly payments out of the treasury, and in the same proportion for any part of a quarter, which payments shall be in full compensation for all his services.

SECT. 13. The clerk of the said court shall keep an account of all fees received by him for his official acts and services, under the laws of this Commonwealth, excepting fees for such copies as he is not required by law to furnish, and he shall, on the first Wednesday of January, in every year, render to the treasurer of the county of Suffolk his account, on oath, of all fees so received within the year then past.

Clerk to keep and render an account of fees 1835, 124, § 1.

SECT. 14. The said clerk shall receive an annual salary of twelve hundred dollars, and in the same proportion for any part of a year, if the fees, for which he is so required to account, shall amount to so much; and if, upon rendering his said account, there shall be in his hands any excess above the amount due for his salary, he shall retain for his own use one half of the excess, and shall pay the other half thereof to the said county treasurer, who shall account therefor to the treasurer of the Commonwealth.

Salary of clerk. 1835, 124, § 1.

CHAPTER 87.

OF POLICE COURTS.

SECTION

OF THE POLICE COURT OF THE CITY OF BOSTON.

1. Appointment of the justices.
2. Times and place of holding the court.
3. General jurisdiction in criminal cases.
4. Of offences against the by-laws of Boston, except, &c.
5. All warrants in criminal cases to be returnable to the police court.
6. Fees on warrants issued by a justice.
7. Justices of the peace in Boston to be conservators of the peace.
8. Appeal allowed to the municipal court.
9. Attendance, when case is adjourned.
10. The court to be held also for civil actions.
11. To have exclusive jurisdiction in certain cases.
12. Teste and form of writs.
13. Proceedings to be like those before justices of the peace.
14. Times and place of holding the justices' court.
15. Appeal allowed to C. C. Pleas.
16. Justices to establish general rules of practice—may discharge from prison in certain cases.
17. Senior justice; seals of the court.
18. Appointment of the clerk.
19. Clerk to be sworn, and to give bond.
20, 21. Duty of the clerk.
22. To account for and pay over moneys.
23. May appoint assistant clerks.
24. To be responsible for them.
25. The justices and clerk not to be of counsel or attorneys, &c.
26. Salaries of the justices.
27. Salary of the clerk.
28. Compensation of assistant clerks.

OF POLICE COURTS IN OTHER TOWNS.

29. Police courts established in certain towns.
30. Appointment of the justices, and special justices.
31. Court when to be held by special justices.
32. Jurisdiction of the courts in criminal cases.
33. All warrants issued within the district, to be returnable to the police court.
34. Jurisdiction of the courts in civil actions.
35. Appeal allowed to C. C. Pleas.
36. Justice to officiate as clerk.
38. To account for all fines, &c. received.
39. Costs in criminal cases, how allowed and paid.
40. General powers and duties of the courts.
41. May commit certain offenders to the workhouse—Expense of persons so committed, how to be paid.
42. Courts where to be held.
43. Times of holding.
44. Justices not to be of counsel or attorneys, &c.
45. Compensation of the standing justices.
46. Of the special justices.

OF THE POLICE COURT OF THE CITY OF BOSTON.

Appointment of the justices. 1821, 109.

SECTION 1. The justices of the police court of the city of Boston shall continue to hold their offices according to the tenor of their commissions and as vacancies occur, others shall be appointed in the manner provided by the constitution, so that there shall be always three justices of the said court.

Times and place of holding the court. 1821, 109.

SECT. 2. The police court shall be held in Boston, for the county of Suffolk, by one or more of the said justices, at nine of the clock in the morning, and at three of the clock in the afternoon, of every day in the year except Lord's days, and days of public thanksgiving and fast.

General jurisdiction in criminal cases. 1821, 109.

SECT. 3. The said court shall have the same jurisdiction in criminal suits and prosecutions, and in all matters relating to treasons, felonies, and other crimes and misdemeanors, committed in the county of Suffolk, and relating to persons found therein, and charged with any of the said offences, and shall have and exercise the same powers in all criminal cases, that are or may be given by law to one or more justices of the peace, or of the peace and quorum in other counties.

Of offences against the by-laws of Boston, except, &c. 1821, 109.

SECT. 4. The said court shall also have cognizance of all offences against the by-laws of the city of Boston, which are not within the exclusive jurisdiction of some other court.

All warrants in criminal cases to be returnable to the police court. 1821, 109.

SECT. 5. All warrants issued by the said court, or by any justice of the peace in Boston, in any criminal suit or prosecution, shall be made returnable before the said court, and no process returnable before a justice of the peace in the town of Chelsea, except for causes of complaint arising in that town, shall be served in Boston.

Fees on warrants issued by a justice. 1821, 109.

SECT. 6. No fees shall be allowed to any justice of the peace for any warrant issued by him, returnable before said court, unless it shall appear to the court that there was just and reasonable cause for issuing the warrant.

Justices of the peace in Boston to be conservators of the peace.

SECT. 7. Every justice of the peace in the city of Boston shall, notwithstanding any thing contained in this chapter, have and exercise all the powers and duties of a conservator of the peace, for suppressing all affrays, riots, assaults and batteries, and for arresting all persons concerned therein; and all persons so arrested, whether upon a warrant in writing or otherwise, shall be brought before the said court for examination, to be there dealt with according to law.

Appeal allowed to the municipal court. 1821, 109.

SECT. 8. Every person, convicted before the said court of any offence, may appeal therefrom to the municipal court of the city of Boston, and the appeal shall be entered at the next term of the municipal court, and shall be conducted and disposed of, in all respects, like appeals in criminal cases from justices of the peace to the court of common pleas in other counties.

Attendance, when case is adjourned.

SECT. 9. When any trial or examination, pending before the said court, is adjourned to a future day, as provided in the one hundred and thirty fifth chapter, the parties and the witnesses shall not be required to attend from day to day, but they shall attend at the time to which the cause is so adjourned, and the recognizances, if any, shall be taken accordingly.

The court to be held also for civil actions. 1821, 109.

SECT. 10. There shall also be a court for the trial of civil actions, to be held by one or more of the justices of the police court, which shall be called the justices' court for the county of Suffolk.

SECT. 11. The said justices' court shall have and exercise, exclusively, the same jurisdiction in all civil actions in the county of Suffolk, that is exercised by justices of the peace in other counties.

—to have exclusive jurisdiction in certain cases. 1821, 109.

SECT. 12. All writs and processes, issued by the said justices' court, shall bear teste of either of the justices who is not a party thereto, and shall be signed by the clerk, and they shall be, in all other respects, substantially like the writs and processes issued by justices of the peace.

Teste and form of writs. 1822, 12.

SECT. 13. All the proceedings in the said justices' court, in the hearing, trial and determination of civil actions, and in all matters relating thereto, shall be substantially the same as the proceedings in like cases before justices of the peace; and the said justices' court shall have and exercise all such powers as may be necessary or proper for the discharge of their duty, in the same manner as justices of the peace might do in the like cases.

Proceedings to be like those before justices of the peace.

SECT. 14. The said justices' court shall be held in Boston, on two days in each week, to be fixed and determined by the justices thereof, and as much oftener as occasion shall require, and it may be adjourned to any other time; and all actions therein may be continued to any future day fixed for the sitting of the court.

Times and place of holding the justices' court. 1821, 109.

SECT. 15. Any party, aggrieved by the judgment of the said justices' court, may appeal therefrom to the court of common pleas for the county of Suffolk, and all the proceedings on such appeal shall be conducted in all respects, as is provided for appeals in civil cases from justices of the peace to the court of common pleas in other counties.

Appeal allowed to the C. C. P. 1821, 109.

SECT. 16. The said justices shall from time to time meet, to establish all necessary rules for the orderly and uniform conducting of the business of both of the said courts, and also to arrange and distribute their duties, so as to equalize the same among themselves, as nearly as may be, and to ensure a prompt and punctual discharge thereof; and on all other occasions requiring the presence of two or more justices; and when so assembled, the said justices may discharge from prison, in the county of Suffolk, any person, who may be there held for no other reason than the non-payment of fine and costs, if it shall appear to them that he is poor and unable to pay the same; provided, that when such person is held under the sentence of any other court, the consent thereto of the judge, or of one of the justices of such other court, shall be first given in writing.

Justices to establish general rules of practice.

—may discharge from prison in certain cases. 1821, 109.

SECT. 17. The senior justice of the said court, for the time being, shall be the first justice of the said police court and justices' court, but each of the said courts shall have a separate and distinct seal.

Senior justice; seals of the courts.

SECT. 18. The clerk of the said police court and justices' court shall continue to hold his office, according to the tenor of his commission; and upon any vacancy in said office, the governor, with the advice of the council, shall nominate and appoint one person, to be clerk of both of the said courts, who shall hold his office during the pleasure of the governor and council; and in case of the death or absence of the clerk, the court shall appoint a clerk pro tempore, who shall officiate as such, until the standing clerk shall resume the performance of his duties, or until another shall be appointed by the governor.

Appointment of the clerk. 1821, 109.

Clerk to be sworn, and to give bond. 1821, 109.

SECT. 19. The clerk shall be sworn to the faithful performance of his duty, and shall give bond to the city of Boston, in such sum as the city council shall order, with a surety or sureties, to the acceptance of the city treasurer, with condition for the faithful performance of the duties of his office.

Duty of the clerk. 1821, 109. 1822, 12.

SECT. 20. The clerk or his assistant shall attend all sessions of both of the said courts, and keep a record of all the proceedings of the said police court, and a distinct record of all the proceedings of the said justices' court.

Same subject. 1821, 109. 1822, 12.

SECT. 21. He shall also make out all warrants, writs and processes, which shall be ordered by either of the said courts, and tax all bills of costs, and receive all fines and forfeitures, and all fees, awarded and payable in either of said courts, and all fees for blanks, and for copies in civil and criminal suits; and the amount of all fees received by him for copies shall be indorsed thereon.

—to account for and pay over moneys. 1821, 109. 1822, 12.

SECT. 22. He shall render to the board of accounts of the city of Boston a quarterly account of all moneys so received by him as clerk, and upon the approval thereof by the board, he shall forthwith pay over the amount due thereon to the city treasurer.

May appoint assistant clerks. 1821, 109.

SECT. 23. He may from time to time appoint one or more assistant clerks, to aid him in the discharge of his duties; but no person shall be so appointed, unless approved by the justices of the said courts.

To be responsible for them. 1821, 109.

SECT. 24. The clerk shall be responsible for the doings of his assistants, and they shall be removable at his pleasure, and shall be sworn to the faithful performance of their duties.

The justices and clerk not to be of counsel or attorneys, &c. 1821, 109.

SECT. 25. Neither of the said justices, nor the said clerk, nor either of his assistants, shall be retained or employed as counsel or attorney in any suit, complaint, or proceeding, in the said police court, or justices' court, nor in any which shall have been heard, examined or tried therein.

Salaries of the justices. 1821, 109.

SECT. 26. The said justices shall severally receive, from the city of Boston, an annual salary, the amount of which shall be from time to time determined by the city council, and shall be paid in quarterly payments, and in the same proportion for any part of a quarter, in full compensation for all their services, except those required of them as members of the board of accounts of the city of Boston.

Salary of the clerk. 1821, 109.

SECT. 27. The said clerk shall also receive from the city an annual salary, the amount of which shall be from time to time determined by the city council, and shall be paid in quarterly payments, and in the same proportion for any part of a quarter, and shall be in full compensation for all his services.

Compensation of assistant clerks. 1821, 109.

SECT. 28. The assistant clerks shall receive from the city such compensation for their services, as shall be ordered by the city council, provided the board of accounts shall certify that their services were necessary.

OF POLICE COURTS IN OTHER PLACES.

Police court established in

SECT. 29. The several police courts in other places shall be continued as heretofore established, that is to say;

The town of Salem shall constitute a judicial district, under the jurisdiction of the police court of Salem: Salem. 1831, 70.

The town of Lowell shall constitute a judicial district, under the jurisdiction of the police court of Lowell: Lowell. 1833, 64.

The town of Newburyport shall constitute a judicial district, under the jurisdiction of the police court of Newburyport: Newburyport. 1833, 192.

The town of New Bedford, shall constitute a judicial district, under the jurisdiction of the police court of New Bedford. New Bedford. 1834, 33.

SECT. 30. There shall be one standing justice, and two special justices, in each of the said judicial districts. The justices now appointed shall continue to hold their offices, according to the tenor of their commissions, and as vacancies occur, others shall be appointed in the manner provided by the constitution, who shall hold their offices for the same time, and by the like tenure, as is provided with respect to justices of the peace. Appointment of the justices, and special justices.

SECT. 31. The said courts shall be held by the respective standing justices thereof, except that when the standing justice is interested in any case, pending or cognizable in his court, or is absent, or otherwise unable to hear and determine the same, the fact shall be stated on the record, and the case shall be heard and determined by one of the said special justices, who shall, upon notice of the fact, attend and hold the court for that purpose, and perform all the duties of the standing justice relating to such case. Court, when to be held by special justices.

SECT. 32. The said courts shall have the same jurisdiction, in criminal suits and prosecutions, and in all matters relating to treasons, felonies, and other crimes and misdemeanors, committed within their respective counties, or relating to persons found therein, and charged with any of the said offences, which justices of the peace have in the same counties. Jurisdiction of the courts in criminal cases.

SECT. 33. All warrants issued by the said courts, or by any justice of the peace in any of the said judicial districts, in any criminal suit or prosecution, shall be returnable before the police court of the district, and no fees shall be allowed to any justice of the peace, for any such warrant, unless it shall appear to the court that there was just and reasonable cause for issuing it. All warrants issued within the district, to be returnable to the police court.

SECT. 34. The said courts shall also have jurisdiction, concurrently with the justices of the peace, of all civil actions in their respective counties, which are within the jurisdiction of justices of the peace, and the jurisdiction of each of the said courts shall be exclusive, in all civil actions, when the plaintiff and defendant both reside within their respective districts. Jurisdiction of the courts in civil actions.

SECT. 35. When there are two or more plaintiffs or defendants, the jurisdiction of the said court shall not be exclusive, unless all the said parties shall reside within the judicial district. Same subject.

SECT. 36. Any party, aggrieved by the judgment of either of the said courts, in any case, whether civil or criminal, may appeal therefrom to the court of common pleas, for the county in which the police court is held, and all such appeals shall be entered, conducted and disposed of, in all respects, like appeals from justices of the peace to the court of common pleas. Appeal allowed to C. C. P. 1831, 70, § 1.

SECT. 37. The standing justice, or other justice, who holds the Justice to officiate as clerk.

court, shall perform all the duties of a clerk thereof, and shall receive all fees, costs and fines, that are paid into court.

To account for all fines, &c. received.

SECT. 38. All fines and forfeitures received by the said justice, and all costs, in criminal prosecutions, received by him, except his own fees, shall be accounted for and paid over, in the same manner, and under the same penalties for neglect, as are prescribed with regard to justices of the peace.

Costs in criminal cases, how allowed and paid. 1833, 192.

SECT. 39. All costs and charges, arising in criminal prosecutions, which shall not be paid to the said justice as above provided, shall be taxed, certified, allowed and paid, in like manner, as is by law provided in the case of prosecutions before justices of the peace.

General powers and duties of the courts.

SECT. 40. The powers and duties of the said police courts, in all matters not herein expressly provided for, shall be the same as those of justices of the peace, in the like cases.

—may commit certain offenders to the work house.

SECT. 41. Every person, being an inhabitant of any town, within either of the said judicial districts, who shall be brought before any of the said courts, and shall be liable to be sent to the house of correction, as a rogue or vagabond, or an idle or disorderly person, may be committed to the work house, if there be any, in the town of which he is an inhabitant, to be there kept, governed and employed, according to the rules of the said work house, and the expense of supporting and employing such person shall be paid, and may be recovered, in the same manner, that is provided in the one hundred and forty third chapter, in case of a like commitment to the house of correction.

Expense of person, so committed, how to be paid.

Courts where to be held.

SECT. 42. Every police court shall be held within the district for which it is established, in the court house, if there be one, or in any other suitable place, to be provided at the expense of the district, and may be adjourned to any other place in the same district, as occasion shall require.

Times of holding. 6 Pick. 110.

SECT. 43. The said courts shall be held, in each of the said districts, on two fixed days in each week, and as much oftener as may be necessary for criminal cases, and on one fixed day in each fortnight, and as much oftener as may be necessary, for civil actions; except that in Newburyport, the court may be held one day only in each week, for both criminal and civil cases.

Justices not to be of counsel or attorneys, &c.

SECT. 44. None of the said standing justices shall be retained or employed, as counsel or attorney in any suit, complaint, or proceeding pending in his court, nor in any which shall have been heard, examined or tried therein; and none of the said special justices shall be so retained or employed, in any such case, in which they shall officiate for the standing justice.

Compensation of the standing justices.

SECT. 45. The standing justice of each of the said courts shall receive and retain for his own use all such fees, for the services performed by him, as would be taxable by law for the like services, when performed by a justice of the peace; provided, that the legislature may, from time to time, limit the said compensation to a certain sum, or make any other change relating thereto, as they shall think just and proper.

—of the special justices.

SECT. 46. Every special justice, when officiating in the police court, shall receive and retain for his services all such fees, as would be taxable by law for the like services, when performed by a justice of the peace.

CHAPTER 88.

OF CLERKS, ATTORNEYS, AND OTHER OFFICERS OF COURTS.

SECTION

OF CLERKS.

1. Appointment of clerks
2. Tenure of office: how removed.
3. Clerk to give bond.
4. To be sworn.
5. His general duties.
6. Record, how made in suits in equity.
7. To keep alphabetical list of names, &c.
8. Records to be inspected by the courts.
9, 10. Proceedings in case of neglect of the clerk.
11. Books of records to be exhibited to the supreme court.
12. Clerks to be liable for any other misconduct.
13. Any court may appoint a clerk pro-tempore.
14. His oath and compensation.
15. Clerks to render an account of fees received.
16. To retain the amount of their salaries.
17. Salaries of the several clerks in the several counties.
18. Salaries not to exceed the amount of fees received.

OF COUNSELLORS AND ATTORNEYS.

19, 20. Qualifications for admission to any court to practise as an attorney.
21. Oaths, to be taken by an attorney.
22. Oath of office.
23. Distinction between counsellors and attorneys abolished.
24. Counsellors and attorneys from other states may be admitted here.
25. Attorney may be removed for malpractice, &c. Expenses of trial, how paid.
26. Parties may manage their own suits, &c.
27. Or may appoint a special attorney.
28. Attorney's lien on execution in his hands.
29. Sheriff, deputy, coroner, or constable, not to act as attorney.
30. Penalty for so doing.

OF MASTERS IN CHANCERY.

31. Appointment of masters in chancery.
32. To be sworn.
33. Their duties and fees.
34. " fees, how taxed and paid.
35. Other persons may be appointed in case, &c.

OF THE REPORTER.

36. Appointment of reporter.
37. Reporter to be sworn.
38. To make and publish reports annually.
39. How to report different cases.
40. Duty of the court in certain cases.
41. Reporter, when sick, &c. may depute one to attend for him.
42. Compensation of the reporter.

OF CLERKS.

SECTION 1. The clerks of the supreme judicial court, of the court of common pleas, and of the county commissioners, in the several counties, shall continue to hold their offices, according to the tenor of their commissions, and as vacancies occur, the justices of the supreme judicial court shall appoint one or more persons in each county, to be clerks of all the said courts which shall be held in their respective counties. Appointment of clerks. 1830, 129.

SECT. 2. The said clerks shall hold their offices for five years, if not sooner removed, and they may be removed at any time, by the justices of the supreme judicial court, for any cause, which the said court shall deem sufficient. Tenure of office: how removed. 1830, 129.

SECT. 3. Every such clerk, before entering on the duties of his office, shall give bond to the treasurer of the county, to be approved by the supreme judicial court, in a sum not less than five hundred, Clerk to give bond. 1786, 57.

and not exceeding two thousand dollars, with one or more sufficient sureties, with condition for the faithful discharge of the duties of his office.

To be sworn. 1796, 95, § 2.

SECT. 4. He shall also be sworn to the faithful discharge of all his said duties, which oath shall be administered by the supreme judicial court in any county, or by any one of the justices thereof in vacation.

His general duties. 1786, 57. 1830, 129.

SECT. 5. The said clerks shall attend all the said courts, when held in their respective counties, and record their proceedings, and shall have the care and custody of all the records, books and papers, appertaining to their respective offices, and filed or deposited therein.

Record, how made in suits in equity. 1826, 109, § 3.

SECT. 6. In suits in equity, the clerk shall record at large such part only of the proceedings, as shall be directed by the court which direction may be given by general rules, or by a special order in any particular case.

To keep alphabetical lists of names, &c. 1786, 57.

SECT. 7. They shall keep in every book of records an alphabetical list of the names of all the parties to any suit or judgment therein recorded, with a reference to the page where it is recorded; and when there are several persons, either plaintiffs or defendants, the name of every person, with a like reference, shall be inserted in its appropriate place in the alphabetical list.

Records to be inspected by the courts. 1786, 57.

SECT. 8. The justices of the several courts shall inspect the doings of the clerks, from time to time, and see that the respective records are made up seasonably, and kept in good order; and if the records are left incomplete, for more than six months, at any one time, such neglect, unless caused by sickness or other extraordinary casualty, shall be adjudged a forfeiture of the clerk's bond.

Proceedings in case of neglect of the clerk. 1786, 57.

SECT. 9. In case of any neglect, causing a forfeiture of the bond given by the clerk, the said justices shall forthwith give notice thereof, in writing, to the treasurer of the county, who shall thereupon cause the bond in be put in suit.

Same subject.

SECT. 10. The sum recovered in such suit shall be applied to making up the deficient records, under the direction of the court, in whose records the deficiency shall happen, and the surplus, if any, shall remain in the hands of the treasurer, for the use of the county.

Books of records to be exhibited to the supreme court.

SECT. 11. At every term of the supreme judicial court, the clerk shall exhibit the then latest book of records of each of the courts in the county, and such others as shall be required, so that the court may have notice of any errors or defects in the keeping of the records, and may cause the same to be corrected, or may remove the clerk, as occasion shall require.

Clerks to be liable for any other misconduct.

SECT. 12. Nothing before expressed shall be construed to exempt the said clerks from a suit, for any other breach of the condition of their bonds, or from their liability in any other way, or to any party, for neglect or misconduct in their offices.

Any court may appoint a clerk pro tempore. 1815, 37

SECT. 13. In case of the death of the clerk, or of his absence from any of the courts, which he is required to attend, the court shall appoint a clerk pro tempore, who shall continue to act as clerk of the court, by which he is appointed, until the standing clerk shall resume the discharge of his duties, or until another shall be appointed by the supreme judicial court.

His oath and

SECT. 14. Such temporary clerk shall be sworn, before the court

by which he is appointed, to the faithful discharge of his duty; and he shall receive for his services such compensation, as the court shall think proper, to be paid either by the standing clerk, or from the county treasury, as the court shall direct.

compensation. 1815, 37.

SECT. 15. The clerks of the several counties shall keep an account of all fees received by them, for their official acts and services, except fees for such copies, as they are not required by law to furnish; and they shall, on the first Wednesday of January, in every year, render to the treasurer of the county, their account on oath of all fees so received within the year then past.

Clerks to render an account of fees received. 1830, 129. 1835, 124, § 2.

SECT. 16. Each clerk shall retain, for his own use, the sum herein after provided for his annual salary, if he shall have received so much, for the fees for which he is to account; and if there be any excess, he shall also retain for his own use one half of that excess, and the residue thereof he shall pay to the treasurer, for the use of the county.

To retain the amount of their salaries. 1830, 129. 1833, 170.

SECT. 17. The sums, which the several clerks may retain for their annual salaries, shall be as follows, to wit:

Salaries of the several clerks in

The clerk or clerks of the county of Suffolk, four thousand dollars; Suffolk.
The clerk of the county of Essex, two thousand dollars; Essex.
The clerk of the county of Middlesex two thousand dollars; Middlesex.
The clerk of the county of Worcester two thousand dollars; Worcester.
The clerk of the county of Hampshire twelve hundred dollars; Hampshire.
The clerk of the county of Hampden twelve hundred dollars; Hampden.
The clerk of the county of Franklin twelve hundred dollars; Franklin.
The clerk of the county of Berkshire fourteen hundred dollars; Berkshire.
The clerk of the county of Norfolk fifteen hundred dollars; Norfolk.
The clerk of the county of Bristol sixteen hundred dollars; Bristol.
The clerk of the county of Plymouth fourteen hundred dollars; Plymouth.
The clerk of the county of Barnstable one thousand dollars; Barnstable.
The clerk of the county of Nantucket four hundred dollars; and Nantucket.
The clerk of the county of Duke's county two hundred and fifty dollars; Duke's county. 1830, 129.

And they may retain, at the same rate, for their services for any part of a year.

SECT. 18. If the fees, received in any county, shall not amount to the salary above provided, the clerk shall retain all that shall be received, which shall be in full for his services for the year.

Salaries not to exceed the amount of fees received.

OF ATTORNEYS AT LAW.

SECT. 19. Any citizen of this Commonwealth, of the age of twenty one years, and of good moral character, who shall have devoted three years to the study of the law, in the office of some attorney, within this state, shall, on application to the supreme court, or court of common pleas, be admitted to practise as an attorney in any court of this Commonwealth, on complying with the other requisitions contained in this chapter.

Qualifications for admission to any court to practise as an attorney. 6 Mass. 382.

SECT. 20. Any person, having the other qualifications, required in the preceding section, but who shall not have studied the term therein prescribed, may, on the recommendation of any attorney within this Commonwealth, petition the supreme court, or court of common pleas, to be examined for admission as an attorney in said courts, whereupon the court shall assign some time and place for the examination, and if they shall thereupon be satisfied with his acquire-

Same subject.

ments and qualifications, he shall be admitted, in like manner as if he had studied three full years.

Oaths to be taken by an attorney. 1785, 23.

SECT. 21. Every person admitted as an attorney shall, in open court, take and subscribe the oaths to support the constitution of the United States, and of this Commonwealth, and the oath of office.

Oath of office. 1785, 23.

SECT. 22. The oath of office shall be as follows:

You solemnly swear, that you will conduct yourself, in the office of an attorney, according to the best of your knowledge and discretion, and with all good fidelity, as well to the courts as to your clients. So help you God.

Distinction between counsellors and attorneys, abolished.

SECT. 23. Every person, admitted to practise in any court, may practise in every other court, in the state, and there shall be no distinction of counsellors and attorneys.

Counsellors and attorneys from other states may be admitted here.

SECT. 24. Any person, who shall have been admitted an attorney or counsellor of the highest judicial court of any other state, of which he was an inhabitant, and shall afterwards become an inhabitant of this state, may be admitted to practise here, upon satisfactory evidence of his good moral character and his professional qualifications.

Attorney may be removed for malpractice, &c.

SECT. 25. Any attorney may be removed by the supreme judicial court, or the court of common pleas, for any deceit, malpractice, or other gross misconduct, and shall moreover be liable in damages, to the party injured thereby, and to such other punishment as may be provided by law; and the expenses of the inquiry and proceedings, in either of the said courts, for the removal of any attorney, shall be paid in the same manner, that is provided in the one hundred and forty first chapter, for the payment of costs in criminal prosecutions, in the same courts.

Expenses of trial, how paid.

Parties may manage their own suits, &c. 1785, 23. 1789, 58.

SECT. 26. Parties may manage, prosecute or defend their own suits, personally, and by such counsel or attorneys as they may see fit to engage, but no more than two persons for each party shall, without permission of the court, be allowed to manage any case therein.

— or may appoint a special attorney. 1789, 58.

SECT. 27. Any person, of good moral character, although not admitted an attorney, may manage, prosecute or defend a suit, for any other person, provided he is specially authorized for that purpose, by the party for whom he appears, in writing, or by personal nomination in open court.

Attorney's lien on execution in his hands. 11 Mass. 236. 3 Greenl. 34. 13 Mass. 525. 5 Mass. 309. 1810, 84. 1830, 124.

SECT. 28. Every attorney, who shall be lawfully possessed of an execution, in favor of his client, shall have a lien thereon, for the amount of his fees and disbursements in the cause, provided, that this shall not prevent the payment of the execution to the judgment creditor, by any officer or other person, without notice of the lien.

Sheriff, deputy, coroner, or constable, not to act as attorney. 6 Pick. 483. 10 Pick. 45. 1783, 44, § 3. 1822, 20.

SECT. 29. No sheriff, deputy sheriff, coroner or constable, shall appear in any court, or before any justice of the peace, as attorney or counsel, for or in behalf of any party in a suit, nor shall he draw, make, fill up, or alter any writ, declaration, plea or process, for any such party.

Penalty for so doing. 1822, 20.

SECT. 30. Every person, offending against the provisions of the preceding section, shall forfeit the sum of fifty dollars, for the use of the county.

OF MASTERS IN CHANCERY.

Appointment of

SECT. 31. Masters in chancery shall be appointed by the gov-

ernor, by and with the advice and consent of the council, and shall hold their offices five years, unless sooner removed by the governor and council; but not more than two shall be appointed, in any one county.

masters in chancery. 1826, 109, § 4.

SECT. 32. They shall be sworn to the faithful discharge of the duties of their office, which oath may be administered by the supreme judicial court, or the court of common pleas, or by any justice of either court in vacation.

To be sworn. 1826, 109.

SECT. 33. They shall perform, under the direction of the supreme judicial court, or of any justice thereof, all the duties, which, according to the practice in chancery, appertain to the office, and shall be allowed therefor such fees as the court shall order.

Their duties and fees. 1826, 109.

SECT. 34. Their fees shall be taxed with the other costs in the case, and shall be eventually paid by such party, or in such manner, as the court shall order.

Fees, how taxed and paid. 1826, 109.

SECT. 35. When it shall happen that the masters, appointed in any county, are of counsel or interested in any suit, or otherwise disqualified or unable to act therein, the court, upon ordering a reference of any matter in such suit, shall appoint some person to act as a master therein.

Other persons may be appointed in case, &c. 1826, 109.

OF THE REPORTER.

SECT. 36. The reporter of the decisions of the supreme judicial court shall be appointed by the governor, by and with the advice and consent of the council, and shall be removable at their pleasure.

Appointment of reporter. 1803, 133.

SECT. 37. He shall be sworn, before the said court or any justice thereof, to the faithful discharge of the duties of his office.

Reporter to be sworn. 1803, 133.

SECT. 38. He shall attend personally all the law terms of the said court, and make true reports of their decisions on all legal questions, that shall be argued by counsel, and publish the same annually.

To make and publish reports annually. 1826, 51.

SECT. 39. He shall, at his discretion, report the several cases more or less at large, according to their relative importance, so as not unnecessarily to increase the size or number of the volumes of reports.

How to report different cases. 1826, 51.

SECT. 40. When judgment, in any of the cases mentioned in the two preceding sections, shall be entered at any other than a law term, the court shall communicate to the reporter a statement in writing of their decision or opinion in the case.

Duty of the court in certain cases. 1826, 51.

SECT. 41. When the reporter shall be necessarily prevented from attending personally at any law term, he shall depute some suitable person, to attend for him and take notes of the decisions, or the court may appoint a person to officiate in his stead, until he shall resume the performance of his duties, or until another shall be appointed by the governor.

Reporter when sick, &c., may depute one to attend for him.

SECT. 42. The reporter shall receive an annual salary of one thousand dollars, which, with the profits arising from the publication of his reports, shall be in full compensation for his services, and the said salary shall be paid out of the treasury of the Commonwealth, in quarterly payments, and in the same proportion for any part of a quarter.

Compensation of the reporter. 1803, 133.

CHAPTER 89.

GENERAL PROVISIONS CONCERNING COURTS AND JUDICIAL OFFICERS.

SECTION
1. Discontinuance of suits in certain cases, prevented.
2. Times and places of holding courts may be changed in case, &c.
3. Such change how to be published.
4. Courts not to be opened on Sunday, unless, &c.
5. Certain officers not to buy demands for collection.
6 Nor to advance money therefor.
7. Penalty for so doing.
8. Judge, &c., not to be of counsel, &c., in suit previously determined by himself.

Discontinuance of suits in certain cases, prevented.

SECTION 1. No suit, process or proceeding, pending in any court, shall be discontinued, by reason of such court not having been held at any stated term, or at any adjournment, thereof, but they shall be respectively returned to, entered, and have day in, the term or session, which shall be held next after such failure.

Times and places of holding courts may be changed in case, &c. 1797, 16, § 10.

SECT. 2. If, by reason of war, pestilence, or other public calamity, it shall be deemed unsafe or inexpedient to hold any court at the time and place appointed therefor, whether it be at a stated term, or a session by adjournment, the justices of the court, or any one of them, may appoint any other place, within the same county, and any other time, for holding the same.

Such change how to be published. 1797, 16.

SECT. 3. Every such adjournment shall be made, by an order in writing, signed by the justice or justices, and shall be published by the sheriff or his deputy, or by any other person, to whom the order is directed, by public proclamation, to be made in the shire town, or as near thereto as may be deemed safe, and also by advertisement in such newspaper, or in such other manner, as shall be required in the order.

Courts not to be opened on Sunday, unless, &c. 2 Bay, 232. 13 Mass. 347. 15 Johns. R. 119. 177.

SECT. 4. No court shall be opened on the Lord's day, unless for the purpose of instructing or discharging a jury or of receiving a verdict; but this section shall not prevent the exercise of the jurisdiction of any magistrate, when it shall be necessary in criminal cases, to preserve the peace, or to arrest offenders.

Certain officers not to buy demands for collection. 13 Pick. 79. 1811, 62.

SECT. 5. No counsellor, attorney, justice of the peace, sheriff, deputy sheriff, coroner or constable, shall directly or indirectly buy, or be interested in buying, any bond, note, book debt or other right of action whatever, with the intent to procure himself to be employed in the collection thereof, or to make to himself any gain or profit from the fees arising in collecting such demand by a suit at law.

Nor to advance money therefor. 13 Pick. 79. 1811, 62.

SECT. 6. None of the officers, mentioned in the preceding section, shall directly or indirectly loan or advance, or agree to loan or advance, any money or other goods, or shall give or promise any valuable consideration whatever, to any person, as an inducement to place, or in consideration of having placed, in the hands of such officer or of any other person, any bond, note, book debt, or other right of action, for collection.

Penalty for so doing. 1811, 62.

SECT. 7. Every person, who shall commit either of the offences described in the two preceding sections, shall forfeit a sum not less

than twenty nor more than five hundred dollars, for every offence, to the use of the county, where the offence is committed.

SECT. 8. No person shall be employed, nor allowed to appear as counsel or attorney before any court, in any suit, which shall have been previously determined before himself, as a judge or justice of the peace.

Judge, &c., not to be of counsel, &c., in suit previously determined by himself. 1815, 49.

TITLE II.

Of actions in general.

CHAPTER 90. Of the commencement of actions, and the service of the original writ.
CHAPTER 91. Of bail in civil actions.
CHAPTER 92. Of proceedings when the defendant does not appear and answer to the suit.
CHAPTER 93. Of death, marriage, or other disability, occuring after the commencement of the suit.
CHAPTER 94. Of witnesses and evidence.
CHAPTER 95. Of juries.
CHAPTER 96. Of trial and its incidents.
CHAPTER 97. Of judgment and execution.
CHAPTER 98. Of the relief of poor prisoners committed on execution for debt.
CHAPTER 99. Of writs of review.
CHAPTER 100. General provisions concerning actions.

CHAPTER 90.

OF THE COMMENCEMENT OF ACTIONS, AND THE SERVICE OF THE ORIGINAL WRIT.

SECTION
1. Original writs in civil actions.
2. In what counties, issued and returnable.
3. The different kinds thereof.
4. Separate summons, after attachment of property.
5. What writ of attachment and summons may be combined.
6. When writ may be sued out.
7. Writs in actions before justices of the peace.
8. Forms of writs, and alterations therein.
9. To be under the control of the supreme court.
10. Writs, by persons out of the state, to be indorsed.
11. Liability of the indorser.
12. New indorser, when to be procured or allowed.
13. If not so procured, the suit to be dismissed.
14. Transitory actions, in what counties they may be brought.
15. Where, when there are two or more plaintiffs or defendants.
16. Where, when certain corporations are parties.

SECTION
17. Penal actions, where to be brought.
18. " " how defeated, if brought in wrong county.
19. Actions against counties, where to be brought.
20. " by counties, where to be brought.
21. Original writs, when to be served.
22. When, if against certain corporations.
23. Real estate may be attached.
24. Goods and chattels may be attached, except, &c.
25. To be held for thirty days after judgment for plaintiff—In Nantucket for 60 days, in certain cases.
26. Attachment dissolved by judgment for defendant.
27. What judgment is intended in the two preceding sections.
28. Copy of writ and of officer's return of attachment of real estate, to be deposited in clerk's office.
29. " within three days, &c.
30. Clerk to file and enter the same in a book—His fees therefor.
31. Attachment of real estate, how to be made.
32. Case of attachment of land that is mortgaged.
33, 34, 35. Attachment of goods that are too bulky to be removed.
36, 37, 38. Shares in banks, &c. how to be attached.
39, 40, 41. Summons, how to be served.
42. Summons, how to be served on certain corporations.
43. " how on other corporations.
44. Actions against persons out of the state, when maintainable.
45. Summons, how served is such case.
46. How, if there is a co-defendant in the state.
47. How, in real actions against persons out of the state.
48. Defendant in all cases, if out of the state, to have further notice, &c.
49. Plaintiff, out of the state, liable to a cross action by the defendant.
50. Or by one, of several defendants.
51. Writ how served in such case.
52. Proceedings in such suits.
53. Certain defects in the service of writs, how supplied.
54. Proceedings, when the defendant's name is not known.
55. Successive attachments on the same writ before the summons is served.
56. Plaintiff may direct the mode of service.
57. Goods attached may be sold by consent.

SECTION
58. If perishable, &c. may be appraised and sold.
59. Proceedings upon application for appraisement.
60. Appraisers, how appointed.
61. Upon the decision of the appraisers, the goods may be sold;
62. Or delivered to the defendant upon his depositing money or giving bond, &c.
63. The bond to be returned with the writ.
64. Action thereon to be brought by the creditors.
65. The money recovered to belong to them.
66. To be distributed by the court.
67. Prior attachments to be protected.
68. Case of a creditor not joining in suit on the bond.
69. Limitation of action on the bond, and of scire facias on the judgment.
70. Any creditor may be paid, leaving enough for prior attachments.
71. Proceeds of goods sold, liable to further attachments.
72. Surplus unattached may be paid to the defendant.
73. Goods attached may be appraised at the request of a part owner, not a deft.;
74. And delivered to such owner upon his giving bond, &c.
75. If such part owner pays, the goods become pledged.
76. Goods to be restored on dissolution of the attachment.
77. Return of the officer, and proceedings in suit upon the bond.
78. Attachment of mortgaged goods.
79. Mortgagee to state the amount due him, to be paid by the creditor.
80. Penalty for demanding too much.
81. The debt to be repaid out of the proceeds of sale;
82. Or by the mortgagor.
83. Fraudulent attachments, how defeated.
84. Petition by persons objecting thereto.
85. To be supported by affidavit.
86. The prior attachment may be dissolved, in case, &c.
87. Plaintiff in prior suit may be examined on oath.
88. Proceedings not to be controlled by defendant—Defendant may testify.
89. Grounds of defence in such case.
90. Damages and costs may be awarded.
91. Petitioner to give security for damages and costs.
92. Proceedings in case of appeal.
93. Decision on such petition to bar action against prior attaching creditor for fraud.

SECTION
94. To what cases the eleven preceding sections to be restricted.
95. Attachment to continue, though attaching officer dies.
96. Death of officer not to abate any suit brought for goods attached.
97. Case of judgment for executor, &c. of the officer.
98. Of judgment against the executor, &c.
99. Goods replevied from an officer, liable to further attachments.
100. Plaintiff in replevin liable for the whole value.
101. Goods may be further attached, after death, &c. of first attaching officer.
102, 103. Proceedings in such case.
104. Mode of attaching goods replevied.
105. Attachment dissolved by death of defendant, unless, &c.
SECTION
106. Proceedings in such case.
107. Officer, liable only for nett proceeds.
108. Creditor liable therefor, if paid over to him.
109. No set-off allowed in such case.
110. Officers not to arrest defendant without express order.
111. No arrest for less than ten dollars.—Affidavit to hold to bail in actions on contract.
112. Person arrested, how to be held.
113. How to be supported, if a pauper.
114. Jailer not to detain defendant without security for board.
115. Duty of bail on surrendering principal.
116. Writs to be returnable to the next ensuing term.
117. Suits in equity, how commenced.
118. Subpœna how issued and served.
119. When to be served.

SECTION 1. All civil actions, excepting those founded on scire facias or other special writs, shall be commenced by original writs, which shall be signed, sealed, and bear teste, as required by the constitution. Original writs in civil actions.

SECT. 2. All original writs in the supreme judicial court, and court of common pleas, may be issued by the clerk of the said courts in any county, and be made returnable in any other county. —in what counties, issued and returnable.

SECT. 3. The original writ may be framed, either, The different kinds thereof.

To attach the goods or estate of the defendant, and for want thereof to take his body; or,

It may be an original summons, either with or without an order to attach the goods or estate.

SECT. 4. When goods or estate are attached, on either of the writs before mentioned, there shall be a separate summons, to be served on the defendant, after the attachment, and the service thereof shall be deemed a sufficient service of the original summons. Separate summons, after attachment of property.

SECT. 5. In actions against corporations, and in other cases, in which goods and estate may be attached, but in which the defendant is not liable to arrest, the writ of attachment and original summons may be combined in one, requiring the officer to attach the goods and estate, and to summon the defendant. When writ of attachment and summons may be combined.

SECT. 6. These writs may be taken out of the clerk's office, in vacation, as well as in term time. When writ may be sued out.

SECT. 7. Original writs, in actions before justices of the peace, shall be signed by the justice, before whom the action is brought, and they shall be dated and filled up, like the other writs before mentioned. Writs in actions before justices of the peace.

SECT. 8. The forms of writs in civil actions shall be the same, as have been heretofore established by law, and by the usage and practice of the courts; but alterations therein may be made or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons. Forms of writs, and alterations therein. 3 Mass. 196.

SECT. 9. All changes in the forms of writs shall be subject to the final control of the supreme judicial court; and the said court To be under the control of

the supreme court.

may, by general rules, regulate such changes, in all the courts of the state.

Writs by persons out of the state, to be indorsed.
12 Pick. 569.
11 Pick. 66.
8 Pick. 25.
3 Greenl. 27.
5 Greenl. 313.
8 Greenl. 286.
9 Greenl. 51.
1833, 50.

SECT. 10. All original writs, and all bills in equity, in which the plaintiff is not an inhabitant of the state, shall, before the entry thereof, be indorsed by some sufficient person, who is an inhabitant of the state; and if any plaintiff, after the commencement of his suit, shall remove from the state, he shall, on the motion of the defendant, or of any other party to the suit, be required to procure such an indorser; and no indorser shall be required in any case, when any one, of two or more joint plaintiffs, is an inhabitant of the state, provided that the court may, in all cases, when it shall appear to them reasonable, require the plaintiff to procure a sufficient indorser.

Liability of the indorser.
6 Mass. 494.
11 Mass. 411.
1833, 50.

SECT. 11. Every such indorser shall be liable, in case of the avoidance or inability of the plaintiff, to pay all such costs, as shall be awarded against the plaintiff, provided the suit therefor, against the indorser, be brought within one year after the original judgment.

New indorser, when to be procured or allowed.
7 Mass. 25.
13 Mass. 422.
1833, 50.

SECT. 12. If any indorser shall remove out of the state, or be deemed by the court insufficient for the purpose aforesaid, they may require the plaintiff to procure a new indorser, to the satisfaction of the court; and they may also, on the motion of the plaintiff, permit the name of any indorser to be struck out, and a sufficient new indorser to be substituted; and every new indorser shall be liable for all the costs, from the commencement of the suit, in like manner as if he had been the original indorser.

If not so procured, the suit to be dismissed.
1833, 50.

SECT. 13. If the plaintiff shall, in any case, fail to procure an indorser, according to the order of the court, the suit shall be dismissed, and the defendant shall recover his costs.

Transitory actions, in what counties they may be brought.
4 Mass. 593.
1784, 28, § 13.

SECT. 14. All transitory actions, between parties who both live within the state, shall, except in cases in which it is otherwise provided, be brought in the county where one of the parties lives, and when brought in any other county, the writ shall be abated, and the defendant shall be allowed double costs; and when the plaintiff lives out of the state, the action may be brought in any county.

— where, when there are two or more plfts. or defts.

SECT. 15. When there are two or more plaintiffs, the action, so far as it depends on the place of their residence, may be brought in the county where either of them lives; and when there are two or more defendants, the action, so far as it depends on the place of their residence, may be brought in the county where either of the defendants lives.

— where, when certain corporations are parties.
9 Mass. 321.

SECT. 16. When any corporation, other than the inhabitants of a county, is a party to any action, the county, in which such action may be brought, shall be determined by the following rules, to wit:

First, When both parties to the action are towns, school districts, or parishes, it shall be brought in the county, in which either of the towns, school districts, or parishes is situated:

Secondly, When the action is between a town, school district, or parish, and any other corporation, or a natural person, it shall be brought either in the county, in which such town, school district, or parish is situated, or in that in which the other party lives.

Thirdly, When one of the parties to the action is a corporation, of any other description than those before mentioned in this section, the action may be brought in any county, in which such corporation

shall have any established or usual place of business, or shall have held its last annual meeting, or shall usually hold its meetings; or if the other party to such action is a natural person, the action may be brought in the county where such person lives.

SECT. 17. When any forfeiture is recoverable in a civil action, the action shall be brought in the county in which the offence was committed, unless a different provision is made in the statute imposing the forfeiture. Penal actions, where to be brought.

SECT. 18. The defendant, in such a case, shall not be required to plead specially that the action is not brought in the proper county, but if, upon a trial on the general issue, it shall not appear that the offence was committed in the county, in which the action is brought, the verdict shall be found for the defendant. —how defeated, if brought in wrong county.

SECT. 19. All actions, whether local or transitory, against the inhabitants of a county, shall be brought either in the county where the plaintiff lives, or in the county, against which the action is brought, or in a county adjoining thereto, at the plaintiff's election. Actions against counties, where to be brought.

SECT. 20. All actions, whether local or transitory, brought by the inhabitants of a county, shall be brought either in the county in which the defendant lives, or in a county adjoining that by which the action is brought; and when the defendant lives in the county by which the action is brought, it shall be brought in an adjoining county. —by counties, where to be brought.

SECT. 21. Original writs, issuing from the supreme judicial court or court of common pleas, shall be served fourteen days at least before the term at which they are returnable, and original writs, issued by a justice of the peace, shall be served seven days at least, before the day on which they are returnable. Original writs, when to be served.

SECT. 22. When an action is brought against a county, town, precinct, parish, religious society, or school district, or against proprietors of common and undivided lands, or of general fields, or of wharves lying in common, the writ shall be served thirty days at least before the return day. When, if against certain corporations. 5 Mass. 100.

SECT. 23. All real estates, that are liable to be taken in execution, may be attached upon the original writ, in any action in which any debt or damages are recoverable, and held as security to satisfy such judgment as the plaintiff may recover. Real estate may be attached.

SECT. 24. All goods and chattels, that are liable to be taken in execution, may be attached and held as security as aforesaid, except such as, from their nature or situation, have been considered as exempted from attachment, according to the principles of the common law, as adopted and practised in this state. Goods and chattels may be attached, except, &c. 7 Mass. 123. 11 Mass. 184. 17 Mass. 409. 3 Pick. 368.

SECT. 25. If final judgment is rendered for the plaintiff, the goods and estate attached shall be held for thirty days after the judgment, in order to their being taken in execution; and if the attachment is made in the county of Nantucket, and the judgment is rendered in any other county, or if the judgment is rendered in Nantucket, and the attachment is made in any other county, the goods and estate shall be held for sixty days after final judgment. —to be held for thirty days after judgment for plaintiff. In Nantucket for sixty days, in certain cases.

SECT. 26. If the final judgment is for the defendant, the attachment shall be forthwith dissolved. Attachment dissolved by judgment for defendant.

SECT. 27. The final judgment, intended in the two preceding sections, is that which is rendered in the original action, whether up- What judgment is intended in

the two preceding sections.
4 Mass. 99.
9 Mass. 241.

on appeal or otherwise, and not such as may be rendered upon a writ of error or writ of review.

Copy of writ and officer's return of attachment of real estate, to be deposited in clerk's office.

SECT. 28. No attachment of real estate, on mesne process, shall be valid against any subsequent attaching creditor, or against any person who shall afterwards purchase the same for a valuable consideration and in good faith, unless the original writ or a copy thereof, and so much of the officer's return thereon as relates to the attachment of such estate, shall be deposited in the office of the clerk of the court for the county in which the lands lie, which copy shall be certified by the officer, but need not contain the declaration in the writ.

—within three days, &c.

SECT. 29. If the writ or copy is deposited as aforesaid, within three days after the day on which the attachment is made, the attachment shall take effect from the time it was made, otherwise it shall take effect from the time when the writ or copy is so deposited.

Clerk to file and enter the same in a book.

SECT. 30. The said clerk shall note, on every such writ or copy, the day, hour and minute when he receives it, and shall file the same in his office. He shall also enter, in a book to be kept for that purpose, the names of the parties in such writ, designating who is plaintiff and who defendant, the time when the attachment was made, and the time when the writ or copy was deposited, and his fee in each case shall be twenty five cents, for which he shall not be holden to render any account, and which shall be paid on the delivery of the writ or copy, and may be taxed for the plaintiff in his bill of costs.

His fees therefor.

Attachment of real estate, how to be made.
13 Mass. 128.
11 Pick. 341.
5 Greenl. 453.

SECT. 31. In attaching real estate, or any right or interest in land, it shall not be deemed necessary that the officer should enter upon the land, or be within view of it.

Case of attachment of land that is mortgaged.
10 Mass. 424.
13 Mass. 51.

SECT. 32. If the estate that is attached is subject to a mortgage or other incumbrance, and the mortgage is redeemed or the incumbrance removed, before the levy of the execution, the attachment shall hold the premises discharged of the mortgage or incumbrance, and the execution may be levied in the same manner, and with the same effect, as if the mortgage or other incumbrance had never existed.

Attachment of goods that are too bulky to be removed.
8 Pick. 402.

SECT. 33. When an attachment is made of any articles of personal estate, which by reason of their bulk, or other cause, cannot be immediately removed, a copy of the writ and of the return of the attachment may, at any time within three days thereafter, be deposited in the office of the clerk of the town in which it is made, and such attachment shall be equally valid and effectual, as if the articles had been retained in the possession and custody of the officer.

Same subject.

SECT. 34. The copy of the writ so deposited shall be certified by the officer, but it shall not be necessary to insert therein a copy of the declaration.

Same subject.

SECT. 35. The said clerk shall receive and file all such copies, noting thereon the time when received, and keep them safely in his office, and also enter a note thereof, in the order in which they are received, in the books which are kept for recording mortgages of personal property; such entry shall contain the names of the parties to the suit, and the date of the entry, and the clerk's fee for this service shall be twenty five cents, to be paid by the officer, and to be included in his charge for the service of the writ.

SECT. 36. Any share or interest of a stockholder in any bank, insurance company, or any other joint stock company, that is or may be incorporated under the authority of this Commonwealth, may be attached by leaving an attested copy of the writ, (without the declaration) and of the return of the attachment, with the clerk, treasurer, or cashier of the company, if there be any such officer; otherwise, with any officer or person who has at the time the custody of the books and papers of the corporation. Shares in banks, &c. how to be attached.

SECT. 37. Any share or interest so attached, with all the dividends that shall thereafter accrue thereon, shall be held as security to satisfy the final judgment in the suit, in like manner as any other personal estate is held. Same subject.

SECT. 38. If the officer, having a writ of attachment against any such stockholder, shall exhibit the writ to the officer of the company who is appointed to keep a record or account of the shares or interest of the stockholders therein, and shall request a certificate of the number of shares or amount of the interest held by the defendant in such suit, such officer of the company shall give such certificate to the officer holding the writ; and if he shall unreasonably refuse to do so, or if he shall wilfully give a false certificate thereof, he shall be liable for double the amount of all damages occasioned by such refusal or false certificate, to be recovered in an action on the case against him, unless the judgment is satisfied by the original defendant. Same subject. Penalty on recording officer for unreasonable refusal or false certificate.

SECT. 39. When there is a separate summons to be served after an attachment of goods or estate, it shall be served by delivering the writ of summons to the defendant, or by leaving it for him as hereinafter directed; and when there is an original summons without an attachment, the summons shall be served by reading the same to the defendant, or by delivering to him a copy thereof attested by the officer who serves it, or by leaving such copy for him as hereinafter directed. Summons, how to be served.

SECT. 40. The separate summons may be served at any time after the attachment is made, provided it be served the like number of days at least before the return day, that are required with respect to the service of the original writ, and the certificate of the service of the summons shall be indorsed on the original writ. Same subject.

SECT. 41. If the summons is not served on the defendant personally, the original or the copy as the case may be, shall be left at his dwelling house or last and usual place of abode. Same subject.

SECT. 42. In all suits against the inhabitants of a county, the summons shall be served by leaving an attested copy thereof with one of the county commissioners, or with one of the officers who by law exercise the powers of county commissioners; and in all suits against the inhabitants or members of a town, precinct, parish, religious society or school district, or against the proprietors of common and undivided lands, or of general fields or wharves lying in common, the summons shall be served by leaving an attested copy thereof with the clerk of the corporation or proprietors, and also leaving another like copy with one of the selectmen of the town, or one of the assessors or standing committee of the parish or religious society, or one of the proprietors of such land or other estate, as the case may be; and if there is no such clerk found within the county, the copy of the sum- Summons, how to be served on certain corporations. 1835, 115.

mons so intended for him, shall be left with one of the other officers before mentioned, or with one of the said proprietors; and if there are no such officers, the copy of the summons so intended for them, respectively, shall be left with one of the inhabitants or members of the corporation.

— how, on other corporations.

SECT. 43. In all suits against any corporation, other than those mentioned in the preceding section, the summons shall be served by leaving the original or the copy, as the case may be, with the clerk, cashier, secretary, agent, or any other officer having charge of their business; and if there be no such officer found within the county, the summons may be served on any member of the corporation.

Actions against persons out of the state, when maintainable.

SECT. 44. No personal action shall be maintained against any person, who is out of the state, at the time of the service of the summons, unless he shall have been before that time an inhabitant of the state, or unless an effectual attachment of his goods, estate or effects is made on the original writ, except in cases, in which it is otherwise specially provided.

Summons, how served in such case.

SECT. 45. If the defendant is out of the state, at the time of the service of the summons, the service thereof shall be made by leaving it, if it is a separate summons, at his last and usual place of abode, if there be any within the state, and, if it is an original summons, a copy thereof shall be left in like manner; and if the defendant never was an inhabitant of the state, the summons shall be served, by leaving the original, or the copy, as the case may be, with his tenant, agent, or attorney, and if there be no such tenant, agent, or attorney within the state, known to the officer or to the plaintiff, the officer shall certify the facts in his return, and the court may thereupon cause notice to the defendant to be given, as provided in the ninety second chapter.

How, if there is a co-defendant in the state.

SECT. 46. If the absent defendant, whose goods or estate are attached, is sued with one or more others on a joint contract, and if he has no such tenant, agent or attorney, within the state, the copy of the summons for him shall be left with one of the co-defendants, if there be any within the state.

How, in real actions against persons out of the state.

SECT. 47. In all real actions, if the defendant or tenant in the action is out of the state, and if there is no place of his last and usual abode here, known to the demandant, the summons, or an attested copy of it, shall, in addition to any other service required, be left for him, with the tenant or occupant of the demanded premises, if there be any, and if not, it shall be left in some conspicuous place on the premises.

Defendant in all cases, if out of the state, to have further notice, &c.

SECT. 48. In all cases, when the defendant is out of the state at the time of the service of the summons, he shall, in addition to the service thereof, as herein prescribed, be entitled to further notice of the suit, as provided in the ninety second chapter.

Plaintiff, out of the state, liable to a cross action by the defts.

SECT. 49. When an action is brought in this state by any person, who is not an inhabitant thereof, or who cannot be found therein, to be served with process, he shall be held to answer to any action, brought against him here, by the defendant in the first action; provided, that the demand in the two cases be of such a nature, that the judgment or execution in the one case can be set off against the judgment or execution in the other.

SECT. 50. If there are several defendants in the original action, each of them shall be authorized to bring such cross action against the original plaintiff, and upon recovering judgment therein, he may be allowed to set off his judgment against that which may be recovered against himself and his co-defendants, in like manner as if the latter judgment had been against himself alone.

— or by one of several defts. 7 Mass. 140. 16 Mass. 478. 4 T. R. 123.

SECT. 51. The writ, in such cross action, may be served on the person who appears as the attorney of the plaintiff in the original suit, and such service shall be as valid and effectual as if made on the party himself within this state.

Writ, how served in such case.

SECT. 52. The court, in which the suits, or either of them, are pending, may order continuances thereof, as they shall think necessary or proper, to enable the absent party to defend the action brought against him, and also to enable either party to set off his judgment or execution against that which shall be recovered against him; provided, that the suits shall not be unreasonably delayed, by the neglect or default of either party.

Proceedings in such suits.

SECT. 53. When the service of the writ, in any civil action, is defective or insufficient, by reason of any mistake on the part of the plaintiff or of the officer, as to the place where, or the person with whom, the summons or copy of the summons ought to have been left, the court may, in their discretion, order a new summons or notice to be issued and served, in such manner as they shall direct; and the service, so made and returned, shall be as effectual as if duly made and returned on the original writ.

Certain defects in the service of writs, how supplied.

SECT. 54. When the name of any defendant is not known to the plaintiff, the writ may be issued against him by a fictitious name, and if duly served, it shall not be abated for that cause, but may be amended on such terms as the court shall think reasonable.

Proceedings when the defendant's name is unknown.

SECT. 55. Different attachments may be made, successively, upon the same writ, by one or more officers, and in one or more counties, at any time before the service of the summons; but no further attachment shall be made, after the summons is served.

Successive attachments on the same writ, before the summons is served.

SECT. 56. When the writ is in the alternative, requiring the officer to attach the goods or estate of the defendant, and for want thereof to take his body, the plaintiff or his attorney may, by written or verbal directions to the officer, require him to serve the writ, either by an attachment of goods or estate, or by arresting the defendant, and the officer shall serve the writ, according to such directions, if it is in his power to do so.

Plaintiff may direct the mode of service. 4 Mass. 60.

SECT. 57. When any personal property is attached, whether on one or more writs, and the debtor and all the attaching creditors shall consent in writing to the sale thereof, the attaching officer shall sell the same, in the manner prescribed by law for selling the like property on execution; and the proceeds of the sale, after deducting the necessary charges thereof, shall be held by the officer, subject to the attachment or attachments, and shall be disposed of, in like manner as the said property would have been held and disposed of, if it had remained unsold.

Goods attached may be sold by consent. 1822, 93, § 1.

SECT. 58. When an attachment is made of any live animals, or of any goods or chattels, which are liable to perish, or waste, or to be greatly reduced in value by keeping, or which cannot be kept

If perishable, &c. may be appraised and sold. 1822, 93, § 2.

without great and disproportionate expense, and the parties shall not consent to a sale thereof, as before provided, the property so attached shall, upon the request of either of the parties interested therein, be examined and appraised, and shall be afterwards sold, or otherwise disposed of, in the manner following.

Proceedings upon application for appraisment. 1822, 93, § 2.

SECT. 59. Upon such application, made by either party, to the attaching officer, he shall give notice thereof to all the said other parties, or their attorneys, and shall prepare a schedule of the goods, and cause three disinterested persons, acquainted with the nature and value of such goods, to be appointed and sworn before a magistrate, to the faithful discharge of their duty, as appraisers in the case.

Appraisers, how appointed.

SECT. 60. The appraisers shall be appointed, one by the creditor or creditors, in the several suits, one by the debtor or debtors, and one by the officer; and if the said debtors or creditors, respectively, shall neglect to appoint such appraiser, or shall not agree in the nomination, the officer shall appoint one in their behalf.

Upon the decision of the appraisers, the goods may be sold;

SECT. 61. The appraisers shall examine the attached property, and if they shall be of opinion, that the same or any part thereof is liable to perish or waste, or to be greatly reduced in value by keeping, or that it cannot be kept, without great and disproportionate expense, they shall proceed to appraise the same, according to their best skill and judgment, at the value thereof in money, and the goods shall thereupon be sold by the officer, and the proceeds thereof shall be held and disposed of, in the manner before provided, in the case of a sale by consent of parties, unless the goods shall be taken by the debtor, as provided in the following section.

— or delivered to the defendant upon his depositing money or giving bond, &c. 1822, 93, § 3.

SECT. 62. The goods so appraised shall be delivered to the debtor, if he require it, upon his depositing with the attaching officer the appraised value thereof in money, or giving bond to him, in a sufficient penalty, and with two sufficient sureties, with condition, either to pay to him the appraised value of the goods, or to satisfy all such judgments as shall be recovered in the suits, in which the goods were attached, if demanded within the time, during which the goods would have been held by the respective attachments, or within thirty days after the time, when the creditors respectively would have been entitled to demand payment out of the proceeds of the said goods, if they had been sold as before provided.

The bond to be returned with the writ. 1822, 93, § 4.

SECT. 63. The officer, taking such bond, shall return the same with the writ, on which the first attachment is made, in like manner as bail bonds are returned, with a certificate of his doings in relation thereto, and in case of a forfeiture of the bond, the creditors, or any one or more of them, may bring an action of debt thereon, in the name of the officer.

Action thereon to be brought by the creditors.

SECT. 64. The writ in such action on the bond shall, in addition to the usual indorsement, have also indorsed on it the names of all the creditors, by whom the action is brought; and in case judgment is rendered for the defendants, executions for the costs shall be issued against all the creditors, whose names are so indorsed.

The money recovered, to belong to them.

SECT. 65. If judgment is rendered for the plaintiff, the money recovered shall be first applied, under the order of the court, to pay the reasonable expenses, incurred by the creditors in prosecuting the suit, so far as the same shall not be reimbursed by the costs recover-

ed of the defendant, and the residue shall belong to all the attaching creditors, according to their respective rights.

SECT. 66. The court may, upon a hearing in chancery, determine the rights of the several attaching creditors, and may thereupon award a separate execution, for the amount due or payable to each, to be served and levied to his own use, in like manner as is provided in the case of a judgment rendered on a bond given by an administrator to the judge of probate; or they may award one execution, for the whole sum due on the bond, and may cause the money received thereon to be paid and distributed to and among the creditors, according to their respective rights.

—to be distributed by the court.

SECT. 67. No judgment or execution shall be awarded, for the use of any creditor, without reserving as much as may be due upon any prior attachment, whether the creditor in such prior suit be or be not one of those, by whom the action is brought on the bond.

Prior attachments to be protected.

SECT. 68. Any creditor, entitled to the benefit of the bond, who shall not have joined in bringing the action thereon, may, after a judgment in such action, bring a writ of scire facias on the judgment, and recover any sum, that may be due to him upon the bond, or he may, upon his own motion, at any time before final judgment in the action on the bond, be allowed, upon such terms as the court shall prescribe, to become a party to the action, in like manner and with the same effect, as if he had been one of those by whom it was originally brought.

Case of a creditor not joining in suit on the bond.

SECT. 69. No creditor, whose cause of action on such bond accrued more than one year before the commencement of the action thereon, shall have judgment or execution in such action, and no creditor shall sue out any such writ of scire facias on the judgment, unless within one year after his cause of action shall accrue.

Limitation of action on the bond, and of scire facias on the judgment.

SECT. 70. When goods, which are sold, or appraised and delivered to the debtor, in the manner before provided, shall have been attached by several creditors, any one of them may demand and receive satisfaction of his judgment, notwithstanding any prior attachment, provided he is otherwise entitled to demand the money, and provided also, that a sufficient sum be left, of the proceeds of the goods, or of the appraised value thereof, to satisfy all prior attachments.

Any creditor may be paid, leaving enough for prior attachments.

SECT. 71. When any goods are sold or disposed of, either by consent of the parties, or after an appraisal as before provided, the proceeds thereof, whilst remaining in the hands of the officer, shall be liable to be further attached by him, as the property of the original defendant, in like manner as the goods themselves would have been liable, if they had remained in the possession of the officer, and the proceeds so attached shall be held and disposed of, in the same manner, as if the attachment had been made on the goods themselves, before the sale thereof.

Proceeds of goods sold, liable to further attachment. 1822, 93, § 5.

SECT. 72. Nothing contained in the preceding section shall prevent the officer from paying over to the defendant the surplus of the proceeds of any such sale, after retaining enough to satisfy all the attachments actually existing thereon at the time of such payment.

Surplus unattached may be paid to the deft.

SECT. 73. When any personal property, belonging to two or more persons, is attached in any suit against one or more of the part

Goods attached may be appraised at the re-

quest of a part owner, not a deft. 1835, 143, § 1.

owners thereof, it shall, upon the request of any other of the part owners, be examined and appraised, in the manner before provided for an appraisement, when made at the request of any party in the suit, except that the part owner, who makes the application, shall appoint one of the appraisers, and the debtor shall not appoint any.

—and delivered to such part owner upon his giving bond, &c.

SECT. 74. The property so appraised shall be delivered to the part owner, at whose request it was appraised, upon his giving bond to the attaching officer, in a sufficient penalty, and with two sufficient sureties, with condition to restore the same, in like good order, or to pay to the officer the appraised value of the defendant's share or interest in such property, or to satisfy all such judgments as shall be recovered in the suit in which the property is attached, if demanded within the time during which the property would have been held by the respective attachments.

If such part owner pays, the goods become pledged. 1835, 143, § 2.

SECT. 75. If such appraised value or any part thereof shall be so paid, the said defendant's share of the property shall thereby become pledged to the party to whom it was delivered, and he may sell the same, if not redeemed, and shall account to the defendant for the balance, if any, of the proceeds of such sale.

To be restored on dissolution of the attachment.

SECT. 76. If the attachment shall be in any way dissolved, the party, to whom the defendant's share was delivered, shall restore the same to the defendant, or to the officer, who made the attachment, to be by him delivered to the defendant.

Return of the officer; and proceedings in suit upon the bond. 1835, 143, § 3.

SECT. 77. The doings of the officer, together with the said bond, shall be returned by him, in the same manner, that is before provided, in the case of a bond given by a debtor, upon the delivery to him of any property that is attached; and, in case of the forfeiture of any such bond, given by a part owner, the like proceedings may be had thereon, as are before provided upon the forfeiture of the said bond given by a debtor.

Attachment of mortgaged goods. 1 Pick. 399. 1829, 124, § 2.

SECT. 78. Any personal property of a debtor, that is subject to any mortgage, pledge or lien, and of which the debtor has the right of redemption, may be attached and held, in like manner as if it were unincumbered, provided the attaching creditor shall pay or tender to the mortgagee, pawnee or holder of the property, the amount for which it is so liable, within twenty four hours after the same is demanded.

Mortgagee to state the amount due to him, to be paid by the creditor. 1829, 124, § 3.

SECT. 79. Every such mortgagee, pawnee or holder shall, when demanding payment of the money due to him, state, in writing, a just and true account of the debt or demand for which the property is liable to him, and deliver it to the attaching creditor or officer; and if the same is not paid or tendered to him, within twenty four hours thereafter, the attachment shall be dissolved, and the property shall be restored to him, and the attaching creditor shall moreover be liable to the mortgagee, pawnee, or holder of the property, for any damages, that he may have sustained by the attachment thereof.

Penalty for demanding too much. 1829, 124, § 3.

SECT. 80. If such mortgagee, pawnee, or holder shall demand and receive more than the amount due to him, he shall be liable for the excess, with interest thereon, at the rate of twelve per cent. a year, to be recovered by the attaching creditor, in an action for money had and received.

The debt to be

SECT. 81. When any property, attached and redeemed, as afore-

said, shall be sold, either on mesne process or on execution, the proceeds thereof, after deducting the charges of the sale, shall be first applied to repay the attaching creditor the amount so paid by him, with lawful interest therefor.

repaid out of proceeds of sales.

SECT. 82. If the plaintiff, after having redeemed the goods so attached, shall not recover judgment in the suit, he shall nevertheless be entitled to hold the goods, until the defendant shall repay to him the sum, that he shall have paid for the redemption, or as much thereof, as the defendant would have been obliged to pay to the mortgagee, pawnee, or holder of the goods, if they had not been attached, with interest, from the time when the same shall be demanded of the defendant.

Or by the mortgagor.

SECT. 83. When any person shall claim any title or interest, by force of a subsequent attachment, or purchase, or mortgage, or in any other manner, in any estate, real or personal, that is attached in a suit between other persons, such claimant may be allowed to dispute the validity and effect of the prior attachment, on the ground that the sum demanded in the first suit was not justly due, or that it was not payable, when the action was commenced.

Fraudulent attachments, how defeated. 1823, 142. 1832, 159.

SECT. 84. The person objecting to the attachment may file his petition in the court, in which the first suit is pending, at any time before final judgment therein, praying that the prior attachment may be dissolved, and setting forth the facts and circumstances, on which his petition is founded, and also the grounds of his own claim.

Petition by the person objecting thereto. 1823, 142.

SECT. 85. The petitioner, or some person in his behalf, shall make oath that his claim is just and legal, and also that all the other facts set forth in the petition are true, or are believed by the deponent to be so.

—to be supported by affidavit.

SECT. 86. The court, upon the hearing of the petition, shall, at the motion of either party, direct a trial, by jury, of any question of fact, arising in the inquiry, and if it shall appear to the court that the sum demanded in the prior suit, or any part of it, is not justly due, or was not payable, when the action was commenced, they shall order the attachment therein made to be dissolved, in whole or in part, as justice and equity shall require, but the order so made shall have no other effect on the prior suit.

The prior attachment may be dissolved, in case, &c.

SECT. 87. The court, upon such inquiry, may examine on oath the plaintiff, who made the prior attachment, and his declarations upon such examination shall be admitted as evidence in the case, provided there is no other objection to his competency, but that of his interest as a party in the suit.

Plff. in prior suit may be examined on oath. 12 Pick. 199. 5 Pick. 410. 8 Pick. 165.

SECT. 88. The proceedings, between the two adverse claimants or plaintiffs, shall not be affected by any plea, or other act of the defendant in the prior suit, nor by the judgment, if any, that shall be rendered therein; but the defendant may be admitted and examined as a witness, in the proceedings between the said other parties.

Proceedings not to be controlled by deft. Deft. may testify.

SECT. 89. No attachment shall be dissolved, in manner aforesaid, by reason of any defence to the action, founded on the laws for the limitation of actions, or for restraining excessive usury, or for requiring certain contracts to be made in writing, or of any other like defence, provided, it shall appear to the court that the demand is otherwise well founded, and is justly and equitably due.

Grounds of defence in such case.

Damages and costs may be awarded.

SECT. 90. The court may, upon every such inquiry, award to either party such costs, as they shall think just and reasonable; and if the prior attachment is maintained, they may award to the attaching creditor such damages, as they shall judge reasonable, and execution may be issued, in the common form, for all such costs and damages.

Petitioner to give security for damages and costs.

SECT. 91. The court shall also, upon the filing of the petition, require a bond or recognizance of the petitioner, or of some person in his behalf, with sufficient surety or sureties, with condition to pay to the adverse party all such damages and costs as shall be awarded to him, in the proceedings upon such petition.

Proceedings in case of appeal.

SECT. 92. If, during the pendency of the proceedings upon such petition, the action, in which the attachment is made, should be carried to a higher court, the inquiry concerning the attachment shall be carried to the same court, and shall be there heard and determined, in like manner as if the action had been originally commenced there.

Decision on such petition to bar action against prior attaching creditor for fraud.

SECT. 93. The decision or judgment of the court, upon such an inquiry, whether the attachment be thereby vacated, or held to be valid and effectual, shall be a bar to any action, to be brought by the petitioner, against the party who made the attachment, for any supposed fraud or deceit therein.

To what cases the eleven preceding sections to be restricted.

SECT. 94. Nothing contained in the eleven preceding sections shall apply to any action commenced before a justice of the peace, nor to any action whatever, that shall be commenced before this act shall take effect.

Attachment to continue, though attaching officer dies.

SECT. 95. Goods and chattels, attached by an officer, whether remaining in his custody, at the time of his death, or taken from him by replevin or otherwise, and also all claims for damages to goods so taken from him, shall remain subject to the attachment, in like manner as if the officer had lived, and shall not be considered as assets in the hands of his executors or administrators.

Death of officer not to abate any suit, brought for goods attached.

SECT. 96. When any goods or chattels, attached by an officer, shall be claimed or taken away by any other person, and an action of replevin, of trover, or of trespass therefor, shall be brought by or against the officer, the action shall not be abated by the death of either party, but may be prosecuted by or against the executor or administrator of the deceased party, in the manner provided in the ninety third chapter.

Case of judgment for executor, &c. of the officer.

SECT. 97. If judgment in any such case shall be recovered by the executor or administrator of the officer, the goods or money recovered shall be held, appropriated, and disposed of, in the same manner, as they would and ought to have been by the officer, if he had lived and recovered the same himself.

Of judgment against the executor, &c.

SECT. 98. If the judgment shall be rendered against the executor or administrator of the officer, the goods and the damages recovered shall be returned, delivered, and paid in full, by the executor or administrator, if he has sufficient therefor, although the estate of the deceased should be insolvent.

Goods replevied, from an officer, liable to further attachments.

SECT. 99. All goods, taken by replevin from an officer, who has attached them, shall be considered as still remaining in his custody and control, so far as to be liable to further successive attachments, in like manner as if the goods themselves had remained in his possession.

SECT. 100. In case of a judgment for a return of the goods so replevied, the plaintiff in the replevin and his sureties shall be liable for the whole of the goods, or the value thereof, although the attachment, for which they are eventually held, should have been made after the taking of the goods by the replevin. Plaintiff in replevin liable for the whole value.

SECT. 101. If an officer, after making an attachment of goods, shall die or be removed from office, whilst the attachment remains in force, the same goods, whether replevied or remaining in possession of the officer, or of his executors or administrators, may be further attached by any other officer, so as to bind the goods, or the proceeds thereof, in like manner as if the latter attachment had been made by the first mentioned officer. Goods may be further attached, after death, &c. of first attaching officer.

SECT. 102. The officer, making the latter attachment in such case, shall not take the goods themselves, but the attachment shall be made by a return, setting forth an attachment in the common form, and stating by whom the goods were previously attached, and if the goods have not been replevied, by leaving a certified copy of the writ, and of the return of that attachment, with the former officer, if living, or if he is dead, with his executor or administrator, or whoever else shall then have possession of the goods; or if the goods shall have been replevied, and the officer who made the original attachment is dead, such copy shall be left with the plaintiff in replevin, or his executors or administrators, and the attachment shall be considered as made, when such copy is delivered, in either of the modes before provided. Proceedings in such case.

SECT. 103. In the copy of the writ, required to be so left, it shall not be necessary to insert the declaration. Same subject.

SECT. 104. Goods, that have been taken by replevin from an attaching officer, shall not be further attached, as the property of the original defendant, in any other manner than that provided in the five preceding sections, so long as they are held by the person, who replevied them, or by any one holding under him, unless the original defendant shall have acquired a new title to the goods. Mode of attaching goods replevied.

SECT. 105. When any real estate, goods, chattels, or effects, are attached, and the debtor dies before they are taken or seized on execution, the attachment shall be dissolved, provided administration of the estate of the deceased shall be granted in this state, within one year after his decease, or that application for such administration shall be made within the said year, and that administration shall be afterwards granted, upon such application; and if no such administration be granted, the property attached shall continue bound by the attachment, in like manner as if the debtor were still living. Attachment dissolved by death of defendant, unless, &c. 7 Pick. 239. 7 Mass. 254. 9 Mass. 209. 1822, 93, § 6.

SECT. 106. When the attachment is of goods, the officer shall, upon demand, deliver them to the executor or administrator, if any shall be appointed in this state, within the time limited in the preceding section, and upon receiving from the executor or administrator his legal fees and charges for attaching and keeping the goods. Proceedings in such case. 1822, 93, § 6.

SECT. 107. If the officer shall have sold the goods on execution, before such demand, or if he shall have sold, in like manner, any other chattel interest, or any right of redeeming real estate, attached as aforesaid, he shall not be considered a trespasser for so doing, but he shall be liable only for the proceeds of the sale, after deducting his legal fees and charges for attaching, keeping and selling the goods; Officer liable only for net proceeds.

and such proceeds may be recovered by the executor or administrator, in an action for money had and received.

Creditor liable therefor, if paid over to him.

SECT. 108. If the officer in such case shall have paid over the proceeds of the sale to the judgment creditor, before such demand, he shall be exempted from all further liability therefor, and the executor or administrator, if appointed as before provided, may recover from the judgment creditor the amount so paid to him, in an action for money had and received.

No set-off allowed in such case.

SECT. 109. The defendant, in an action founded on either of the three preceding sections, shall not be allowed, in any manner, to set off any demand, that he may have against the executor or administrator, or against the estate of the deceased.

Officer not to arrest deft. without express order.

SECT. 110. The officer, who serves an original writ, shall never be liable, for not having arrested the defendant, unless he has been expressly required to make the arrest by the plaintiff or his attorney.

No arrest for less than ten dollars. 1834, 167.

SECT. 111. No person shall be arrested or held to bail, for any debt or demand, arising on any contract, made after the fourth day of July in the year one thousand eight hundred and thirty four, unless the plaintiff, or some person in his behalf, shall make oath before some justice of the peace, that the plaintiff has a demand against the defendant, upon the cause of action stated in the writ, which the deponent believes to be justly due, and upon which he expects that the plaintiff will recover ten dollars or upwards, and that the deponent has reasonable cause to believe that the defendant is about to depart beyond the jurisdiction of the court, to which the writ is returnable, and not to return until after judgment may probably be recovered in said suit, so that he cannot be arrested on the first execution, if any, which may issue in such suit.

Affidavit to hold to bail in actions on contract.

Person arrested, how to be held. 1784, 28, § 10.

SECT. 112. When any person, who is arrested in a civil action, is committed to prison, for want of bail, he shall be held in prison, unless he is bailed, or otherwise discharged by order of law, until final judgment in the suit, in which he was arrested ; and if the final judgment shall be against him, he shall be held for thirty days thereafter, in order that his body may be taken in execution.

How to be supported, if a pauper. 1821, 22.

SECT. 113. If any person, so committed, shall claim support as a pauper, the jailer shall furnish his support, at the rate of one dollar and twenty five cents a week, to be paid by the creditor, so long as the debtor is kept in close confinement in that suit.

Jailer, not to detain deft. without security for board. 7 Pick. 216. 3 Pick. 259. 1821, 22.

SECT. 114. The jailer in such a case shall not be required to detain such person in prison, unless the creditor, at whose suit he is committed, shall advance the money necessary for his support, or give satisfactory security therefor, in the manner provided in the ninety seventh chapter, respecting persons committed on execution.

Duty of bail on surrendering principal. 1824, 124.

SECT. 115. If the person so committed shall have been surrendered by his bail, the bail shall be liable for his support, in like manner and to the same extent, as is provided in the ninety seventh chapter, when a debtor is surrendered in execution by his bail, and the jailer may proceed, in demanding payment or security therefor, in the manner provided in the last mentioned chapter.

Writs to be returnable to the next epsuing term.

SECT. 116. Original writs, issuing from the supreme judicial court or court of common pleas, if required to be served fourteen days before the return day, shall be made returnable at the court, next to be

held after the expiration of fourteen days from the date of the writ; and if they are required to be served thirty days before the return day, they shall be made returnable at the court, next to be held after the expiration of thirty days from the date of the writ.

SECT. 117. Suits in equity may be commenced by a writ of subpœna, according to the usual course of proceedings in chancery, or the complaint may be inserted, like a common declaration, in a writ of original summons, with or without an order for the attachment of the goods and estate of the defendant. Suits in equity, how commenced.

SECT. 118. The subpœna shall be issued from the clerk's office either in term time or vacation, upon a bill there filed, and shall bear teste of the first justice of the court, who is not a party to the suit, and it shall be under the seal of the court, and signed by the clerk, and shall be served in the same manner, as original writs of summons are required to be served. Subpœna, how issued and served. 5 Pick. 360.

SECT. 119. Every such writ of original summons, and writ of subpœna, shall be served the same number of days, at least, before the day on which it is returnable, as would be required for the service of an original writ at common law, between the same parties. When to be served.

CHAPTER 91.

OF BAIL IN CIVIL ACTIONS.

SECTION

1. Bail, how to be taken.
2. Officer may require two sureties.
3. Bail bond, when not to be void.
4. Bail bond to be returned with the writ.
5. Obligation of the bail.
6, 7. Suit on the bail bond:
8. To be brought within one year.
9. Pleadings and trial therein.
10. Principal may be surrendered in court, on the scire facias.
11. And committed.
12. Principal may be surrendered out of court:
13. To the keeper of the county jail.
14, 15. Proceedings in such case.
16. Notice to be given to the plaintiff.
17. Bail to pay the costs on the scire facias.
18. Treatment of principal after he is surrendered.
19. Principal may be surrendered, on the original suit.
20. Proceedings on bail bond before a justice of the peace.
21. Surrender of principal in such a case.
22. Officer to attend, if requested.
23, 24, 25. Proceedings upon such surrender.
26. Fees of the officer.

SECTION 1. When bail is taken in any civil action, it shall be taken, as heretofore practised in this Commonwealth, by a bond to the sheriff, if the writ is served by him or his deputy, otherwise to the coroner, or other officer, by whom the writ is served, with condition that the defendant shall appear and answer to the plaintiff in the suit, and that he shall abide the final judgment of the court thereon, and shall not avoid. Bail, how to be taken. 2 Mass. 481. 1784, 10.

SECT. 2. No officer shall be required to accept a bail bond, unless it be with two sureties at the least, having sufficient within the Officer may require two sureties. 9 Mass. 479.

county in which the principal is arrested, or held in custody; and if he take a bail bond with only one surety, he shall be liable to the plaintiff for any loss sustained by the insufficiency of the bail, although the surety may have been actually sufficient when taken.

Bail bond, when not to be void. 2 Pick. 284.

SECT. 3. A bail bond shall bind the persons who execute it, though it be taken with one surety only, or with two or more sureties, when they or either of them may not have sufficient within the county, as is required in the preceding section.

Bail bond to be returned with the writ.

SECT. 4. The bail bond shall be returned and filed with the writ, and the clerk shall note on the writ, that a bond is so filed; and in case of an appeal, the bond shall be sent, with the other papers, to the court appealed to.

Obligations of the bail. 1784, 10.

SECT. 5. In case of the avoidance of the principal, and the return on the execution, that he is not found, his bail shall be obliged to satisfy the judgment, with interest thereon, from the time when it was rendered, unless he shall discharge himself, by surrendering the principal, before final judgment against him on the writ of scire facias, or by other sufficient defence in that suit.

Suit on the bail bond. 17 Mass. 602. 2 Mass 484. 13 Pick. 339. 2 N. Hamp. R. 359. 1784, 10.

SECT. 6. The bail bond shall be considered as so far a matter of record, and of the nature of a recognizance, that the creditor may take out a writ of scire facias thereon, in his own name, against the bail, in which it shall be sufficient to allege, substantially, that the defendants became bail, without setting forth the bail bond.

Same subject. 1784, 10.

SECT. 7. The scire facias shall be issued from the court in which the judgment against the principal is rendered, and may be taken out of the clerk's office in vacation, as well as in term time.

To be brought within one year. 1784, 10.

SECT. 8. No such action shall be maintained against any person as bail, unless the writ of scire facias be served on him, within one year after the rendition of final judgment against the principal.

Pleadings and trial therein. 10 Mass. 20. 12 Mass. 434.

SECT. 9. The defendants in such action may either jointly or severally plead, that they never became bail, as alleged in the writ, and shall thereupon be entitled to every ground of defence, of which they could have availed themselves, upon a plea that the bond is not their deed, if an action of debt had been brought on the bond; or they may plead specially any sufficient matter in their discharge.

Principal may be surrendered in court, on the scire facias. 1784, 10.

SECT. 10. The bail may surrender the principal in the court where the suit is pending on the scire facias, at any time before final judgment therein against them, and on paying the costs of suit on the scire facias up to that time, they shall be discharged.

— and committed. 1784, 10.

SECT. 11. The principal so surrendered shall be committed to the common jail, there to remain thirty days, in order to his being taken in execution.

Principal may be surrendered out of court. 1817, 146.

SECT. 12. Any person, who is bail for another, may at any time after he has become bail, and before final judgment against him on a writ of scire facias, exonerate himself from all further responsibility, by surrendering his principal, in the manner provided in the five following sections.

— to the keeper of the county jail. 1817, 146.

SECT. 13. Such surrender may be made to the keeper of the county jail, either in the county in which the principal was arrested, or in that to which the original writ against the principal was returnable, and the jailer shall receive the prisoner and hold him in custody, in like manner as if he had been committed by the officer, who arrested him on the original writ.

SECT. 14. The jailer shall not be obliged to receive any person so surrendered, unless the bail shall deliver to him a copy of the bail bond, attested by the officer who took it, or by the clerk in whose custody it may be; and the delivery of such copy shall be a sufficient warrant for the jailer, although the surrender and commitment should prove to be unlawful, on the part of the bail. Proceedings in such case.

SECT. 15. The bail shall, within fourteen days after such surrender, deliver to the jailer a copy of the original writ, or process, whereby the prisoner was arrested, with a copy of the return indorsed thereon, attested by the officer who served the writ, or by the clerk into whose office it is returned. Same subject. 1817, 146.

SECT. 16. He shall also, within the same fourteen days, give notice in writing to the plaintiff in the suit, or to his attorney, of the time when, and the place where, the prisoner was so committed. Notice to be given to the plaintiff. 1817, 146.

SECT. 17. If the surrender is made, after a writ of scire facias is taken out against the bail, he shall, within fourteen days after the surrender, pay the costs of suit on the scire facias; the same to be paid to the creditor, or his attorney or to be left for his use with the jailer; provided however, that if the writ of scire facias has not been served on the bail, he shall not be required to pay the costs thereof, until twenty four hours after he has notice of the issuing of the writ, and after a demand of the costs made on him by the creditor. Bail to pay the costs on the scire facias. 1817, 146.

SECT. 18. Every person, who is surrendered by his bail and committed to prison, shall be received by the jailer, and held in custody, and may be forthwith bailed, whether notice of the surrender shall or shall not have been given to the plaintiff, and shall in all respects have the same rights and privileges as if he had been committed upon the original arrest. Treatment of principal after he is surrendered. 1817, 146.

SECT. 19. Nothing contained in the preceding sections shall impair the right of bail, in all cases, to surrender their principal in the court in which the original suit is pending, at any time before final judgment therein; or, after judgment, to surrender him to the officer, who may hold the execution thereon, at any time before the return of the execution. Principal may be surrendered on the original suit. 1784, 10.

SECT. 20. When bail is taken in any action before a justice of the peace, the justice may issue a scire facias against the bail, although the amount of the debt and costs on the original judgment exceed the amount, to which his jurisdiction is otherwise limited; and the rights and obligations of the bail, and all the proceedings, as to the surrender of the principal and the action against the bail, shall be substantially the same, as are provided with regard to bail, when taken in suits in other courts. Proceedings on bail bond before a justice of the peace. 1803, 132.

SECT. 21. When the bail, in any suit before a justice, proposes to surrender his principal in court, either during the pendency of the original suit, or of the suit on the scire facias, the bail shall procure the attendance of some officer, qualified to serve legal process in the case, to whom the principal may be committed. Surrender of principal in such a case. 1803, 132.

SECT. 22. Every such officer, who is seasonably notified, and requested to attend at a justice's court, for the purpose aforesaid, shall be bound to attend, and to receive and take charge of the principal, if committed to his custody by the justice. Officer to attend, if requested. 1803, 132.

SECT. 23. When the principal is surrendered in a justice's Proceedings

upon such surrender.

court, an entry thereof shall be made on the record, and he shall be forthwith committed to the officer in attendance, to be conveyed to the common jail of the county, or otherwise disposed of according to law.

Same subject.

SECT. 24. If the surrender is made in a justice's court, after final judgment in the original suit, the bail shall deliver to the officer a copy of the entry of the surrender, attested by the justice, and the officer shall deliver the same copy to the jailer, on committing the prisoner to his custody; and this shall be a sufficient warrant to the officer, for receiving the prisoner and conveying him to the jail, and to the jailer for holding him in custody, according to law.

Same subject.

SECT. 25. If the principal is so surrended and committed, before final judgment in the original suit, the bail shall deliver to the officer a copy of the original writ, with the return indorsed thereon, attested by the justice, and the officer shall deliver the same copy to the jailer, on committing the prisoner to his custody; and this shall be a sufficient warrant to the officer and to the jailer, for receiving, committing and holding the prisoner, according to law.

Fees of the officer. 1803, 132.

SECT. 26. The officer shall be allowed the same fees, as are provided for arresting and committing a defendant on mesne process, which fees shall be paid by the bail.

CHAPTER 92.

OF PROCEEDINGS WHEN THE DEFENDANT DOES NOT APPEAR AND ANSWER TO THE SUIT.

SECTION
1. Defendant not appearing, to be defaulted.
2. Default may be taken off at the first term.
3. Notice to be given to defendant out of the state.—Suit to be continued in the mean time.
4. Absent defendant may review within one year after judgment.
5. Or upon petition, within one year after notice.
6. Bond when to be given by plaintiff, upon default of an absent defendant.
7. " how taken and disposed of.
8. Execution levied on real estate of an absent defendant.
9. Judgment in a real action against him.
10. Absence of one of several defendants in actions on tort.
11. Same, in actions on contract.
12. Action may proceed against those served with process.
13. The other contractors liable to a new action.
14. Absence of one of several tenants in a real action.
15. In a mixed action.
16. Exception.

Defendant not appearing, to be defaulted. 1784, 28.

SECTION 1. When any defendant, being duly served with process, shall fail to appear, his default shall be recorded, and the charge in the declaration shall be taken to be true, and judgment shall be rendered accordingly.

Default may be taken off at the first term. 1784, 28.

SECT. 2. If, after such default at the first term, the defendant shall appear before the jury is dismissed, the court may take off the default, and allow the appearance to be entered, upon the defendant's

paying the plaintiff's costs up to that time, or such part thereof as the court shall think reasonable.

Notice to be given to defendant out of the state.

SECT. 3. If the defendant is not an inhabitant or resident within the state, or if his residence is not known to the plaintiff, nor to the officer serving the writ in the case, or if the defendant has no last and usual place of abode, nor any tenant, agent or attorney within the state, known to the said plaintiff or officer, the court, upon suggestion thereof being made, and upon the facts appearing by the officer's return on the writ, shall order the action to be continued from term to term, until notice of the suit shall be given in such manner as the court may order; and if after such notice, the defendant shall not appear at the term to which the action may be continued, judgment may be rendered against him upon default.

Suit to be continued in the mean time.

Absent defendant may review within one year after judgment. 1797, 50.

SECT. 4. When judgment is so rendered upon the default of an absent defendant, he shall be entitled to a review of the action as of right, provided the writ of review be sued out within one year after the judgment, and be commenced and prosecuted in the manner provided in the ninety ninth chapter.

— or upon petition, within one year after notice. 1820, 53.

SECT. 5. If such review is not so prosecuted as of right, the defendant may, at any time within one year after he shall first have notice of the judgment, apply by petition to the supreme judicial court, for a review of the action, and if it shall appear to the court that justice requires a revision of the case, they may grant a review thereof, on such terms as they shall think reasonable.

Bond, when to be given by plaintiff, upon default of an absent defendant. 1797, 50.

SECT. 6. When judgment in any personal action is rendered, as above provided, upon the default of an absent defendant, the plaintiff shall not take out execution thereon within one year thereafter, unless he shall first give bond to the defendant, with one or more sufficient sureties, in a sum equal to double the amount recovered, with condition to repay the amount so recovered, if the judgment shall be reversed upon a review to be brought, by the original defendant, at any time within one year after the original judgment, or as much of the amount first recovered as shall be recovered back upon such review.

— how taken and disposed of.

SECT. 7. The said bond shall be deposited with the clerk of the court for the use of the defendant, and the clerk shall decide on the sufficiency of the sureties, saving a right of appeal from his decision to any justice of the court in which the judgment is rendered.

Execution levied on real estate of an absent defendant. 1797, 50.

SECT. 8. If the execution in any such personal action shall be levied on real estate, no alienation thereof by the original plaintiff shall prevent the defendant from retaking the same, or as much thereof as may be necessary to satisfy the judgment, if any, that he shall recover on such review, provided the writ of review be sued out within one year after the original judgment.

Judgment in a real action against him.

SECT. 9. If the original judgment be for seizin of any premises demanded in a real action, the demandant may take out his writ of seizin without giving bond; and if the judgment be reversed in whole or in part upon a review, whether sued out within the year or afterwards, the original tenant may have restitution of the premises, in like manner as upon a reversal on a writ of error.

Absence of one of several defendants in actions on tort. 1797, 50.

SECT. 10. In personal actions founded on tort, against several defendants, if any one of them is out of the state at the time of the service of the writ, the suit shall be conducted, with regard to the

absent defendant, in every thing relating to the service of the writ, the judgment, the review thereof, and the execution, in like manner as if he had been the only defendant in the case.

Same, in actions on contract. 1797, 50.

SECT. 11. If an action founded on contract is brought against several defendants, of whom any one is within the state, and any other is absent, and the plaintiff recovers judgment, he shall take it without any of the conditions and regulations above provided, as to a review of the judgment, and as to giving bond, and alienating any real estate taken in execution; but he shall not take judgment against any such absent defendant, unless under such circumstances as would have entitled him to judgment against the absent party, if he had been the only defendant in the case.

Action may proceed against those served with process. 8 Mass. 423. 5 Mass. 193.

SECT. 12. If an action founded on contract is brought against several defendants, and the writ is duly served on one or more of them, but no legal service is made on the others, either by attachment of property or otherwise, by reason of their absence from the state, or for other sufficient cause, the action may nevertheless proceed against those who are duly served with process, without any further proceedings against the others.

The other contractors liable to a new action. 13 Mass. 148. 6 Cranch, 254.

SECT. 13. If judgment shall be rendered against one or more of several joint contractors, in the manner provided in the preceding section, and shall remain unsatisfied, an action on the same contract may be afterwards maintained against any of the other joint contractors, in like manner as if the contract had been joint and several.

Absence of one of several tenants in a real action.

SECT. 14. In real actions against several tenants, if any one of them is out of the state the suit shall be conducted with regard to him, in like manner as if he had been the only person sued.

— in a mixed action.

SECT. 15. In mixed actions, if the defendant, or if any one of two or more joint defendants, is out of the state, the suit shall be conducted, with regard to the absent defendant, in every thing relating to the judgment, the review thereof, and the bond upon issuing execution, in the manner before provided with respect to personal actions, when founded on tort; and in every thing relating to the service of the writ and the notice of the suit to be given to the defendant, it shall be considered and conducted as a real action.

Exception.

SECT. 16. None of the rules before prescribed, concerning actions brought against a person who is out of the state, shall apply to a cross action brought, as provided in the ninetieth chapter, by the defendant in a prior suit, against the plaintiff in the same suit.

CHAPTER 93.

OF DEATH, MARRIAGE, OR OTHER DISABILITY, OCCURRING AFTER THE COMMENCEMENT OF THE SUIT.

SECTION
1. General provision as to actions which survive.
2. Executor or administrator may prosecute or defend.

SECTION
3. May be cited for that purpose.
4. Citation, how served and returned.
5. Executor, &c. may be nonsuited or defaulted.
6. Provision as to costs in such case.
7, 8. Certain actions for torts to survive.
9. Damages recoverable in trespass against an executor, &c.
10 Recovery by executor, &c. in right of another.
11. Goods returned on replevin by executor, &c.
12. Death of a joint plff. or deft.
13. Death of all the plffs. or defts.
14. In real and mixed actions, the heir may prosecute:
15. Jointly with the survivor, if any.
16. Or the survivor may prosecute alone.
17. Real, &c. actions prosecuted against surviving tenant.
18. Same proceedings in suits for partition.
19. Except in certain cases.
20. Further exceptions.
21. Upon marriage of a female plaintiff, her husband may prosecute.
22. Party becoming insane, his guardian may prosecute or defend.
23. Successor of a public officer, &c. may prosecute.
24. Amendments and suggestions to be made when necessary.

SECTION 1. In all personal actions, the cause of which does by law survive, if there is only one plaintiff, or one defendant, and the sole plaintiff or defendant shall die, after the commencement of the action, and before the entry thereof, or after an appeal claimed, and before the entry of the appeal, or at any other time, before final judgment, the action may proceed and be prosecuted, by and against the survivor, and the executor or administrator of the deceased party, in the manner provided in this chapter.

General provision as to actions which survive. 4 N. Hamp. R. 385. 1783, 32. 1834, 86.

SECT. 2. The action or the appeal may be entered, in such cases, if it is not already entered, and the death of the party shall be suggested on the record, and his executor or administrator may, at the same term, or within such further time as the court shall allow, appear and take upon himself the prosecution or defence of the suit, as the case may be; and it shall be thenceforth conducted in the same manner, as if it had been originally commenced by or against the same executor or administrator.

Executor or administrator may prosecute or defend. 1783, 32. 1834, 86.

SECT. 3. If the executor or administrator does not voluntarily appear, the surviving party may take out a citation from the court or the justice of the peace, before whom the cause is pending, requiring the executor or administrator to appear, and take upon himself the prosecution or defence of the suit.

— may be cited for that purpose. 1783, 59.

SECT. 4. The citation, if taken out of court in term time, may be made returnable at the same, or the next succeeding term, as the court shall order, and if taken out in vacation, it shall be returnable at the next term; and if issued by a justice of the peace, it shall be made returnable at such time as he shall direct, and in all cases, it shall be served fourteen days at least before the return day.

Citation, how served and returned. 1783, 59.

SECT. 5. If the executor or administrator shall not appear on the return of the citation, or within such further time as the court or justice shall allow, he shall be nonsuited or defaulted, and judgment shall be rendered against him, in like manner as if the action had been originally commenced by or against him, in his said capacity, except as provided in the following section.

Executor, &c. may be nonsuited or defaulted. 1783, 59.

SECT. 6. When an executor shall be nonsuited or defaulted, without having taken upon himself the prosecution or defence of the suit, he shall not be personally liable for any costs in the action; but

Provision as to costs in such case.

the estate of the deceased in his hands shall be liable for the costs, as well as for the debt or damages, if any are recovered.

Certain actions for torts to survive.
8 Greenl. 123.
4 Mass. 480.
3 Mass. 228.
1822, 110.
1828, 112.
1834, 2.

SECT. 7. In addition to the actions, which survive by the common law, the following shall also survive, that is to say; actions of replevin and trover, actions of trespass for assault, battery, or imprisonment, or for goods taken and carried away, and actions of trespass and trespass on the case for damage done to real or personal estate.

Same subject.
6 Greenl. 427.
7 Mass. 395.
5 Pick. 257.

SECT. 8. All the said last mentioned actions may be originally commenced and prosecuted by and against executors and administrators, and if commenced by or against the original party, in his life time, they may be prosecuted or defended by or against his executor or administrator.

Damages re-recoverable in trespass against an executor, &c.
4 Pick. 218.

SECT. 9. When an action of trespass is commenced or prosecuted against the executor or administrator of the trespasser, the plaintiff shall be entitled to recover only for the value of the goods taken, or for the damage actually sustained, without any vindictive or exemplary damages, or damages for any alleged outrage to the feelings of the injured party.

Recovery by executor, &c. in right of another.
1822, 110.

SECT. 10. When the executor or administrator of a trustee, carrier, depositary, or other person, who claimed only a special property in any goods, to hold them for the use and benefit of another, shall recover such goods, or damages for the taking or detention thereof, in an action of replevin, or trover, or trespass, the goods or money so recovered shall not be considered as assets in his hands, but shall, after deducting the costs and expenses of the suit, be paid over and delivered to the person, for whose use and benefit they were so held or claimed by the deceased person.

Goods returned, on replevin by executor, &c. not to be assets.
1822, 110.

SECT. 11. When judgment for a return, in an action of replevin, shall be rendered against an executor or administrator, the goods returned by him shall not be considered as assets in his hands; and if they shall have been included in the inventory, it shall be a sufficient discharge for the executor or administrator, to show that they have been returned, in pursuance of such judgment.

Death of a joint plff. or deft.
7 Greenl. 421.
9 Pick. 528.
4 Pick. 308.
7 Pick. 62.

SECT. 12. When there are several plaintiffs or defendants in any personal action, the cause of which survives, either by the common law or by the provisions of this chapter, and any of them shall die before final judgment, the action shall proceed at the suit of the surviving plaintiff, or against the surviving defendant, as the case may be.

Death of all the plffs. or defts.
9 Pick. 532.

SECT. 13. If, in such a case, all the plaintiffs, or all the defendants shall die, the action may be prosecuted or defended by or against the executor or administrator of the last surviving plaintiff or defendant, respectively, in like manner as if the survivor had been originally the only plaintiff or defendant.

In real and mixed actions the heir may prosecute.
1826, 70.

SECT. 14. In all real and mixed actions, if the demandant shall die before final judgment, his heir, at the same term when the death is suggested, or within such further time as the court shall allow, may appear and prosecute the suit, in the same manner as if it had been originally commenced by him.

Jointly with the survivor, if any.
10 Mass. 130.
11 Mass. 56.
1826, 70.

SECT. 15. If there are several demandants in such an action, and any of them shall die before final judgment, the heir of the deceased party shall be admitted, on motion, to prosecute the suit jointly with the survivors, in the same manner as if he had originally joined with them in commencing the suit.

SECT. 16. If the interest of the deceased party passes to the surviving demandants, or if there is no motion for the admission of another person as heir, at the term when the death of the deceased party is suggested, or within such further time as the court shall allow, the surviving demandants may prosecute the suit, for so much of the premises in question, as may then be claimed by them.

Or the survivor may prosecute alone. 1826, 70.

SECT. 17. When there are several tenants in any real or mixed action, and any of them shall die before final judgment, the action may be prosecuted against the surviving tenants, for so much of the premises as they shall hold or claim.

Real, &c., actions prosecuted against surviving tenant. 1826, 70. 2 Pick. 23. 2 Mass. 480.

SECT. 18. The same proceedings, as are prescribed in the four preceding sections, shall be had in all petitions and actions for partition of lands, in case of the death of any of the parties, except as is provided in the two following sections.

Same proceedings in suits for partition. 1822, 71. 1826, 70. 2 Mass. 479. 10 Mass. 5.

SECT. 19. If, upon the death of either of several plaintiffs or petitioners, in a suit for partition, the interest of the deceased party shall pass to the surviving plaintiffs or petitioners, or to any person, who shall be admitted to join them in the suit, it shall be prosecuted accordingly, in the manner before provided respecting real actions; but if the interest of the deceased party shall pass to any person, who is not so admitted as a plaintiff or petitioner, such person may, by order of the court, be made a defendant or respondent, and the same proceedings may be had against him, as would have been necessary to make him an original defendant or respondent.

Except in certain cases.

SECT. 20. If, upon the death of either of several defendants or respondents, the interest of the deceased party shall pass to the surviving defendants or respondents, the suit may proceed against them without any new process; but if the interest of the deceased party shall pass to any other person, that person may be made a defendant or respondent, by order of the court, in the manner prescribed in the preceding section.

Further exception.

SECT. 21. If any action or suit is brought by an unmarried woman, either alone, or jointly with others, and she shall be married before final judgment, her husband may, on his own motion, be admitted as a party to prosecute the suit with her, and with the other plaintiffs, if there be any, in like manner as if he had originally joined in the suit.

Case of the marriage of a female plff. 14 Mass. 295. 17 Mass. 342. 1826, 70. 1828, 120.

SECT. 22. If, during the pendency of any action or suit, either party shall become insane, the action may be prosecuted or defended by his guardian, in like manner as if it had been commenced after the appointment of the guardian, or the court may appoint a guardian for the suit, as the case may require.

Of a party becoming insane pending a suit. 13 Mass. 412. 5 Pick. 431.

SECT. 23. When an action is brought by or in the name of any public officer, or by any trustee appointed by virtue of any statute, his death or removal shall not abate the writ, but it may be prosecuted by his successor, provided there be a successor, who might have originally commenced and prosecuted the like action.

Of the death or removal of an officer, &c. 2 Mass. 440. 12 Mass. 575. 1797, 14.

SECT. 24. In all the cases mentioned in this chapter, when any change shall happen in a suit after its commencement, the court may allow such amendments of the declaration and other pleadings, and such suggestions to be entered on the record, as circumstances may require.

Amendments and suggestions to be made when necessary. 1826, 70.

CHAPTER 94.

OF WITNESSES AND EVIDENCE.

SECTION

OF WITNESSES.

1. Summonses for witnesses may be issued by clerks of courts and by justices of the peace.
2. By whom served.
3. Fees to be tendered to witness.
4, 5. Liability for not attending.
6. Witness may be brought in on a warrant.
7, 8. Mode of administering oaths.
9. Quakers allowed to affirm.
10. Others, having conscientious scruples.
11. Persons of other than the christian religions, how sworn.
12. Penalty for false oath or affirmation.

OF DEPOSITIONS.

13, 14. Depositions, when and for what purposes taken.
15. Notice to be given to the adverse party:
16. Or to his agent or attorney:
17. Or to one of several parties.
18, 19. Notice, how to be served.
20, 21. Deponent, how to be sworn and examined.
22. Deposition by whom to be written.
23. Certificate to be annexed.
24. Deposition to be delivered or sent to the court, &c.
25. Not to be used if the deponent can attend.
26. Objections to the testimony, how and when to be made
27. Depositions, when to be used in another suit.
28. Courts may make rules concerning depositions.
29. Deponent may be summoned and compelled to testify.
30. Depositions how taken out of the state.
31. To be taken on written interrogatories.
32. Courts may make rules concerning foreign depositions.
33. Discretionary power, as to depositions and affidavits otherwise taken.
34. Depositions to perpetuate evidence, how taken.
35. Notice to be given to all persons interested.
36. Mode of taking such deposition. Certificate to be annexed.
37. Deposition to be recorded in registry of deeds.
38. In what cases may be used.
39. Deponent may be summoned and compelled to testify.
40. Depositions in perpetuam may be taken out of the state.
41. Statement to be filed by the party applying.
42. Notice to be given to the adverse party.
43. Commission may be issued.
44. Deposition, how, taken and returned.
45. Statement may be filed and notice given in vacation.
46. Supreme court may make rules concerning foreign depositions in perpetuam.
47. Such depositions, in what cases to be used.
48. Depositions may be taken to perpetuate testimony against all persons.
49, 50. Proceedings therefor.
51. To be recorded in the registry of deeds.
52. Such depositions, in what cases they may be used.
53. Depositions may be taken for courts in other governments.

OTHER PROVISIONS RESPECTING EVIDENCE.

54. Members of certain corporations to be competent witnesses.
55. Disqualification by being surety, &c. may be removed.
56. Conviction without the state, to affect credibility in case, &c.
57. Records of courts of other states, how authenticated.
58. Acts and resolves of the government, to be evidence.
59. Statute laws of the other states, when to be evidence.
60. Unwritten law of other states, how proved.
61. Laws of foreign countries, how proved.

OF WITNESSES.

Summonses for witnesses may

SECTION 1. Every clerk of a court of record, and every justice of the peace, may issue summonses for witnesses in all civil cases

pending before any court, or before any magistrates, arbitrators or other persons authorized to examine witnesses; and the summons shall be in the form heretofore adopted and commonly used, but may be altered from time to time, like other writs.

be issued by clerks of courts, and by justices of the peace. 1783, 42, § 5. 1784, 28, §§ 5 & 6. 1826, 86, § 5.

SECT. 2. Such summons may be served by any officer, qualified to serve any civil process, or by any disinterested person, by exhibiting and reading it to the witness, or by giving him a copy thereof, or leaving such copy at the place of his abode.

— by whom served.

SECT. 3. No person shall be obliged to attend as a witness, unless the fees are paid or tendered to him, which are allowed by law for one day's attendance as a witness, and for travelling to, and returning from, the place where he is required to attend.

Fees to be tendered to witnesses. 1784, 28, § 6.

SECT. 4. If any person duly summoned and obliged to attend as a witness, shall fail so to do, without any reasonable excuse, he shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in an action on the case.

Liability for not attending. 1784, 28, § 6.

SECT. 5. Such failure to attend as a witness in any court of record shall also be considered a contempt of the court, and may be punished by a fine not exceeding twenty dollars.

Same subject. 1784, 28, § 6.

SECT. 6. The court in such case may issue a warrant to bring such witness before them, to answer for the contempt, and also to testify as a witness in the cause in which he was summoned.

Witness may be brought in on a warrant. 1784, 28, § 6.

SECT. 7. The usual mode of administering oaths, now practised in this state, with the ceremony of holding up the hand, shall be observed in all cases, in which an oath may be administered by law, except as is hereinafter provided.

Mode of administering oaths. 1797, 35, § 10.

SECT. 8. When the court or magistrate, before whom any person is to be sworn, shall be satisfied that such person has any peculiar mode of swearing, which is in his opinion more solemn or obligatory than holding up the hand, they may adopt that mode of administering the oath.

Same subject. 6 Mass. 262. 1797, 35, § 10.

SECT. 9. Every quaker, when called on to take an oath, shall be permitted, instead of swearing, solemnly and sincerely to affirm, under the pains and penalties of perjury.

Quakers, allowed to affirm. 1797, 35, § 9. 1810, 127, § 1.

SECT. 10. Every person, who shall declare that he has conscientious scruples against taking any oath, shall, when called upon for that purpose, be permitted to affirm in the manner prescribed for quakers, provided that the court or magistrate shall, on inquiry, be satisfied of the truth of such declaration.

Others, having conscientious scruples. 2 Gallis. 364. 1824, 91, § 1.

SECT. 11. Every person, believing in any other than the Christian religion, may be sworn according to the peculiar ceremonies of his religion, if there be any such.

Persons of other than the Christian religion, how sworn. 1797, 35, § 10.

SECT. 12. If any person, who shall take an oath or make an affirmation, in any of the modes prescribed or allowed by this title, shall therein wilfully and corruptly swear or affirm falsely, he shall be liable to all the pains and penalties of perjury.

Penalty for false oath or affirmation. 1797, 35, § 10. 1824, 91, § 2.

OF DEPOSITIONS.

SECT. 13. Depositions may be taken, in the manner and according to the regulations, provided in this chapter, to be used before any magistrates, or other persons authorized to examine witnesses, in any other than criminal cases.

Depositions, when and for what purposes, taken.

Same subject. 1797, 35, § 1.

SECT. 14. When a witness, whose testimony is wanted in any civil cause pending in this state, shall live more than thirty miles from the place of trial, or shall be about to go out of the state, and not to return in time for the trial, or is so sick, infirm or aged, as to make it probable that he will not be able to attend at the trial, his deposition may be taken in the manner hereinafter provided.

Notice to be given to the adverse party. 1797, 35, § 1. 1817, 181, § 1.

SECT. 15. At any time after the cause is commenced by the service of process, or after it is submitted to arbitrators or referees, either party may apply to any justice of the peace, who shall issue a notice to the adverse party, to appear before the said justice or any other justice of the peace, at the time and place appointed for taking the deposition, and to put such interrogatories as he may think fit.

— or to his agent or attorney. 7 Pick. 137. 1797, 35, § 2.

SECT. 16. The said notice may be served on the agent or attorney of the adverse party, and shall have the same effect, as if served on the party himself.

— or to one of several parties. 1797, 35, § 2.

SECT. 17. When there are several persons, plaintiffs or defendants, or parties on either side in the cause, a notice served on either of them shall be sufficient.

— how to be served. 1797, 35, § 2.

SECT. 18. The notice shall be served, by delivering an attested copy thereof to the person to be notified, or by leaving such copy at his place of abode, allowing, in all cases, not less than twenty four hours after such notice, before the time appointed for taking the deposition, and also allowing time for his travel to the place appointed, after being notified, not less than at the rate of one day, Lord's days excluded, for every twenty miles travel.

Same subject. 1817, 181, § 1.

SECT. 19. Instead of the written notice before prescribed, the notice may, in all cases, be given verbally by the justice taking the deposition, or it may be wholly omitted, if the adverse party or his attorney shall in writing waive the right to it.

Deponent, how to be sworn and examined. 1797, 35, § 3.

SECT. 20. The deponent shall be sworn or affirmed to testify the truth, the whole truth and nothing but the truth, relating to the cause for which the deposition is taken, and he shall then be examined by the justice and by the parties, if they think fit, and his testimony shall be taken in writing.

Same subject.

SECT. 21. The party producing the deponent shall be allowed first to examine him, either upon verbal or written interrogatories, on all the points which he shall deem material, and then the adverse party may examine the deponent in like manner; after which either party may propose such further interrogatories, as the case may require.

Deposition, by whom to be written. 1797, 35, § 3.

SECT. 22. The deposition shall be written by the justice, or by the deponent, or by some disinterested person in the presence and under the direction of the justice, and it shall be carefully read to or by the deponent, and shall then be subscribed by him.

Certificate to be annexed. 3 Pick. 79. 80. 1797, 35, § 3.

SECT. 23. The justice shall annex to the deposition a certificate of the time and manner of taking it, the person at whose request, and the cause or suit for which it was taken, and the reason for taking it, and stating also whether the adverse party attended, and if not, stating the notice, if any, that was given to him.

Deposition to be transmitted to the court, &c.

SECT. 24. The deposition shall be delivered by the justice to the court or arbitrators or referees, before whom the cause is pend-

ing, or shall be enclosed and sealed by him, and directed to them, and shall remain sealed until opened by the said court, arbitrators, or referees. 1797, 35, § 3.

SECT. 25. No such deposition shall be used, if it shall appear that the reason for taking it no longer exists; provided however, that if the party, producing the deposition in such case, shall show any sufficient cause then existing for using the deposition, it may be admitted. —not to be used if the deponent can attend. 1797, 35, § 5.

SECT. 26. Every objection to the competency or credibility of the deponent, and to the propriety of any questions put to him, or of any answers made by him, may be made when the deposition is produced, in the same manner as if the witness were personally examined on the trial; provided, that when any deposition is taken upon written interrogatories, all objections to any interrogatory shall be made before it is answered, and if the interrogatory is not withdrawn, the objection shall be noted thereon, or otherwise the objection shall not be afterwards allowed. Objections to the testimony, how and when to be made. 8 Pick. 51. 1 Pick. 313 2 Pick. 165.

SECT. 27. When the plaintiff in any suit shall discontinue it or become nonsuit, and another suit shall afterwards be commenced for the same cause, between the same parties or their respective representatives, all depositions, lawfully taken for the first suit, may be used in the second, in the same manner and subject to the same conditions and objections, as if originally taken for the second suit, provided, that the deposition shall have been duly filed in the court where the first suit is pending, and shall remain in the custody of the court, from the termination of the first suit, until the commencement of the second. Deposition, when to be used in another suit. 1826, 86, § 1.

SECT. 28. The courts may, from time to time, make such rules, as they shall find proper and convenient, as to the time and manner of opening and filing depositions, and the safe keeping thereof, and any other regulations, concerning the taking and using of depositions, which may not be inconsistent with the provisions of law. Courts may make rules concerning depositions.

SECT. 29. Any witness may be summoned and compelled to give his deposition, at any place within twenty miles of his place of abode, in like manner and under the same penalties, as he may be summoned and compelled to attend as a witness in any court. Deponent may be summoned and compelled to testify. 1797, 35, § 4.

SECT. 30. The deposition of any witness, without this state, may be taken under a commission, issued to one or more competent persons, in any other state or country, by the court in which the cause is pending, or it may be taken before any commissioner, appointed by the governor for that purpose, in any part of the United States; and in either case, the deposition may be used in the same manner, and subject to the same conditions and objections, as if it had been taken in this state. Depositions, how taken out of the state. 1797, 35, § 6. 1829, 125, § 1.

SECT. 31. Every such deposition, taken before commissioners appointed either by the governor or by the courts, shall be taken upon written interrogatories, to be exhibited to the adverse party, or his attorney, and cross interrogatories, to be filed by him, if he shall think fit. To be taken on written interrogatories.

SECT. 32. The courts may make rules, as to the issuing of commissions, either in vacation or term time, and the filing of interrogatories, and all other matters relating to depositions, taken out of the Courts may make rules concerning foreign depositions.

1797, 35, §§ 6 & 7.

state, provided, that such rules be not inconsistent with the provisions of law.

Discretionary power, as to depositions, and affidavits, otherwise taken. 1797, 35, §§ 6 & 7.

SECT. 33. All depositions and affidavits, taken out of the state, in any other manner than is prescribed in the three preceding sections, if taken before any notary public, or other person authorized by the laws of any other state or country, to take depositions, may be admitted or rejected, at the discretion of the court; provided, that no such deposition or affidavit shall be admitted, unless it shall appear that the adverse party had sufficient notice of the taking thereof, and opportunity to cross-examine the witness, or that from the circumstances of the case, it was impossible to give him such notice.

Depositions to perpetuate evidence, how taken.

SECT. 34. When any person shall be desirous to perpetuate the testimony of any witness, he shall make a statement in writing, setting forth briefly and substantially his title, claim or interest in or to the subject, concerning which he desires to perpetuate the evidence, and the names of all other persons, interested or supposed to be interested therein, and also the name of the witness proposed to be examined, and shall deliver the said statement to two justices of the peace, one of whom shall be either a judge or register of probate, a clerk of the supreme judicial court, a master in chancery, or a counsellor at law, requesting them to take the deposition of the said witness.

Notice to be given to all persons interested. 1797, 35, § 8.

SECT. 35. The said justices shall thereupon cause notice to be given of the time and place, appointed for taking the deposition, to all persons mentioned in the said statement as interested in the case; which notice shall be given in the same manner, as is prescribed in this chapter, respecting notice upon taking a deposition in this state, to be used in any cause here pending.

Mode of taking such deposition. Certificate to be annexed. 3 Pick. 80. 1797, 35, § 8. 1817, 181, § 2.

SECT. 36. The deponent shall be sworn and examined, and his deposition shall be written, read and subscribed, in the same manner as is prescribed respecting the other depositions before mentioned; and the justices shall annex thereto a certificate under their hands, of the time and manner of taking it, and that it was taken in perpetual remembrance of the thing, and they shall also insert, in the certificate, the names of the person, at whose request it was taken, and of all those who were notified to attend, and of all who did attend the taking thereof.

Deposition to be recorded in registry of deeds. 1797, 35, § 8.

SECT. 37. The deposition, with the certificate, and also the written statement of the party, at whose request it was taken, shall, within ninety days after the taking thereof, be recorded in the registry of deeds, in the county where the land lies, if the deposition relates to real estate, otherwise, in the county where the parties or some of them reside.

In what cases, it may be used. 3 Pick. 74. 1797, 35, § 8. 1826, 86, § 2.

SECT. 38. If any suit shall, either at the time of taking such deposition, or at any time afterwards, be pending between the person at whose request it was taken, and the persons named in the said written statement, or any of them, who were notified as aforesaid, or any persons claiming under either of the said parties, respectively, concerning the title claim or interest, set forth in the statement, the deposition so taken, or a certified copy of it, from the registry of deeds, may be used in such suit, in the same manner and subject to the same conditions and objections as if it had been originally taken for the said suit.

SECT. 39. Any witness may be summoned and compelled to give his deposition in perpetual remembrance of the thing, as before prescribed, in like manner and under the same penalties as are provided in this chapter respecting other depositions taken in this state.

Deponent may be summoned and compelled to testify. 1826, 86, § 3.

SECT. 40. Depositions, to perpetuate the testimony of witnesses living without the state, may be taken in any other state, or in any foreign country, upon a commission to be issued by the supreme judicial court or court of common pleas, in the manner hereinafter provided.

Depositions in perpetuam may be taken out of the state. 3 Pick. 14.

SECT. 41. The person, who proposes to take the deposition, shall apply to either of the said courts, and file therein a statement like that before prescribed to be delivered to the justice of the peace upon taking such a deposition within this state; and if the subject of the proposed deposition relates to real estate within this state, the statement shall be filed in the county where the land or any part thereof lies, otherwise in the county where the parties or some of them reside.

Statement to be filed by the party applying.

SECT. 42. The court shall order notice of such application and statement to be served on all the persons mentioned therein as adversely interested in the case, and living within the state, which notice shall be served, fourteen days at least, before the time therein appointed for hearing the parties.

Notice to be given to the adverse party.

SECT. 43. If upon such hearing of the parties, or of the applicant alone, should no adverse party appear, and the court shall be satisfied that there is sufficient cause for taking the deposition, they shall issue a commission therefor, in like manner as for taking a deposition to be used in any cause pending in the same court.

Commission may be issued.

SECT. 44. The deposition shall be taken upon written interrogatories filed by the applicant, and cross interrogatories filed by any party adversely interested, if he shall think fit, and it shall be taken and returned substantially in the same manner as if taken to be used in a cause pending in the same court.

Deposition, how taken and returned.

SECT. 45. The person who proposes to take the deposition may, at his election, file his statement in the clerk's office in vacation, and may cause notice thereof to be given to the persons therein named as adversely interested, by serving them with an attested copy of the said statement, fourteen days at least before the next term of the court, and the court may thereupon proceed to hear the parties and to issue the commission, as before provided.

Statement may be filed, and notice given in vacation.

SECT. 46. The supreme judicial court may, from time to time, make rules as to taking depositions to perpetuate the testimony of witnesses without the state, whether taken under a commission from the supreme judicial court, or the court of common pleas, and as to the filing or recording of such depositions, provided that such rules be not inconsistent with the provisions of law.

Supreme court may make rules concerning foreign depositions in perpetuam.

SECT. 47. All depositions to perpetuate the testimony of witnesses, taken at any place without this state, according to the provisions of this chapter, may be used in like manner as if taken within the state.

Such depositions, in what cases to be used

SECT. 48. Depositions to perpetuate the testimony of witnesses within or without the state, so that the same may be evidence against

Depositions may be taken to perpetuate testimony a-

gainst all persons.

all persons, may be taken upon a commission, to be issued after public notice by the supreme judicial court or court of common pleas.

Proceedings therefor.

SECT. 49. The person, who desires to have such deposition taken, may apply to either of the said courts, in the manner before prescribed in the case of taking a deposition to perpetuate the testimony of a witness living without the state, and all the proceedings thereon shall be the same as are prescribed in the case last mentioned.

Same subject.

SECT. 50. The court shall, in addition to the proceedings so before prescribed, inquire upon the oath of the applicant or otherwise, at their discretion, as to all persons known or supposed to be interested in the case, and shall in the commission direct the commissioner or commissioners to publish in such newspaper or newspapers, within or without the state, or both, or in such other manner as the court shall consider most effectual, such notice of the time and place of taking such deposition, and of the subject matter thereof, as the court shall think proper; which notice shall be addressed specially by name to all persons who are known or supposed to be interested in the case, and generally to all others, that they may attend and propose cross interrogatories to the witness; and the court may also require personal notice of the time and place of taking, and of the subject matter of such deposition, to be given to such persons and in such manner, as under all the circumstances shall seem proper.

Such depositions to be recorded in the registry of deeds.

SECT. 51. Such deposition having been taken and returned to the court, by whose order the commission issued, and being found by the court to have been taken according to law and the directions contained in the commission, the court shall order it to be recorded, within thirty days, in the registry of deeds for the county in which the land lies, if the deposition relates to real estate, otherwise in the county in which the parties or some of them reside.

— in what cases they may be used.

SECT. 52. Any deposition, taken and recorded under the provisions of the four preceding sections, or a certified copy thereof from the registry, may be used by the person at whose request it was taken, or by any person claiming under him, against any person whatever, in any suit or process, wherein shall be brought in question the title, claim or interest set forth in the statement upon which the commission was founded, in the same manner, and subject to the same conditions and objections, as if it had been originally taken for said suit or process.

Depositions may be taken for courts in other governments. 1826, 86, § 3.

SECT. 53. Any witness may be summoned and compelled, in like manner, and under the same penalties, as are prescribed in this chapter, to give his deposition in any cause, pending in a court in any other state or government; which deposition may be taken before any justice of the peace in this state, or before any commissioners, that may be appointed under the authority of the state or government, in which the suit is pending; and if the deposition is taken before such commissioners, the witness may be summoned and compelled to appear before them, by process from any justice of the peace in this state.

OTHER PROVISIONS RESPECTING EVIDENCE.

Members of certain corpo-

SECT. 54. In all cases in which any county, city, town, district or precinct, or any parish, or incorporated or legally organized religious

society, or any school district, or any incorporated mutual fire insurance company shall be, in their corporate capacity, parties to, or interested in, any suit, whether of a civil or criminal nature, any member of such corporation may be admitted as a competent witness, to testify on the trial, or to give his deposition, provided there be no sufficient objection to his competency, except that of his being such member of the corporation.

rations to be competent witnesses. 3 Pick. 357. 8 Pick. 518. 1792, 32. 1821, 99. 1826, 143, § 17. 1828, 54. 1834, 164.

SECT. 55. If any person shall be disqualified to testify in any suit, by reason of having indorsed the original writ or process, or of being a surety in the recognizance of the appellant, or in a replevin bond, he may be discharged by order of the court, so as to be sworn as a witness, provided another sufficient indorser or surety be substituted in his stead, to be liable in like manner and to the same extent, as he would have been.

Disqualification, by being surety, &c. may be removed. 13 Pick. 79.

SECT. 56. No person shall be deemed an incompetent witness, by reason of having committed any crime, unless he has been convicted thereof in this state; but the conviction of any person, in any court without the state, of a crime which, if he has [*had*] been convicted thereof within this state, would render him an incompetent witness here, may be given in evidence to affect his credibility.

Conviction without the state, to affect credibility in case, &c. 17 Mass. 537. 549. 9 Pick. 512.

SECT. 57. The records and judicial proceedings of any court of another state, or of the United States, shall be admissible in evidence in all cases in this state, when authenticated by the attestation of the clerk, prothonotary, or other officer having charge of the records of such court, with the seal of such court annexed.

Records of courts of other states, how authenticated. 9 Cranch, 122.

SECT. 58. The printed copies of all statutes, acts and resolves of the Commonwealth, whether of a public or private nature, which shall be published under the authority of the government, shall be admitted as sufficient evidence thereof in all courts of law, and on all occasions whatsoever.

Acts and resolves published by the Commonwealth to be evidence. 1805, 36.

SECT. 59. Printed copies of the statute laws of any other of the United States, or of the territories thereof, if purporting to be published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, shall be admitted in all courts of law, and on all other occasions, in this state, as prima facie evidence of such laws.

Statute laws of other states, when to be evidence. 3 Pick. 293.

SECT. 60. The unwritten or common law of any other of the United States, or of the territories thereof, may be proved as facts by parol evidence, and the books of reports of cases, adjudged in their courts, may also be admitted as evidence of such law.

Unwritten laws of other states, how proved.

SECT. 61. The existence, and the tenor or effect, of all foreign laws, may be proved as facts, by parol evidence; but if it shall appear that the law in question is contained in a written statute or code, the court may, in their discretion, reject any evidence of such law, that is not accompanied by a copy thereof.

Laws of foreign countries, how proved. 14 Mass. 455.

CHAPTER 95.

OF JURIES

SECTION
1. Qualifications of jurors.
2. Persons exempted from serving.
3. Members of the fire department.
4. Selectmen to prepare lists of persons qualified.
5. Lists, subject to approval and alteration by the town.
6. Names to be put into a box.
7. Name of a person convicted, &c. to be withdrawn.
8. Jurors to be selected by drawing their names.
9. Names, when and how to be drawn.
10. May be drawn in town meeting.
11. Date of each draft to be indorsed on the ballot.
12. No person liable to serve more than once in three years.
13. Clerks to issue writs of venire facias.
14. Jurors to be equally apportioned.
15. Venires, how distributed and served.
16. Jurors, at what time to be drawn.
17. Jurors to be summoned. Venire to be returned.
18. Additional venires may be issued in term time.
19. Fines on jurors neglecting to attend.
20, 21. Manner of empannelling jurors for civil causes.
22. Foreman to be chosen by the jury.
23. Empannelling juries in criminal cases.
24. Talesmen ,when and how returned.
25. By whom to be returned.
26. Must be qualified as jurors.
27. Jurors may be examined as to their interest, &c. and the objection may be otherwise proved.
28. Interest not to disqualify in certain cases.
29. Objections to jurors, when to be made.
30. Certain irregularities not material.
31. Gratuities to jurors, forbidden.
32. Jury not to be sent out more than twice, unless, &c.
33. The court may direct a view by the jury.
34. List of jurors in Boston.
35. Jurors, how drawn in Boston.
36. Grand jurors from Chelsea to serve in the municipal court.
37. Traverse jurors also.
38. Special provisions for Nantucket and Duke's county.
39. Fines on officers and others for neglect.
40. " in cases of highways, mills, &c.
41. Punishment for fraud in drawing jurors.
42. Coroners to summon and empannel jurors, &c.

Qualifications of jurors. 9 Mass. 107. 1812, 141, § 2.

SECTION 1. All persons, who are qualified to vote in the choice of representatives in the general court, shall be liable to be drawn as jurors, except as is hereinafter provided.

Persons exempted from serving. 1812, 141, § 2.

SECT. 2. The following persons shall be exempted from serving as jurors, to wit:

The governor, lieutenant governor, members of the council, secretary and treasurer of the Commonwealth, all judges and justices of any court, except justices of the peace, all county and special commissioners, clerks of courts, registers of probate, and registers of deeds, sheriffs and their deputies, coroners, constables, and criers of the courts, marshals of the United States and their deputies, and all other officers of the United States, counsellors and attorneys at law, settled ministers of the gospel, officers of colleges, and preceptors and teachers of incorporated academies, practising physicians and surgeons regularly licensed, cashiers of incorporated banks, and constant ferrymen, and all persons who are more than sixty five years old.

Members of the fire department. 1808, 25.

SECT. 3. All members of the fire department, in the city of Boston, shall be exempted from serving as jurors; and all engine men

and members of the fire departments, in other towns, may be exempted by their respective towns, by vote at any legal town meeting.

SECT. 4. The selectmen of each town shall, once at least in every three years, prepare a list of such inhabitants of the town, not exempted as aforesaid, as they shall think well qualified to serve as jurors, being persons of good moral character, of sound judgment, and free from all legal exceptions, which list shall include not less than one for every one hundred inhabitants of the town, and not more than one for every sixty inhabitants, computing by the then last census.

Selectmen to prepare lists of persons qualified. 1812, 141, § 2. 1824, 119, § 2.

SECT. 5. The list, when so prepared, shall be laid before the town, and the town may alter it, by adding thereto the names of any persons liable to serve, or by striking any names therefrom.

Lists, subject to approval and alteration by the town. 1812, 141, § 2.

SECT. 6. The selectmen shall cause all the names, borne on the said list, to be written, each on a separate paper or ballot, and shall roll up or fold the ballots, so as to resemble each other as much as possible, and so that the name written thereon shall not be visible on the outside; and they shall place the ballots in a box, to be kept by the town clerk for that purpose.

Names to be put into a box. 1812, 141, § 2.

SECT. 7. If any person, whose name is so placed in the jury box, shall be convicted of any scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the box by the selectmen, and he shall not be returned to serve as a juror.

Name of a person convicted, &c. to be withdrawn. 1807, 140, § 2.

SECT. 8. All jurors, whether required to serve on a grand jury, or a traverse jury, or by force of the laws relating to highways or mills, or on any other occasion, except a coroner's inquest, shall be selected by drawing ballots from the said box, and the persons, whose names are borne on the ballots so drawn, shall be returned to serve as jurors.

Jurors to be selected by drawing their names. 1807, 140.

SECT. 9. When any jurors are to be so drawn, the town clerk and selectmen shall attend at the clerk's office, or at some other public place appointed for that purpose, and if the town clerk is absent, the selectmen may proceed without him; and the ballots in the jury box shall be shaken and mixed together, and one of the selectmen shall openly draw therefrom as many ballots, without seeing the names written thereon, as shall be equal to the number of jurors required; and if any person so drawn is exempted by law, or is unable, by reason of sickness, or absence from home, to attend as a juror, or if he shall have served as a juror in any court, within three years then next preceding, his name shall be returned into the box, and another shall be drawn in his stead.

Names, when and how to be drawn. 1807, 140, § 5.

SECT. 10. Any town may, at a legal meeting, order that all drafts for jurors in such town shall be made in open town meeting, in which case, the draft shall be made by the selectmen, in the manner prescribed in the preceding section, except that it shall be done in a town meeting, to be notified and warned, in such manner as shall be ordered by the town, or otherwise prescribed by law.

May be drawn in town meeting. 1807, 140, § 5.

SECT. 11. When any person is drawn and returned to serve as a juror in any court, the selectmen shall indorse on the ballot the date of the draft, and shall then return it into the box, and whenever there is a revision and renewal of the ballots in the box, the selectmen shall transfer to the new ballots the date of all the drafts, made within three years then next preceding.

Date of each draft to be indorsed on the ballot. 1807, 140, § 6.

No person liable to serve more than once in three years.
1807, 140, § 5.
1812, 141, § 2.
8 Pick. 504.
16 Mass. 220.

SECT. 12. No person shall be liable to serve as a juror in any court oftener than once in three years, but he shall not be exempted by reason of having been drawn, unless he shall actually attend and serve as a juror, in pursuance of the draft.

Clerks to issue writs of venire facias.
1807, 140, § 3.
1817, 63, § 3.
1820, 79, § 8.

SECT. 13. The clerks of the several courts shall, in due season before every term, or at such other times as the respective courts shall order, issue writs of venire facias for jurors, and shall therein require the attendance of the jurors, on such day of the term as the court shall order.

Jurors to be equally apportioned.
1807, 140, § 3.

SECT. 14. The clerks, in issuing the venires, shall have regard to the number of inhabitants in the several towns, and shall require from each town a number of jurors, as nearly as may be in proportion to their respective numbers, so as to equalize as far as possible the duty of serving as jurors.

Venires, how distributed and served.
1807, 140, § 4.

SECT. 15. The venires shall be delivered to the sheriff of each county, and by him be transmitted to a constable, in each of the towns to which they are respectively issued, and they shall be served by the constable, without delay, on the selectmen and town clerk; and if the town shall have ordered that jurors shall be drawn in open town meeting, the selectmen shall cause a town meeting to be warned for that purpose.

Jurors, at what time to be drawn
1807, 140, § 4.

SECT. 16. The meeting for drawing jurors, whether the draft be made in town meeting, or before the selectmen and town clerk only, shall be held not less than seven days, and not more than twenty one days, before the day when the jurors are required to attend.

Jurors to be summoned. Venire to be returned.
1807, 140, § 6.

SECT. 17. The constable shall, four days at least before the time when the jurors are required to attend, summon each person who is drawn, by reading to him the venire, with the indorsement thereon of his having been drawn, or by leaving at his place of abode a written notification of his having been drawn, and also of the time and place of the sitting of the court, at which he is to attend, and shall make a return of the venire, with his doings thereon, to the clerk before the opening of the court from which it was issued.

Additional venires may be issued in term time.
1807, 140, § 7.

SECT. 18. Nothing contained in the preceding sections shall prevent any court from issuing venires in term time, for additional jurors, whenever it shall be found necessary, for the convenient despatch of their business; in which case, the venires shall be served and returned, and the jurors shall be required to attend, on such days as the court shall direct.

Fines on jurors neglecting to attend.
1807, 140, § 17.

SECT. 19. If any person, duly drawn and summoned to attend as a juror in any court, shall neglect to attend, without any sufficient excuse, he shall pay a fine not exceeding forty dollars, which shall be imposed by the court, to which the juror was summoned, and shall be paid into the county treasury.

Manner of empannelling juries for civil causes.
1807, 140, § 11.

SECT. 20. On the day when the jurors are summoned to attend at any court, the clerk shall prepare a list of their names arranged in alphabetical order and the first twelve on the list, who are not excused, shall be sworn and empannelled as a jury for the trial of any civil causes, and shall be called the first jury.

Same subject.
1807, 140, § 11.

SECT. 21. The next twelve on the same list shall then be sworn and empannelled in like manner, and shall be called the second jury;

and if there are any supernumerary jurors, they may be excused from time to time, until wanted, and may be put on either of the juries as occasion shall require, in the place of any who are absent; provided, that nothing herein contained shall prevent the transferring of jurors from one jury to the other, when the convenience of the court or of the jurors may require it.

Foreman to be chosen by the jury. 1807, 140, § 11.

SECT. 22. Each jury, after being thus empannelled, shall retire and choose their foreman by ballot, or shall make such choice upon retiring with the first cause, with which they shall be charged, and whenever the foreman shall be absent, or be excused from further service, a new foreman shall be chosen in like manner.

Empannelling juries in criminal cases.

SECT. 23. Nothing contained in the preceding sections shall apply to the empannelling of juries in criminal cases, but the jurors shall be called, sworn and empannelled anew, for the trial of each criminal case, according to the established practice; and their foreman shall be appointed, either by the court, or by the jury when they retire to consider of their verdict.

Talesmen, when and how returned. 1807, 140, § 7.

SECT. 24. When by reason of challenge or otherwise, a sufficient number of jurors, duly drawn and summoned, cannot be obtained for the trial of any cause, civil or criminal, the court shall cause jurors to be returned from the by-standers, or from the county at large, to complete the panel, provided, there be on the jury not less than seven of the jurors, who were originally drawn and summoned, as before provided.

By whom to be returned. 1807, 140, § 7.

SECT. 25. The jurors, so returned from the by-standers, shall be returned by the sheriff or his deputy, or by a coroner, or by any disinterested person, appointed therefor by the court.

Must be qualified as jurors. 1807, 140, § 7.

SECT. 26. The persons so returned shall be such as are qualified and liable to be drawn as jurors, according to the provisions of law.

Jurors may be examined as to their interest, &c.

SECT. 27. The court shall, on the motion of either party in any suit, examine on oath any person who is called as a juror therein, to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence, in support of the objection; and if it shall appear to the court, that the juror does not stand indifferent in the cause, another shall be called and placed in his stead, for the trial of that cause.

And the objection may be otherwise proved. 1807, 140, § 9.

Interest, not to disqualify in certain cases. 5 Mass. 90.

SECT. 28. In indictments and penal actions for the recovery of any sum of money or other thing forfeited, it shall not be a cause of challenge to any juror, that he is liable to pay taxes in any county or town, which may be benefitted by such recovery.

Objections to jurors, when to be made. 1 Pick. 38. 196.

SECT. 29. If a party knows of any objection to a juror, in season to propose it before the trial, and omits to do so, he shall not afterwards be allowed to make the same objection, unless by leave of the court.

Certain irregularities not material. 1 Pick. 38. 196. 2 Pick. 550.

SECT. 30. No irregularity in any writ of venire facias, or in the drawing, summoning, returning or empannelling of jurors, shall be sufficient to set aside a verdict, unless the party making the objection was injured by the irregularity, or unless the objection was made before the returning of the verdict.

Gratuities to jurors forbidden. 1807, 140, § 17.

SECT. 31. If either party, in a case in which a verdict is returned, shall, during the same term of the court, either before or after the trial, give to any of the jurors, who shall try the cause, any thing by way of treat or gratuity, the court may, on the motion of the adverse party, set aside the verdict and award a new trial of the cause.

Jury not to be sent out more than twice, unless, &c. 1807, 140, § 15.

SECT. 32. When a jury, after due and thorough deliberation upon any cause, shall return into court, without having agreed on a verdict, the court may state anew the evidence, or any part of it, and explain to them anew the law applicable to the case, and may send them out again for further deliberation; but if they shall return a second time, without having agreed on a verdict, they shall not be sent out again, without their own consent, unless they shall ask from the court some further explanation of the law.

The court may direct a view by the jury. 1807, 140, § 8.

SECT. 33. The jury may, in any case, at the request of either party, be taken to view the premises or place in question, or any property, matter, or thing, relating to the controversy between the parties, when it shall appear to the court that such view is necessary to a just decision, provided, the party making the motion shall advance a sum, sufficient to defray the expenses of the jury and the officers who attend them, in taking the view; which expenses shall be afterwards taxed like other legal costs, if the party who advanced them shall prevail in the suit.

List of jurors in Boston. 1821, 110, § 13. 1822, 13.

SECT. 34. The list of jurors in the city of Boston shall be prepared by the mayor and aldermen of the city, in the same manner as is required, in this chapter, to be done by the selectmen within and for their respective towns, and the lists, when so made out by the mayor and aldermen, shall be deemed complete, without being submitted to the inhabitants of the city for revision and alteration by them.

Jurors, how drawn in Boston. 1822, 13.

SECT. 35. The said mayor and aldermen, and the clerk of the city, shall severally have and exercise all the powers and duties, with regard to the drawing of jurors in Boston, and all other matters relating to jurors therein, which are in this chapter required to be performed by the selectmen and town clerks in their respective towns, and all venires, for jurors to be returned from Boston, shall be served on the said mayor and aldermen.

Grand jurors from Chelsea to serve in municipal court. 1826, 12.

SECT. 36. The jurors returned from the town of Chelsea, to serve on the grand jury in the supreme judicial court in the county of Suffolk, shall also serve, with the other members of the same jury, in the municipal court of the city of Boston.

Traverse jurors also. 1826, 12.

SECT. 37. The said municipal court shall have power to issue venires, from time to time, for one or more traverse jurors from the town of Chelsea, and the jurors so returned shall attend and serve in the said court, in the same manner as is required of jurors returned from the city of Boston.

Special provisions for Nantucket and Duke's county. 1825, 176.

SECT. 38. The inhabitants of the counties of Nantucket and Duke's county shall be liable to be drawn and to serve as jurors, once in every two years; and the lists of persons, liable to serve as jurors in the several towns in Duke's county, may include one for every thirty of the inhabitants thereof respectively.

Fines on officers and others for neglect. 1807, 140, § 17.

SECT. 39. When by a neglect of any of the duties required in this chapter, to be performed by any of the officers or persons here-

in mentioned, the jurors, to be returned from any place, shall not be duly drawn and summoned to attend the court, every person guilty of such neglect shall pay a fine not exceeding twenty dollars, to be imposed by the same court, to the use of the county in which the offence is committed.

SECT. 40. If such neglect shall occur with regard to any jurors who may be required to serve on any other occasion than as jurors in the supreme judicial court, the court of common pleas, or the municipal court, the sheriff or other officer, before whom the jurors were required to appear, shall make known the fact to the court of common pleas, then next to be held in the same county, and the court, after due examination and a hearing of the parties who are charged, shall impose the fine. Same, in cases of highways, mills, &c.

SECT. 41. If any town clerk, selectman, mayor, alderman, or clerk of the city of Boston, shall be guilty of any fraud, either by practising on the jury box previously to a draft, or in drawing a juror, or in returning into the box the name of any juror which had been lawfully drawn out, and drawing or substituting another in his stead, or in any other way in the drawing of jurors, he shall, on conviction thereof, be punished by a fine not exceeding five hundred dollars, to be paid to the use of the county in which the offence is committed. Punishment for fraud in drawing jurors. 1807, 140, § 17.

SECT. 42. Nothing contained in this chapter shall affect the power and duty of coroners to summon and empannel jurors on any inquest held by them. Coroners to summon and empanneljurors, &c.

CHAPTER 96.

OF TRIAL AND ITS INCIDENTS.

SECTION
1. Certain mutual demands may be set off.
2, 3, 4, 5, 6. Description of the demands to be set off.
7. In what actions allowed.
8, 9. Case of several plaintiffs or defendants.
10. Case of assignment of plaintiff's demand.
11. Of action by one in trust for another.
12. Of actions by executors or administrators.
13. Of judgment in such case for balance due defendant.
14. Of actions against executors, &c.
15. The demand must be due in the same right.
16. At what time demand must be filed in the clerk's office.
17. Demand, how to be stated.
18, 19, 20. Proceedings in the trial thereof.
21. Judgment, when the demand in set-off is proved.
22. Judgment for balance due to defendant.
23. Of set-off in suits before a justice of the peace.
24. Plaintiff not allowed to discontinue, &c.
25. Auditors may be appointed to state accounts.
26, 27. Proceedings by auditors.
28. Auditors may summon witnesses.
29. " may be discharged, &c.
30. Their report may be used in evidence.
31. Their compensation.

SECTION 1. When there are mutual debts or demands between the plaintiff and defendant in any action, one demand may be set off against the other, as provided in this chapter. Certain mutual demands may be set off. 1784, 28.

Description of the demands to be set off.

SECT. 2. No demand shall be set off, unless it is founded upon a judgment or upon a contract, but the contract may be either express or implied, and with or without a seal.

Same subject. 17 Mass. 66. 4 Pick. 63. 5 Pick. 312. 1784, 28, § 12. 1793, 75, § 4.

SECT. 3. No demand shall be set off, unless it is for the price of real or personal estate sold, or for money paid, money had and received, or for services done, or unless it is for a sum that is liquidated, or one that may be ascertained by calculation.

Same subject.

SECT. 4. No demand shall be set off, unless it existed at the time of the commencement of the suit, and then belonged to the defendant, nor unless it is due to him in his own right, except as is hereinafter provided.

Same subject.

SECT. 5. Any demand which had been assigned to the defendant with notice to the plaintiff of the assignment, before the commencement of the action, may be set off in like manner as if it had been originally payable to the defendant.

Same subject.

SECT. 6. If the demand set off is founded on a bond, or other contract having a penalty, no more shall be set off than the sum equitably due.

In what actions allowed.

SECT. 7. The set-off shall be allowed in all actions founded upon demands, which could themselves be the subject of set-off, according to law, and in no others.

Case of several plaintiffs or defendants. 11 Mass. 140.

SECT. 8. If there are several plaintiffs, the demand set off shall be due from all of them jointly; and if there are several defendants, the demand set off shall be due to all of them jointly, except as is provided in the following section.

Same subject. 6 Pick. 352.

SECT. 9. When the person, with whom any contract is made, has a dormant partner, and a suit is brought on such contract, by or against the partners jointly, any demand due to or from the person with whom the contract was made, may be set off in like manner as if such dormant partner had not been joined in the suit.

Case of assignment of plaintiff's demand. 12 Mass. 193. 195. 14 Mass. 291.

SECT. 10. If the demand, on which the action is brought, has been assigned, and the defendant had notice of the assignment, he shall not set off any demand that he may acquire against the original creditor, after such notice.

Of action by one in trust for another. 8 Pick. 342.

SECT. 11. When an action is brought by one person in trust or for the use or benefit of another, the defendant may set off any demand against the person for whose use or benefit the action is brought, in like manner as if that person were the plaintiff in the suit.

Of actions by executors or administrators. 9 Pick. 37. 4 Pick. 212. 3 Pick. 452. 2 Mass. 498.

SECT. 12. In actions by executors and administrators, demands against their testators or intestates, which belonged to the defendant at the time of their death, may be set off in the same manner as if the action had been brought by the deceased.

Of judgment in such cases for balance due defendant.

SECT. 13. When upon such a set-off against an executor or administrator, a balance shall be found due to the defendant, the judgment therefor against the plaintiff shall be in the same form, and have the same effect, as if the suit had been originally commenced by the defendant.

Of actions against executors, &c.

SECT. 14. In actions against executors and administrators, and against trustees and others, sued in their representative character, the defendants may set off demands belonging to their testators or intestates, or those whom they represent, in the same manner as the per-

ed to discontinue, &c.

not be allowed to discontinue his action, unless by consent of the defendant.

Auditors may be appointed to state accounts. 6 Pick. 193. 11 Pick. 359. 1817, 142.

SECT. 25. Whenever a cause is at issue, and it shall appear that the trial will require an investigation of accounts, or an examination of vouchers by the jury, the court may appoint one or more auditors to hear the parties, and examine their vouchers and evidence, and to state the accounts and make report thereof to the court.

Proceedings by auditors.

SECT. 26. The auditors shall give notice to the parties of the time and place appointed for their meeting, and they may adjourn the same from time to time, as may be necessary.

Same subject.

SECT. 27. When there is more than one auditor, they shall all meet and hear the cause, but a report by a majority of them shall be valid.

Auditors may summon witnesses.

SECT. 28. Witnesses may be summoned, and compelled to attend and testify before the auditors, in the same manner as before arbitrators or referees.

— may be discharged, &c. 4 Pick. 283.

SECT. 29. The court may, for any sufficient reason, discharge the auditors, and appoint others, and they may also recommit the report, for revision or further examination, to the same or to other auditors.

Their report may be used in evidence. 1817, 142.

SECT. 30. The report of the auditors, if there is no legal objection to it, may be used by either party as evidence on the trial before the jury, but it may be impeached and disproved by other evidence, produced on the trial by either party.

Their compensation. 1817, 142.

SECT. 31. The court shall award reasonable compensation to the auditors, which shall be paid by the plaintiff, and shall be taxed in his bill of costs, if he prevail in the suit.

CHAPTER 97.

OF JUDGMENT AND EXECUTION.

SECTION
1. Judgment, of what day to be entered.
2. Judgment on default.
3. Damages may be assessed by a jury, after default:
4. Or ascertained by the clerk.
5. Execution not to issue within twenty-four hours:
6. Nor after one year:
7. Unless after a surrender by bail.
8. Scire facias, or debt on judgment.
9. Executions, when returnable.
10. Forms of executions and alterations therein.
11. To be under the control of the supreme court.
12. Creditor may direct the mode of service.
13. Case of the death, &c. of officer, after beginning to serve an execution.
14. Case of removal, &c. of the officer.
15. " of the death of either party.
16. Execution levied on real estate.
17. On personal estate.
18. Officer may demand security of the creditor.
19. What goods are liable to execution.
20. Current coin.
21. Bank notes.
22. What goods are exempted.
23. Goods, how sold on execution.
24. Notice of sale how given.
25. How, when the value exceeds $300.
26. Sale may be adjourned.
27. Re-sale to be made in case.
28. Return of the execution—Liability for fraud.
29. Proceeds of sale, how disposed of.

SECTION
30. Proceeds of sale, when liable to two or more creditors.
31. " " " there have been successive attachments.
32. " " " equity of redemption is sold.
33. Terms for years, when to be levied on as real estate
34, 35. Execution suspended by a prior attachment.
36. Shares in incorporated companies, may be taken in execution.
37, 38. Proceedings in such case.
39. Cashier, &c. to make known the shares held by the debtor:
40. And to give new certificates to the purchaser.
41. Purchaser entitled to dividends after the attachment.
42. Executions against corporations, how levied.
43. Alias execution when a levy is not effectual.
44, 45. Imprisonment, for what amount of debt allowed.
46. No female to be imprisoned for debt, except, &c.
47. Forms of executions to be varied, &c.
48. Case of pauper imprisoned on execution.
49, 50, 51. How to be supported.
52, 53. Demand, on whom and when it may be made.
54, 55. Demand, when debtor is surrendered by his bail.
56. When and how long bail to continue liable for support of prisoner.
57. When liability of creditor commences
58. Creditor may discharge such debtor.
59. The goods and estate of the debtor to continue liable.
60. Debtor liable for all sums paid for his support.
61. Debtors having prison limits, not to be considered paupers.
62. " to be confined if they need support.
63. Debtor how to obtain the liberty of the prison limits—Sheriff, &c. not liable for an escape in certain cases.
64. Debtor not to have prison limits after 90 days.
65. Sufficiency of the sureties, how determined.
66. Bond, how disposed of.
67. No action upon it after one year.
68. Execution, for what sum to issue.
69. Surrender of the debtor to discharge bond, except, &c.
70. He may give bond anew.
71. Action of debt, for any escape since, &c. abolished.
72. Action on the case allowed.
73. Penalty for detaining money collected.
74. Executions may be set off.
75. Proceedings for that purpose.
76. Such set-off, when to be allowed.

SECTION 1. Every judgment shall be entered, as of the last day of the term in which it is rendered, unless there is an express order of the court for the entry thereof on some other day; in which case the day shall be noted by the clerk on his docket.

Judgment, of what day to be entered. 8 Mass. 113. 11 Mass. 204. 16 Mass. 381.

SECT. 2. When the defendant is defaulted, in any stage of the proceedings, the court shall award such judgment for the plaintiff, as they shall, upon inquiry, find to be just and proper, unless the plaintiff or defendant shall move to have the damages assessed by a jury; in which case they shall be so assessed.

Judgment on default. 1784, 28, § 7.

SECT. 3. The court may, in all cases in which damages are demanded, refer the assessment thereof to a jury, although it be not moved for by either party.

Damages may be assessed by a jury after default.

SECT. 4. In actions upon promissory notes and other contracts, where the amount due appears to be undisputed, the debt or damages may be assessed and ascertained by the clerk, either under a general order of the court, or by a special reference of the case to him; and the judgment, in either case, shall be entered in the same form, as if it had been awarded by the court, on an assessment or computation made by themselves.

Or ascertained by the clerk.

SECT. 5. No execution shall be issued within twenty four hours after the entry of the judgment.

Execution not to issue within twenty four hours. 1783, 57, § 1. 1784, 28, § 15.

Nor after one year.
1783, 57, § 1.

SECT. 6. No original execution shall be issued, unless within one year after the party shall be entitled to sue out the same, and no alias, or other successive execution, shall be issued afterwards, unless each one be sued out within one year after the return day of that which preceded it, except as provided in the following section.

Unless after a surrender by bail.
5 Mass. 373.

SECT. 7. When a judgment debtor is surrendered by his bail, the creditor may sue out a new execution, within thirty days after the surrender, although more than one year should have elapsed after the return day of the next preceding execution.

Scire facias, or debt on judgment.
1783, 57, § 1.
1795, 61.

SECT. 8. If a judgment remains unsatisfied, after the expiration of the time for taking out execution thereon, the creditor may have a scire facias to obtain a new execution, or he may, at any time after the judgment, have an action of debt thereon.

Executions, when returnable.
1783, 57, § 1.

SECT. 9. All executions, issued by a justice of the peace, or by any police court or justices' court, shall be made returnable within sixty days from the date thereof; and all executions from the supreme judicial court shall be made returnable in six months from their date, and all executions from the court of common pleas, in three months from their date, unless in either case there shall be a regular term of the court, to commence within that time, in which case the execution shall be made returnable at such term.

Forms of executions, and alterations therein.

SECT. 10. The forms of executions shall be the same as have been heretofore established by law, and by the usage and practice of the courts; but alterations therein may, from time to time, be made, or allowed by the courts, when necessary to adapt them to changes in the law, or for other sufficient reasons.

— to be under the control of the supreme court

SECT. 11. All changes in the forms of executions shall be subject to the final control of the supreme judicial court, and the said court may, by general rules, regulate such changes in all the other courts of the state.

Creditor may direct the mode of service.
11 Mass. 317.

SECT. 12. When an execution is in the alternative, so that it may be lawfully served in either of two or more ways, the creditor or his attorney may require the officer to serve it, in either of those ways; and it shall be the duty of the officer to conform to such directions, if it is in his power to do so.

Case of the death, &c., of officer after beginning to serve an execution.
2 Pick. 276.

SECT. 13. When an officer shall have begun to serve an execution, and shall die, or be incapable of completing the service and return thereof, the same may be completed by any other officer, who might by law have served the execution, if originally delivered to him; and if the first officer shall not have made a certificate of his doings, the second officer shall certify whatever he shall find to have been done by the first, and shall add thereto a certificate of his own doings in completing the service.

Case of removal, &c., of the officer.
6 Mass. 20.
9 Mass. 393.

SECT. 14. When an officer has begun to serve an execution, he may complete the service and return thereof, although he shall have been removed from office, or although the service cannot be completed until after the return day.

Case of the death of either party.
9 Mass. 209.

SECT. 15. If either party shall die, after any real estate or any goods or chattels have been seized on execution, the service thereof may be completed, in like manner and with the same effect, as if both parties were still living, and the officer may appoint an appraiser, when necessary, for the deceased party.

SECT. 16. When the creditor shall direct an officer to levy his execution on real estate, the officer shall serve it accordingly, in the manner prescribed in the seventy third chapter. Execution levied on real estate.

SECT. 17. If the creditor shall direct the officer to levy his execution on the goods of the debtor, the officer shall serve it accordingly, in the manner hereinafter provided. — on personal estate. 7 Mass. 123.

SECT. 18. If, in any case, there is any reasonable doubt, as to the ownership of the goods, or as to their liability to be taken on the execution, the officer may require sufficient security, to indemnify him for taking them. Officer may demand security of the creditor.

SECT. 19. All chattels, real or personal, and all other goods, that are by the common law liable to be taken in execution, may be taken and sold thereon, except as is otherwise provided in this chapter. What goods are liable to execution. 3 Pick. 368. 7 Mass. 123. 17 Mass. 409.

SECT. 20. Current gold or silver coin may be taken in execution, and may be paid to the creditor as money collected. Current coin.

SECT. 21. Bank notes and all other bills or evidences of debt, issued by any monied corporation, and circulated as money, may be taken in execution, and may be paid to the creditor, at their par value, as money collected, if he will accept them, otherwise they shall be sold like other chattels. Bank notes. 3 Mass. 291. 9 Mass. 537. 7 Mass. 438. 1 Pick. 271. 4 N. Hamp. R. 198.

SECT. 22. The following articles shall be exempted from execution, to wit:

First. The necessary wearing apparel of the debtor, and of his wife and children; one bedstead, bed, and the necessary bedding for every two persons of the family; one iron stove, used for warming the dwelling house; and fuel, not exceeding the value of ten dollars, procured and designed for the use of the family: What goods are exempted. 3 Mass. 198. 15 Mass. 170. 1805, 100. 1813, 172. 1817, 108. 1832, 58.

Secondly. Other household furniture, necessary for the debtor and his family, not exceeding fifty dollars in value:

Thirdly. The bibles and school books used in the family:

Fourthly. One cow, six sheep, one swine, and two tons of hay; the six sheep not to exceed thirty dollars in value: 15 Mass. 205.

Fifthly. The tools and implements of the debtor, necessary for carrying on his trade or business, not exceeding fifty dollars in value: 2 Pick. 80. 10 Pick. 423. 13 Mass. 82.

Sixthly. The uniform of an officer, non-commissioned officer or private, in the militia, and the arms and accoutrements required by law to be kept by him: and 5 Mass. 313. 1809. 108, § 11.

Seventhly. Rights of burial, and tombs whilst in use as repositories for the dead. 1822, 93, § 8.

SECT. 23. When goods are seized on execution, they shall be safely kept by the officer, at the expense of the debtor, for the space of four days at the least, and they shall be sold by public auction, within fourteen days next after the seizure, except as hereinafter provided, unless the debtor shall, before such sale, redeem them by otherwise satisfying the execution. Goods, how sold on execution. 14 Mass. 473. 1783, 57, § 5.

SECT. 24. The officer shall give public notice of the time and place of the sale, by causing notifications thereof to be posted up, forty eight hours at least before the time of sale, in some public place in the town, where the sale is to be made, or by causing an advertisement of the time and place of sale to be published in some newspaper printed in the county, if any such newspaper is there printed. Notice of sale, how given. 1783, 57, § 5.

SECT. 25. If the value of the goods to be sold shall exceed three — how, when

the value exceeds $300.

hundred dollars, the officer shall, if requested by either party, give notice of the sale by advertisement in a newspaper, as provided in the preceding section; and the sale, in such case, may be made at any time after the expiration of four days, and within thirty days after the seizure on execution.

Sale may be adjourned, &c. 9 Mass. 265.

SECT. 26. If, at the time appointed for the sale, the officer shall deem it expedient, and for the interest of all persons concerned therein, to postpone the sale, for want of purchasers or for other sufficient cause, he may postpone it for any time not exceeding seven days, and so from time to time, for like good cause, until the sale shall be completed; giving notice of every such adjournment, by a public declaration thereof, at the time and place previously appointed for the sale.

Re-sale to be made in case. 7 Mass. 392.

SECT. 27. If the highest bidder for any article, at such a sale, shall refuse to take and pay for it, the officer shall sell the same again by auction, at the same time, or within ten days thereafter, giving notice of the second sale, and he shall account for what he shall receive on the second sale, and for any damages, that may be recovered of the first bidder, for a loss on the re-sale, as for so much received on the execution.

Return of the execution. Liability for fraud. 1783, 57, § 5.

SECT. 28. The officer, who shall make such sale on execution, shall, in his return of the execution, particularly describe the goods sold, and the sum for which each article was sold; and if he shall be guilty of any fraud in the sale, or in the return, he shall be liable, in an action on the case, at the suit of the party injured, for five times the amount of the actual damage sustained by reason of such fraud.

Proceeds of sale, how disposed of. 1783, 57, § 5.

SECT. 29. The money arising from the sale shall be applied to paying the charges, and satisfying the execution, and the officer shall return the residue, if any, to the debtor, on demand, or shall otherwise apply and pay over the same, as provided in the following sections.

— when liable to two or more creditors. 1804, 83, § 6. 1819, 87.

SECT. 30. If the goods sold on execution shall have been attached by any other creditor, or seized on any other execution, either by the same or by any other officer, or, if before the payment of such residue to the debtor, any other writ of attachment or execution against him shall be delivered to the officer who made the sale, the proceeds of the sale shall be applied to the discharge of the several judgments, in the order in which the respective writs of attachment or execution shall have been served, and the residue, if any shall be returned to the debtor.

— when there have been successive attachments. 1804, 83, § 6. 1819, 87.

SECT. 31. If an attachment or seizure on execution is made of a share in any incorporated company, or of any other property which may be attached without taking and keeping the exclusive possession thereof, and if the same property shall be subsequently attached or taken in execution, by any other officer, he shall give notice thereof to the officer who makes the sale under the first attachment or seizure, and if the latter shall, without such notice, pay to the debtor the balance of the proceeds of the sale, he shall not be liable therefor to the person claiming under such subsequent attachment or seizure.

— when equity of redemption is sold.

SECT 32. When the right of redeeming mortgaged real estate is sold on execution, the proceeds of the sale, after satisfying the

execution on which the sale is made, shall be applied and disposed of, in the same manner as is before provided in the case of the sale of goods. 1804, 83, § 6

SECT. 33. All terms for years, when the original lease was for one hundred years or more, and so long as fifty years or more of the term remain unexpired, shall be regarded as real estate, so far as concerns the levying of an execution thereon, and all other terms for years shall be seized and sold on execution, in the same manner as personal chattels. Terms for years, when to be levied on as real estate. 1834, 162, § 1.

SECT. 34. When any estate, either real or personal, is seized on execution, and the further service of the execution is suspended, by reason of any prior attachment on the same estate, the estate shall remain bound by such seizure, until it is set off or sold, in whole or in part, under the prior attachment, or until that attachment is dissolved. Execution suspended by a prior attachment.

SECT. 35. If the estate is set off or sold, in part, under the prior attachment, or if that attachment is dissolved, the estate, or such part thereof as remains undisposed of, shall continue bound for thirty days thereafter, by the seizure on the execution; and the service of the execution may be completed, in like manner as if the estate had been first seized thereon, at any time within the said thirty days although the return day of the execution may have passed. Same subject.

SECT. 36. Any share or interest of a stockholder in any bank, insurance company, or any other joint stock company, that is or may be incorporated under the authority of this Commonwealth, may be taken in execution and sold in the following manner. Shares in incorporated companies may be taken in execution. 1804, 83, § 1.

SECT. 37. If the property has not been attached in the same suit, the officer shall leave an attested copy of the execution with the clerk or treasurer, or cashier of the company, if there be any such officer, otherwise with any officer or person, who has at the time the custody of the books and papers of the corporation; and the property shall be considered as seized on execution, when the copy is so left. Proceedings in such case. 1804, 83, § 1.

SECT. 38. If the property is already attached in the same suit, the officer shall proceed in seizing and selling it on the execution, in the same manner as in the case of goods and chattels. Same subject. 1804, 83, § 3.

SECT. 39. The officer of the company, who is appointed to keep a record or account of the shares or interest of the stockholders therein, shall, upon the exhibiting to him of the execution, be bound to give a certificate of the number of shares or amount of the interest, held by the judgment debtor, in like manner and upon the like penalty, as is prescribed in the ninetieth chapter, upon the exhibiting to him of a writ of attachment. Cashier, &c. to make known the shares held by the debtor. 1804, 83, § 4.

SECT. 40. An attested copy of the execution and of the return thereon shall, within fourteen days after the sale, be left with the officer of the company, whose duty it may be to record transfers of shares; and the purchaser shall thereupon be entitled to a certificate or certificates of the shares bought by him, upon paying the fees therefor, and for recording the transfer. And to give new certificates to the purchaser. 1804, 83, § 1.

SECT. 41. If the shares or interest of the judgment debtor had been attached in the suit, in which the execution issued, the purchaser shall be entitled to all the dividends, which shall have accrued after the attachment. Purchaser entitled to dividends after the attachment. 1804, 83, § 1.

Executions against corporations how levied.

SECT. 42. Executions against corporations, when levied upon any corporate property, shall be levied in the same manner as other executions are levied, except in the cases provided for in the thirty sixth and forty fourth chapters.

Alias execution, when a levy is not effectual. 1835, 145.

SECT. 43. If any execution shall be returned satisfied, in whole or in part, by the sale of any property which shall afterwards appear not to have belonged to the judgment debtor, or not to have been liable to such execution, and if any damages shall be recovered against the judgment creditor or the officer who served the execution, on account of the seizure and sale of the property, the creditor may have a writ of scire facias on his judgment, and shall thereupon be entitled to a new execution for the sum then remaining justly and equitably due to him.

Imprisonment, for what amount of debt allowed. 1830, 131, § 1.

SECT. 44. No person shall be imprisoned on mesne process or execution, for any debt less than five dollars, founded on any contract heretofore made, nor for any debt less than ten dollars, founded on any contract made after the first day of July in the year one thousand eight hundred and thirty one.

Same subject. 5 Greenl. 291. 1816, 111. 1830, 131, § 3.

SECT. 45. If a new judgment be rendered on a former judgment, which was founded on any such debt, as is described in the preceding or the following section, the debtor shall not be imprisoned on the execution issued on the new judgment.

No female to be imprisoned for debt, except, &c. 1830, 131, § 2.

SECT. 46. No female shall be imprisoned on mesne process or execution, for any debt founded on any contract made after the first day of July in the year one thousand eight hundred and thirty one, except on a judgment against her as a trustee, for the sum of ten dollars or more, in a process of foreign attachment.

Forms of executions to be varied, &c. 1830, 131, § 3.

SECT. 47. The forms of the executions, in the cases specified in the three preceding sections, shall be so varied as to adapt them to the rules therein prescribed.

Case of pauper imprisoned on execution. 1821, 22, § 1.

SECT. 48. When any person, who is confined in close prison on execution, shall claim support as a pauper, the jailer shall furnish his support at the rate of one dollar and twenty five cents a week, to be paid by the creditor so long as the debtor is kept in close confinement on that execution, and no town shall be liable for the support of any such prisoner.

How to be supported. 1821, 22, § 2.

SECT. 49. The creditor in such case, if required by the jailer, shall either advance from time to time the money necessary for the support of the debtor, or give to the jailer satisfactory security for the payment thereof.

Same subject. 7 Pick. 216. 1821, 22, § 2.

SECT. 50. If the creditor shall neglect, for twenty four hours after he is required by the jailer to give such security, or to advance the money for the support of the debtor, the jailer may discharge him.

Same subject. 1821, 22, § 2.

SECT. 51. If the creditor shall undertake to advance money for the support of the debtor, instead of giving security therefor, the jailer may discharge the debtor, whenever all the money advanced shall have been expended, at the rate of one dollar and twenty five cents a week.

Demand, on whom and when it may be made. 7 Pick. 216.

SECT. 52. The demand of the security, or of the advance of money before mentioned, may be made by the jailer of the officer who commits the debtor, at the time of the commitment, or it may be

made then, or at any time afterwards, of the creditor, or his attorney in the suit. 3 Pick. 259. 1821, 22, § 2.

SECT. 53. The jailer shall not be entitled, in any case, to demand such security or advance of money, unless the debtor shall have first claimed support as a pauper. Same subject.

SECT. 54. When any debtor, who is surrendered by his bail and committed to close prison, shall claim support as a pauper, the jailer may require the creditor, or his attorney in the suit, to give security or advance the money for the support of the debtor, in like manner as if the commitment had been made by an officer, and if the creditor shall neglect so to do, for twenty four hours after being so required, the jailer may discharge the debtor. — when debtor is surrendered by his bail. 1824, 124.

SECT. 55. The jailer, in such a case, may, at the time of the surrender, demand of the bail the advance of money for the support of the debtor, or security therefor, instead of demanding the same of the creditor; and if the bail shall neglect, for twenty four hours after such demand, to give such security, or to advance the money for the support of the debtor, the jailer may discharge him, and the bail and the debtor shall thereupon continue liable to the creditor, in all respects, as if the surrender had not been made. Same subject. 1824, 124.

SECT. 56. The bail, if such demand shall be made of him, shall be liable for the support of the debtor, until the expiration of seven days after he shall have given notice of the surrender to the creditor, or his attorney in the suit. When and how long, bail to continue liable for support of prisoner. 1824, 124.

SECT. 57. The creditor shall be liable for the support of the debtor, after the expiration of the said seven days; and if he shall neglect to advance the money, or give security therefor, as before provided, at or before the expiration of the said seven days, the jailer may discharge the debtor. When liability of creditor commences. 1824, 124.

SECT. 58. If any debtor, committed on execution, shall claim support as a pauper, the creditor may at any time thereafter order him to be discharged. Creditor may discharge such debtor. 1819, 94, § 2.

SECT. 59. When a debtor is so discharged by order of the creditor, or when he is discharged by the jailer for want of security, or of an advance of money, as before provided, the debt and costs, together with all sums paid by the creditor for his support in prison, shall remain a legal claim against his goods and estate, and may be enforced accordingly, in the same manner as if he had not been committed on the execution; but his body shall never thereafter be liable to arrest or imprisonment for the same debt, costs, or charges. The goods and estate of the debtor to continue liable. 1819, 94, § 2. 1821, 22, § 3.

SECT. 60. If the debtor shall undertake to satisfy the execution, he shall not be entitled to his discharge therefrom, until he has paid all the charges for his support in prison, both upon the arrest on the original writ, and upon the commitment in execution, in addition to the sum due on the execution, and the costs and charges thereon. Debtor liable for all sums paid for his support. 1821, 22, § 4.

SECT. 61. No person, who is committed on execution, shall be considered a pauper, nor be entitled to support as such from any town, nor from the creditor or jailer, so long as he is at large within the limits of the prison, upon security given for that purpose. Debtors, having prison limits, not to be considered paupers 1819, 94, § 1.

SECT. 62. If it shall be found necessary to support, as a pauper, any such debtor who has the liberty of the prison limits, the jailer shall confine him in close prison, notwithstanding his bond for the lib- — to be confined, if they need support.

erty of the yard, and shall support him in prison, at the charge of the creditor, as before provided.

Debtor, how to obtain the liberty of the prison limits. 8 Mass. 373. 1784, 41, § 8. 1811, 167, § 1. 1822, 86, § 4. 2 N. Hamp. R. 152.

SECT. 63. Any person, who is committed on execution in any civil action, or for any debt whatever, may have the liberty of the prison limits, upon giving to the creditor a bond, with a surety or sureties, having sufficient within the county, in a penalty not less than double the sum for which he is committed, including the charges of commitment, with condition that he will not go without the exterior limits of the prison, until he shall be lawfully discharged, and that if he shall not be lawfully discharged, within ninety days from the day of his commitment on the execution, he will surrender himself to the jailer, to be held in close confinement; provided, that no sheriff or jailer shall be liable, for an escape, to the creditor to whom such bond shall be given, in consequence of allowing to a prisoner the liberty aforesaid, although from accident, mistake, or misapprehension, such bond may be taken in a less penalty than is above provided.

Sheriff, &c. not liable for an escape in certain cases. 15 Mass. 276. 1819, 24.

No debtor to have prison limits after 90 days. 1822, 86, § 3.

SECT. 64. No person, committed on execution, shall be entitled to the liberty of the prison limits, at any time after the expiration of ninety days from the day of his commitment; and if he shall not, within that time, be lawfully discharged, he shall be thereafter kept in close confinement, as long as he is detained by force of the same execution.

Sufficiency of the sureties, how determined. 1784, 41, § 8.

SECT. 65. If the creditor shall not admit the sufficiency of the surety or sureties, the jailer may require that the question be submitted to two justices of the peace and of the quorum, of the county, and if the sureties are approved by them, they shall be deemed sufficient.

Bond, how disposed of. 1784, 41, § 8.

SECT. 66. If the creditor shall not be present, or if he shall refuse to accept the bond, it shall be left for him with the jailer.

No action upon it after one year. 1811 85, § 3.

SECT. 67. No action shall be brought for any breach of the condition of the bond, unless within one year after the time of the breach.

Execution, for what sum to issue. 1823, 67.

SECT. 68. If, in any action on the bond, it shall appear that the condition thereof has been broken, execution shall not issue for the whole penalty, but only for so much thereof as may be justly and equitably due; provided, that it shall never be for less than the amount due on the original judgment, with interest thereon, and with all the lawful costs and charges that shall have arisen after the issuing of the original execution.

Surrender of the debtor to discharge bond, except, &c. 1811, 167, § 3.

SECT. 69. Any debtor, who shall give bond for the liberty of the prison limits, may, at any time, surrender himself, or be surrendered by his surety, to the jailer, and the bond shall thereupon become void, as to all breaches of the condition, that may happen after that time.

He may give bond anew. 1811, 167, § 3.

SECT. 70. After such a surrender, the prisoner may give bond and have the liberty of the prison limits anew, in like manner as before, until the expiration of the ninety days from the time of his original commitment under the execution.

Action of debt for any escape, since, &c. abolished. 1833, 134.

SECT. 71. No action of debt shall be maintained against any officer, for any escape committed after the nineteenth day of March, in the year one thousand eight hundred and thirty three, by any prisoner, arrested or committed on execution in any civil action, whether the escape be negligent or voluntary on the part of the officer.

SECT. 72. The creditor, in such case, may have an action on the case against the officer, to recover such damages as he shall have suffered by the escape, and he may also have his remedy against the original debtor by a scire facias, or an action of debt on the judgment. Action on the case allowed.

SECT. 73. If any officer shall unreasonably neglect to pay any money, collected by him on execution, when demanded by the creditor therein, he shall forfeit and pay to the creditor, five times the lawful interest of the money, from the time of the demand until it is paid. Penalty for detaining money collected. 7 Mass. 464. 1783, 44, § 3.

SECT. 74. Executions between the same parties may be set off, one against another, if required by either party, in the manner prescribed in the following sections. Executions may be set off. 1810, 84. 1830, 124.

SECT. 75. When one of the executions is delivered to an officer to be served, the person who is the debtor therein may deliver his execution to the same officer, whether the second execution is directed to the same or to any other officer, and the officer shall apply it, as far as it will extend, to the satisfaction of the first execution; and the balance due on the larger execution may be collected and paid, in the same manner as if there had been no set-off. Proceedings for that purpose. 1830, 124.

SECT. 76. Such set-off shall not be allowed in the following cases: Such set-off, when to be allowed.

First. When the creditor in one of the executions is not, in the same capacity and trust, the debtor in the other:

Secondly. When the sum, due on the first execution shall have been lawfully, and in good faith, assigned to another person, before the creditor in the second execution became entitled to the sum due thereon:

Thirdly. When there are several creditors in one execution, and the sum due on the other is due from a part of them only:

Fourthly. When there are several debtors in one execution, and the sum due on the other is due to a part of them only:

Fifthly. Nor shall it be allowed as to so much of the first execution, as may be due to the attorney in that suit, for his fees and disbursements therein.

CHAPTER 98.

OF THE RELIEF OF POOR PRISONERS COMMITTED ON EXECUTION FOR DEBT.

SECTION

1. Proceedings for relief of poor debtors.
2. Notice to the creditor.
3. How to be served.
4. Debtor how to be examined before two justices.
5. Time and place of examination.
6. Mode of examination.
7. Creditor may propose interrogatories.
8. Justices, if satisfied, shall administer the oath.
9. Form of the oath.
10. Form of certificate to be made by the justices.
11. Debtor to be thereupon discharged.
12. Justices, if not satisfied, shall remand the prisoner.

SECTION
13. Debtor may swear, though disqualified as a witness.
14. Not to be imprisoned for same debt, unless, &c.
15. Penalty for swearing falsely.
16. His estate to remain liable for the debt.
17. Poor debtors may be sworn, &c. in the original suit, if, &c.
18. Proceedings for that purpose.
19. The like, in suits before a justice of the peace.
20. Debtor to be examined as before directed.
21. The court if satisfied, shall administer the oath.
22. If debtor is confined, he may be brought into court for examination.
23. Case of a debtor secreting his goods.
24. Penalty on any person aiding him therein.
25. Creditor may attach, &c. although debtor is imprisoned.
26. Proceedings in such case.
27. Charges of fraud against debtor may be tried by jury.
28. " shall be in writing and sworn to.
29. Notice thereof to the debtor.
30. Proceedings on the trial thereof.
31. What acts of fraud may be charged.
32. Appeal from justice, &c. to C. C. P.
33. Recognizance on allowance of appeal.
34. Appeal from C. C. P. to supreme court.
35. Trial to be by jury, unless, &c.
36. Penalty on conviction.
37. Debtor may be bailed during the proceedings.
38. " to be examined as heretofore, if such charges are not made.
39. Notice by debtor, when it may be repeated.
40. Provisions, as to such charges of fraud, to be prospective.
41. Fees for services under this chapter.

Proceedings for relief of poor debtors. 1787, 29, § 1. 1789, 9.

SECTION 1. When any person, who is committed on execution in any civil action, or for any debt, shall represent to the jailer that he is unable to pay the debt, for which he is imprisoned, and is desirous to take the benefit of the law for the relief of poor debtors, the jailer shall make known the same to some justice of the peace for the county.

Notice to the creditor. 1787, 29, § 1.

SECT. 2. The justice shall thereupon appoint a time and place for the examination of the debtor, and shall give notice thereof to the creditor, by a citation under his hand, which citation shall be served and returned by any officer, who is qualified to serve any civil process, between the same parties.

How to be served. 10 Pick. 434. 1787, 29, § 1. 1819, 130

SECT. 3. The citation shall be served on the creditor by reading it to him, or by leaving an attested copy thereof at his usual place of abode, thirty days at least before the time appointed for the examination, if the creditor be alive and within the state; otherwise, it shall be served, in like manner, on the person who was his attorney in the suit, and if there is no such attorney within the state, the copy shall be left with the clerk of the court, or justice of the peace, by whom the execution was issued, thirty days at least before the time appointed for the examination.

Debtor to be examined before two justices. 1787, 29, § 2.

SECT. 4. The examination shall be had before any two justices of the peace for the county, each of whom shall be of the quorum, and disinterested, and not related either to the creditor or the debtor.

Time and place of examination. 14 Mass. 368. 1817, 186, § 1. 1826, 9, § 2.

SECT. 5. It may be had at any place, within the limits of the prison, that shall be appointed for that purpose, and may be adjourned by the justices, or by either of them, in the absence of the other, to any other place within the same limits, and to any other time, that shall be found convenient.

Mode of examination. 1817, 186, § 1.

SECT. 6. The justices shall examine the debtor on his oath, concerning his estate and effects and the disposal thereof, and his ability to pay the debt, for which he is committed, and they shall

also hear any other legal and pertinent evidence, that may be produced by the debtor or the creditor.

SECT. 7. The creditor may, upon such examination, propose to the debtor any interrogatories, pertinent to the inquiry, and they shall, if required by the creditor, be proposed and answered in writing, and the answers shall be signed and sworn to by the debtor; and the creditor may have a copy of the interrogatories and answers, certified by the justices, upon paying therefor the same fees as for a deposition of the same length.

Creditor may propose interrogatories. 1817, 186, § 1.

SECT. 8. If, upon such examination, the justices shall be satisfied of the truth of the facts, set forth in the oath to be taken by the debtor, and in the certificate to be made by the justices, as required in the two following sections, and if it shall appear to them, that the debtor is entitled to his discharge, under the provisions of this chapter, they shall administer to him the oath hereafter mentioned.

Justices, if satisfied, shall administer the oath. 1787, 29, § 2. 1817, 186, § 1.

SECT. 9. The oath shall be as follows, to wit:

I, (here repeat the name) do solemnly swear that I have not any estate real or personal, to the amount of twenty dollars, except the goods and chattels, which are by law exempted from being taken in execution, and that I have not any other estate, now conveyed or concealed, or in any way disposed of, with design to secure the same to my use, or to defraud my creditors. So help me God.

Form of the oath. 1787, 29, § 2. 1816, 55.

SECT. 10. After administering the oath, the justices shall make a certificate thereof under their hands, in substance as follows, to wit: S——, ss. To C. D., keeper of the jail at ———

We the subscribers, two of the justices of the peace for the said county of S——, and each of us of the quorum, hereby certify, that A. B., a poor prisoner, confined upon execution for debt in the jail at ——— aforesaid, has caused E. F., the creditor, at whose suit he is confined, to be notified according to law, of his desire to take the benefit of the law for the relief of poor debtors; that in our opinion the said A. B. has not any estate, real or personal, to the amount of twenty dollars, except the goods and chattels, which are by law exempted from being taken in execution, and has not any other estate, now conveyed or concealed, or in any way disposed of, with design to secure the same to his own use, or to defraud his creditors. And we have, after due examination of the said A. B. administered to him the oath, prescribed by law to be taken by poor prisoners, who are committed on execution for debt. Witness our hands this day of in the year

Form of certificate to be made by the justices. 1787, 29, § 2. 1816, 55.

SECT. 11. The jailer, upon receiving the said certificate, shall forthwith discharge the prisoner, so far as he is held in prison on the execution therein mentioned.

Debtor to be thereupon discharged. 1787, 29, § 2.

SECT. 12. If the justices, after the examination of the prisoner, shall not be satisfied that he is entitled to his discharge, he shall be remanded to the prison; but this shall not prevent him from obtaining his discharge upon new notice to the creditor, and new proceedings before the same or some other justices, in the manner before provided.

Justices, if not satisfied, shall remand the prisoner. 1787, 29, § 3.

SECT. 13. No debtor shall be precluded from taking the oath prescribed in this chapter, by reason of his having been convicted of any offence, or otherwise disqualified to testify as a witness in judicial proceedings.

Debtor may swear, though disqualified as a witness. 1804, 67.

Not to be imprisoned for same debt, unless, &c. 1 Pick. 497.

SECT. 14. The debtor, after being so discharged, shall be forever exempted from arrest or imprisonment for the same debt, unless he shall be convicted of having wilfully sworn falsely, upon his examination before the two justices, or in taking the oath before prescribed.

Penalty for swearing falsely. 1787, 29, § 3.

SECT. 15. If he shall be so convicted, he shall have no benefit from the proceedings had under this chapter, and he shall be liable to be punished for perjury.

His estate to remain liable for the debt. 1787, 29, § 4.

SECT. 16. The judgment against any prisoner, who is discharged as aforesaid, shall remain in full force against any estate, which may then, or at any time afterwards, belong to him; and the creditor may take out a new execution, against the goods and estate of the debtor, in like manner as if he had not been committed on the execution.

Poor debtor may be sworn, &c., in the original suit, if, &c. 1834, 167, § 1.

SECT. 17. In any action founded on a debt or demand, arising on any contract made after the fourth day of July, in the year one thousand eight hundred and thirty four, if it shall appear upon a trial, or by the acknowledgment of the defendant, or otherwise, that he is indebted to the plaintiff in the sum of ten dollars or upwards, exclusive of costs, the court, in which the action is pending, may, in the manner and upon the terms provided in the following sections, administer to the defendant the oath prescribed for poor debtors.

Proceedings for that purpose. 1834, 167, § 2.

SECT. 18. The defendant shall give notice in writing, seven days at least before the time when the writ is returnable, to the plaintiff or his attorney, of his intention to take the said oath, which notice shall be delivered to the plaintiff or his attorney, if within the state, and if not, it shall be filed in the clerk's office.

The like, in suits before a justice of the peace. 1834, 167, § 2.

SECT. 19. If the action is brought before a justice of the peace, or before any police court, the notice shall, four days at least before the time when the writ is returnable, be delivered to the plaintiff or his attorney, if within the state, and if not, it shall be filed with the justice or in the police court, and the further proceedings shall be conducted in the same manner as if the action were brought in the court of common pleas.

Debtor to be examined as before directed. 1834, 167, § 2.

SECT. 20. If it shall appear to the court that notice has been given as before provided, the defendant may, at his request, be examined on his oath, concerning his estate and effects, and the disposal thereof, and his ability to pay the debt, and other evidence pertinent to the inquiry may be produced by either party; and the examination shall be conducted, in all respects, in the manner prescribed for the examination of a poor debtor before two justices of the peace, and the cause may be continued for that purpose

The court, if satisfied, shall administer the oath. 1834, 167, § 2.

SECT. 21. If, upon such examination, it shall appear to the court that the facts, set forth in the oath to be taken by the defendant, are true, the court shall administer the said oath to the defendant, and he shall thereupon be forever exempted from imprisonment for the same debt, and no execution, that shall be issued on the judgment rendered in that action, shall run against his body, unless he shall be convicted of having wilfully sworn falsely, upon his examination before the court, or in taking the said oath, in which case, he shall have no benefit from the said proceedings, and shall be liable to be punished for perjury.

If debtor is confined, he

SECT. 22. When the defendant shall be in close confinement, at

the time the writ is returnable, if it shall appear to the court that notice has been given, as before required, of his intention to take the oath, the court, or the magistrate, may order the jailer to bring the defendant into court. In such case the defendant shall be in the custody of the jailer, and if he shall have been in confinement for any cause, except upon the writ aforesaid, he shall, after his examination, be remanded, and if not in confinement for any other case, he shall be remanded or discharged, according to the decision of the court or magistrate, upon his application to take the oath.

may be brought into court for examination.

SECT. 23. If any debtor, after being committed on execution, shall have any goods, effects or credits, to the value of forty dollars, which are not exempted from being taken in execution, but which cannot be attached by the ordinary process of law, and shall secrete, spend or use the same, or as much thereof, as is equal to the sum for which he is committed, without having offered to the creditor or his attorney the said goods, effects or credits, in whole or part payment of the debt, for which he is committed, he shall not be discharged under the provisions of this chapter.

Case of a debtor secreting his goods. 1788, 16, § 3.

SECT. 24. If any person shall knowingly assist the debtor, in secreting, spending or using any such goods, effects or credits, without offering the same to the creditor or his attorney, as provided in the preceding section, he shall pay to the creditor double the value of all such goods, effects and credits, to be recovered in an action on the case.

Penalty on any person aiding him therein. 1788, 16, § 3.

SECT. 25. Any judgment creditor may bring an action of debt on the judgment, and therein attach the goods, effects and credits of the debtor, in the hands of any other person, in the manner provided in the one hundred and ninth chapter, although the debtor should then be imprisoned on execution upon the same judgment; provided, that the creditor in such case shall, within seven days after the service of the writ on the supposed trustee, discharge the body of the debtor from imprisonment under his execution, and if he shall fail so to do, his writ of foreign attachment shall be abated, and the debtor shall recover double costs in that suit.

Creditor may attach, &c., although debtor is imprisoned. 14 Mass. 157. 1788, 16, § 4.

SECT. 26. Such discharge shall be given by an order, in writing, to the jailer, stating the reason or occasion of giving it, and it shall not discharge, or in any way effect [*affect*] the original judgment.

Proceedings in such case. 1788, 16, § 4.

SECT. 27. When any debtor shall give notice of his intention to take the oath, before provided for poor debtors, the creditor may allege against him certain specific charges of fraud, upon which either party may have a trial by jury, in the manner hereinafter provided.

Charges of fraud against debtor may be tried by jury.

SECT. 28. The said charges shall be fully, plainly, and formally set forth in writing, which shall be signed by the creditor, and he shall make oath that he believes the charges to be true.

— shall be in writing, and sworn to.

SECT. 29. Notice of the said charges shall be given to the debtor, by any officer qualified to serve any civil process between the same parties, by delivering to the debtor an attested copy thereof, or by leaving such copy at his place of abode; and if the examination is to be had before two justices of the peace, the said service shall be made ten days at least before the time appointed for the examination; and if it is to be had before the court or justice of the peace, before

Notice thereof to the debtor.

whom the original action is brought, the service shall be made at or before the time when the writ is returnable

Proceedings on the trial thereof.

SECT. 30. The charges so made, being filed and presented by the creditor, at the time appointed for the examination of the debtor, shall be considered in the nature of a suit at law, to which the debtor may plead that he is not guilty; and the justices or the court may thereupon hear and determine the same, and they may adjourn the trial from time to time, and shall have the same powers, with respect to amendments, costs, and all other incidents of the suit, as justices of the peace or other courts have, in civil actions; and witnesses, when duly summoned, shall attend, as in civil cases.

What acts of fraud may be charged.

SECT. 31. The only fraudulent acts, which the creditor shall be allowed to charge, as aforesaid, shall be substantially the following, or some of them, to wit:

First, that since the debt was contracted, or the cause of action accrued, the debtor has fraudulently conveyed, or concealed, or otherwise disposed of, his estate or some part thereof, with design to secure the same to his own use, or to defraud his creditors: or

Secondly, that since the debt was contracted, or the cause of action accrued, he has hazarded and paid money or other property, to the value of one hundred dollars or more, in some kind of gaming prohibited by the statutes of the Commonwealth: or

Thirdly, that he has wilfully expended his goods and estate, or some part thereof, for the purpose of enabling himself to swear that he has not any estate to the amount of twenty dollars, except such as is exempted from being taken in execution: or

Fourthly, if the action was founded on contract, that the debtor contracted the debt, with an intention not to pay the same:

And the creditor shall not, upon such a trial, give evidence of any charges of fraud, that shall not be contained in his statement, made and filed as before provided, nor of any supposed fraudulent acts of the debtor, committed more than three years before the commencement of the creditor's original action.

Appeal from justice, &c., to C. C. Pleas.

SECT. 32. When the said trial is had, and judgment thereon is rendered, before two justices of the peace, upon the application of a debtor committed on execution, or when the trial and judgment is had, in the course of the original suit, before a justice of the peace or a police court, either party may appeal therefrom to the court of common pleas, in like manner as from the judgment of a justice of the peace in civil actions.

Recognizance on allowance of appeal.

SECT. 33. If the creditor appeals, he shall, before the allowance thereof, recognize with sufficient surety or sureties, to enter and prosecute his appeal with effect, and to produce, at the court appealed to, a copy of all the proceedings upon his said charges, and to pay all costs, if the judgment shall not be reversed; and if the debtor appeals, he shall recognize in like manner, and with the like condition, and with the further condition, that if the final judgment shall be against him, he will surrender himself to be taken in execution, and abide the order of the court, or pay to the creditor the whole amount of the original judgment against him.

Appeal from C. C. Pleas, to supreme court.

SECT. 34. When the said trial is had, and judgment thereon is rendered, in the course of the original suit, in the court of common

pleas, either party may appeal therefrom to the supreme judicial court, as in civil actions, and the appellant shall, before the allowance of his appeal, recognize in the manner provided in the preceding section.

Trial to be by jury, unless, &c.

SECT. 35. Upon every such trial, in the court of common pleas or supreme judicial court, the issue joined on any charge of fraud shall be tried by a jury, unless the court shall, with the consent of both parties, hear and determine it without a jury.

Penalty on conviction.

SECT. 36. If the debtor, after being personally served with a copy of the said charges against him, shall voluntarily make default, at the time appointed for the trial, or if upon a final trial, he shall be found guilty of any of the said charges, he shall have no benefit from the proceedings under this chapter, and he shall moreover be sentenced, by the justices or the court, before which the trial is had, to confinement at hard labor, in the county jail or house of correction, for a term not exceeding one year, according to the circumstances of the case.

Debtor may be bailed during the proceedings.

SECT. 37. If the debtor, at the time of any such trial, is imprisoned either on mesne process or execution, for the original debt, the justices or the court, before which the trial is had, may admit him to bail, from time to time, during the continuance of the proceedings; and if he shall make default, or neglect to appear before them, at any time when lawfully required, the said justices or court shall issue a writ for his arrest, to abide their order and sentence in the case.

— to be examined as heretofore, if such charges are not made.

SECT. 38. Nothing contained in the eleven preceding sections shall prevent the examination of the debtor on his own oath, in the manner provided in the former part of this chapter, but he shall, in addition to such examination, be subjected to a trial, as before provided, upon the said charges of fraud, when so filed and presented against him.

Notice by debtor, when it may be repeated.

SECT. 39. When any debtor, who is committed on execution, shall have given to the creditor notice of his intention to take the benefit of the law for the relief of poor debtors, no new notice of the same intention shall be given, until the expiration of thirty days from the service of the former notice, unless said former notice shall be ineffectual from some defect therein, or in the service thereof.

Provisions, as to such charges of fraud, to be prospective.

SECT. 40. The provisions contained in the thirteen preceding sections shall take effect when this chapter shall go into operation, and shall apply only to contracts made, or to other causes of action, accrued after that day.

Fees for services under this chapter. 1817, 186, § 1.

SECT. 41. The fees, for the services to be performed when a prisoner is discharged by two justices of the peace, shall be as follows:

To the justice who issues the citation to the creditor, fifty cents:

To each of the justices before whom the examination is had, one dollar for every day employed therein, and the same travelling fees as to [*for*] taking depositions: and

To the officer who serves the citation, the same fees as for serving a summons in civil actions:

All which fees shall be paid by the debtor.

CHAPTER 99.

OF WRITS OF REVIEW.

SECTION
1. Review of civil actions.
2. Writ, how sued out.
3. Form of the writ.
4. Plaintiff to produce copies of the case.
5. Writ, how to be served.
6. Defendant's property may be attached thereon.
7. Cause to be tried on the former issue, if any.
8. Otherwise, upon pleadings on the review.
9. Proceedings upon the trial
10. Judgment thereon.
11. Provision as to costs.
12. Effect of the review upon the execution, &c.
13. Judgment, when for a reduced sum.
14. When for a greater sum.
15. Case of replevin, and of set-off.
16. One of two or more defts. may review.
17. Review allowed as of right, only to a defendant, who was out of the Commonwealth, when, &c.
18. " may be granted on petition, in such case.
19. Supreme court may grant it in other cases.
20. Petition, when to be filed.
21. " when it may be filed, and where the trial shall be had.
22, 23. Execution may be stayed.
24. Costs on petition for review.
25. Trial to be had in sup. court, in case, &c.
26. C. C. P. may grant reviews, in case, &c.
27. Also of judgments before justices.
28. Proceedings in such cases, in C. C. P.
29. Writs of review and petitions, when to be indorsed.

Review of civil actions.

SECTION 1. Final judgments in civil actions may be re-examined and tried anew, upon writs of review, under the circumstances and in the manner provided in this chapter, and not otherwise.

Writ, how sued out.

SECT. 2. The writ of review shall be sued out of the clerk's office of the court in which the action is to be tried, and shall be in the form heretofore used, except as is hereinafter provided.

Form of the writ.

SECT. 3. It shall not be necessary, in the writ of review, to recite at length the declaration and other proceedings in the original suit, but the writ may be substantially as follows, to wit: to summon A. to answer to B. "in the review of an action brought by the said A. against the said B., in a plea of the case on promises," or "in a plea of debt," or "of trespass," or "of covenant," as the case may be; "in which action the said A. by the consideration of the justices of our court of common pleas, begun and held at C. within and for our said county of M. on the — day of —, recovered judgment against the said B. for the sum of one hundred dollars debt," or "damages, and ten dollars costs, which said judgment the said B. says is wrong and erroneous;" or the former judgment may be briefly described in any other manner that shall be deemed sufficiently certain, according to such rules as the courts shall prescribe.

Plaintiff to produce copies of the case. 1786, 66, § 1.

SECT. 4. The plaintiff in review shall produce and file in court certified copies of the writ and judgment, and of all proceedings in the former suit, and the originals or copies of all depositions and other papers, used and filed therein.

Writ, how to be served. 1786, 66, § 5.

SECT. 5. The writ of review shall be served in the same manner as an original writ, except, that when the defendant in review is not an inhabitant of the state, or not found therein, the writ may be

served on the person who appeared as his attorney in the original suit, and the court in such case may continue the cause, as they shall think necessary or proper, to enable the absent party to appear and answer to the writ of review.

Defendant's property may be attached thereon.

SECT. 6. If the writ of review is sued out by the original plaintiff, he may cause the defendant's goods and estate to be attached, in the same manner as might have been done in the original action, and for this purpose the writ of review may be so framed, as to require an attachment in the common form, and also to require that the defendant be summoned.

Cause to be tried on the former issue, if any. 1 Mass. 242. 5 Mass. 488. 1786, 66. 1817, 63.

SECT. 7. If an issue of fact was joined in the original suit, the cause shall be tried on the review upon the same issue, except, that the court may, upon the review, allow amendments of the original declaration and other pleadings, in the same manner as might have been done in the original suit, and if any other or different issue shall be joined in consequence of such amendment, the cause shall be tried upon such new issue.

Otherwise, upon pleadings on the review.

SECT. 8. If the former judgment was rendered upon the default of the defendant or otherwise, without the joining of an issue, the parties shall plead upon the review, in like manner as they might and ought to have done in the original suit, and the cause shall be tried upon any issue of fact or law that shall be joined upon such pleadings, in like manner as if it had been joined in the original suit.

Proceedings upon the trial. 1786, 66.

SECT. 9. Upon the trial of any issue of fact upon such review, each party may produce any legal evidence, whether produced in the former suit or not, and the cause shall proceed and be disposed of upon the verdict, if any, or upon nonsuit or default, or otherwise, in like manner as if it were an original suit.

Judgment thereon. 1786, 66.

SECT. 10. Judgment shall be given upon the review, as the merits of the case upon law and the evidence shall appear to require, although it should be more advantageous than the original judgment was to the defendant in review, in like manner as if both parties had brought their several writs of review.

Provision as to costs. 4 Mass. 614. 1786, 66. 1788, 11.

SECT. 11. The party prevailing in the review shall recover his costs of that suit, but this shall not prevent the court, when granting a review upon petition, from imposing on the petitioner such terms as to costs, as they shall think reasonable.

Effect of the review upon the execution, &c.

SECT. 12. The execution of the original judgment shall not be stayed or superseded by the writ of review, unless by the order of the court, and upon security given by the plaintiff in review, as hereinafter provided; and no attachment made, or bail taken, in the original suit, shall be held liable to satisfy the judgment that shall be rendered on the review.

Judgment, when for a reduced sum.

SECT. 13. If any sum is recovered by the plaintiff in the original suit for debt or damages, and that sum is reduced on the review, the original defendant shall have judgment and execution for the difference with his costs, or if the former judgment has not been satisfied, one judgment may be set off against the other, and an execution shall issue for the balance.

When for a greater sum.

SECT. 14. If the original plaintiff shall recover on the review a greater sum for debt or damages than was awarded to him in the original suit, he shall have judgment and execution for the excess.

Case of replevin, and of set-off.

SECT. 15. In actions of replevin, and in all actions in which a set-off is filed, the original defendant shall be considered, as to every thing contained in this chapter, like a plaintiff in other actions, so far as it respects the damages, if any, that may be awarded to him, either in the original suit or upon the review.

One of two or more defendants may review. 1786, 66.

SECT. 16. If judgment is recovered against several defendants in the original action, any one or more of them may review the cause, in like manner as if he or they had been the only defendants therein; and if the sum, recovered in the original suit for debt or damages, shall be increased or reduced on the review, the court shall take such order respecting the further proceedings, as shall be necessary to carry into effect the two judgments, according to the rights of all the different parties.

Review allowed as of right only to a defendant, who was out of the Commonwealth, when, &c. 1797, 50. 1817, 85.

SECT. 17. When judgment is rendered, as provided in the ninety second chapter, upon the default of a defendant, who is out of the state, he may, at any time within one year after the judgment, sue out, as of right, and without any petition therefor, a writ of review thereof, in the manner provided in this chapter, which writ shall be sued out of the court in which the judgment was rendered; and no writ of review shall be issued in any other case, unless it shall be allowed upon petition, as hereinafter provided.

— may be granted on petition in such case. 1820, 53.

SECT. 18. If a review, in the case mentioned in the preceding section, is not prosecuted as of right, the supreme judicial court may, on the petition of the defendant, grant a review thereof on such terms as they shall think reasonable; provided such petition be filed within one year after the defendant shall first have notice of the judgment.

Supreme court may grant it in other cases. 1786, 11, § 1. 1791, 17, § 1.

SECT. 19. When judgment is rendered, either by the supreme judicial court or the court of common pleas, in any civil action, whether upon verdict, or report of referees, or upon a nonsuit or default, or in any other manner, the supreme judicial court may grant a review thereof, if they shall think it reasonable, upon such terms and conditions as they shall think fit, provided the petition for such review be filed within the time prescribed in the following section.

Petition, when to be filed. 1791, 17. 1820, 53.

SECT. 20. If the judgment complained of was rendered in the absence of the petitioner, and without his knowledge, the petition for review may be filed at any time within one year after he shall first have notice of the judgment, otherwise it shall be filed within one year after the judgment was rendered.

— where it may be filed, and where the trial shall be had.

SECT. 21. The petition may be filed before the court, when sitting in any county, and the order of notice issued thereon may be made returnable in such county as the court shall in the same order direct; but the review, if granted, shall be had in the county in which the former judgment was rendered, or in the county in which the original action would have been tried, if it had been carried to the supreme judicial court by appeal or otherwise.

Execution may be stayed. 1788, 11, § 5.

SECT. 22. If the execution in the original action has not been satisfied, the court may order a stay or supersedeas thereof, upon security, given by the petitioner to the adverse party, to pay whatever shall appear to be due to him, after the final judgment in the review, or upon such other terms, as the court shall think just and reasonable.

Same subject.

SECT. 23. Such stay or supersedeas of the execution may be ordered, upon the petition of the plaintiff in review, as well when a

writ of review is demandable of right, as when it is grantable at the discretion of the court.

SECT. 24. If, upon any such petition, the review shall not be granted, the court may award to the respondent his reasonable costs for appearing and answering thereto. Costs on petition for review. 1788, 11.

SECT. 25. When a review is granted by the supreme judicial court, the trial thereon shall be had in the same court, in like manner as if the action had been carried there by appeal or otherwise, in the usual course. Trial to be had in supreme court, in case, &c. 1788, 11.

SECT. 26. The court of common pleas may, concurrently with the supreme judicial court, grant reviews of judgments rendered in the court of common pleas, in all cases in which a review can be granted, according to the provisions of this chapter. C. C. P. may grant reviews in case &c. 1820, 79, § 7.

SECT. 27. The court of common pleas may also grant a review of any judgment, rendered before a justice of the peace, in any cases in which a review might be granted, if the judgment had been rendered in the court of common pleas. Also, of judgments before justices. 1791, 17, § 3.

SECT. 28. The proceedings in the court of common pleas, on the petition for such review, and upon the trial thereof, if the review be granted, shall be conducted in the same manner as is prescribed in the like case, in the supreme judicial court. Proceedings in C. C. P. in such cases.

SECT. 29. All writs of review, and all petitions for reviews, both in the supreme judicial court and in the court of common pleas, shall be indorsed in the same manner, as is prescribed with respect to original writs, and all the regulations, concerning the indorsement of original writs contained in the ninetieth chapter, shall apply in like manner to the indorsement of writs of review and petitions for review. Writs of review and petitions, when to be indorsed.

CHAPTER 100.

GENERAL PROVISIONS CONCERNING ACTIONS.

SECTION
1. If defendant pleads nonjoinder, new defendants may be brought in.
2, 3. Proceedings for that purpose.
4. Proceedings when a new defendant cannot be served, &c.
5. Of the judgment and execution, and of attachment and bail.
6. Plaintiff may discontinue as to part of the defendants, in case, &c.
7. Discontinuance as to one defendant, and trial as to another.
8. Judgment on forfeiture of a penalty.
9. For what sum execution shall issue and how determined.
10. Scire facias to recover further damages.
11. Proceedings thereon.
12. Plaintiff may sue for damages, instead of penalty.
13. Actions on bonds, &c., to be regulated by supreme court.
14. Plea of payment or tender after the day, &c.
15. Tender after action brought.
16. How to be made and pleaded.
17. Proceedings when the tender is accepted.
18. Matter in one plea no evidence on another.
19. Plea of justification in slander, not proof of malice.
20. Mode of referring to statutes in pleading.

SECTION
21. No writ, &c. to be abated for circumstantial errors.
22, 23. Courts may allow amendments.
24. No judgment to be reversed for defect that is amendable.
25. Action may be brought by successor of an officer.
26. The general issue may be pleaded by certain officers, &c.
27. And by defendants in penal actions.
28. Writs of scire facias to be indorsed.

If deft. pleads nonjoinder, new defts. may be be brought in. 1833, 194.

SECTION 1. When the defendant, in any action founded on contract, shall plead in abatement the nonjoinder of any other person as defendant, the court may, at any time before issue joined on such plea, allow the plaintiff, on such terms as they shall prescribe, to amend his declaration, by inserting therein the name of any other person as defendant, and declaring against him jointly with the original defendant.

Proceedings for that purpose. 1833, 194.

SECT. 2. The plaintiff may thereupon take out a new writ, in such form as the court shall prescribe, which shall be in the nature of an original writ of capias and attachment, or of summons, and shall require the new defendant to appear and answer as a defendant in the original action, and upon such writ, the new defendant's body may be arrested, or his goods or estate may be attached, as upon an original writ, and the writ shall be returnable at such time as the court shall order, and shall be served fourteen days at least before the return day.

Same subject. 1833, 194.

SECT. 3. Upon the return of such new writ, every person, named therein as a defendant, shall be bound to appear and answer with the other defendants, in the same manner as if they had all been originally made parties in the first writ.

Proceedings when a new deft. cannot be served &c.

SECT. 4. If a legal service cannot be made on any such new defendant, by reason of his absence from the state, or for other sufficient cause, the action may nevertheless proceed against all the defendants, who are duly served with process, either on the original or the new writ, in like manner as is provided in the ninety second chapter, when one of several original defendants is not duly served with process.

Of the judgment and execution, and of attachment and bail. 1833, 194.

SECT. 5. Judgment shall be rendered, and execution shall issue, in every such case, for either party, in the same manner as if the original writ had been issued against all the defendants; and the plaintiff shall have the same benefit of any attachment made, or bail taken, upon each of the said writs, as if the same had been made or taken in the usual manner upon the original writ.

Plff. may discontinue as to part of the defts. in case, &c.

SECT. 6. When any action, founded on contract, is brought against several persons, and any of the defendants shall be defaulted, or shall confess the action, the plaintiff may amend his declaration, and take judgment against those defendants, in like manner as if they had been sued alone, and the action may be discontinued against the other defendants, who shall be entitled to costs against the plaintiff, as in case of a nonsuit; provided, that no such discontinuance and amendment shall be allowed, without notice to the defendants who have been defaulted, that they may appear and object thereto, if they shall see fit.

Discontinuance as to one deft.

SECT. 7. When any action, founded on contract, is brought against several persons, the plaintiff may be allowed, at any time be-

fore the cause is argued to the jury, and if there is no such argument, at any time before it is committed to the jury by the court, to discontinue, as against any of the defendants, upon payment of costs to them, as in case of a nonsuit, and on such other terms as the court shall direct; and the plaintiff may thereupon amend his declaration, and proceed against the other defendants, in like manner as if the action had been originally brought against them alone; and the defendants, against whom the cause has been discontinued, may be thereupon examined as witnesses for either party, if in other respects competent.

and trial as to another. 1834, 189.

SECT. 8. In all actions, brought for breach of the condition of a bond, or to recover a penalty for the non-performance of any covenant, contract, or agreement, when it shall appear by verdict, default, confession, or otherwise, that the condition is broken, or the penalty forfeited, judgment shall be entered in the common form for the penal sum, but no execution shall issue thereon, except as is provided in the following sections.

Judgment on forfeiture of a penalty. 1785, 22, § 1. 1798, 77, § 2.

SECT. 9. The court shall award an execution, in such case, for so much of the penal sum, as shall then be due and payable in equity and good conscience, for the breach of the condition, or other non-performance of the contract; which sum shall be ascertained and determined by the court, unless either party shall move to have it assessed by a jury, or unless the court shall think proper to have the question so decided; in which cases, the sum so due shall be assessed by a jury.

For what sum execution shall issue, and how determined. 1785, 22, § 1. 1798, 77, § 2.

SECT. 10. If any further sum shall afterwards become due on such bond or other contract, the plaintiff or his executors or administrators may have a scire facias on the judgment, from the court in which it was rendered, against the original defendant, or his executors, administrators, heirs, devisees, or assigns, as the case may be, suggesting such further breaches of the contract as shall have occurred, and summoning the adverse party to show cause why execution should not be awarded upon the judgment, for the damages caused by such further breaches.

Scire facias to recover further damages. 1798, 77, § 6.

SECT. 11. The sum due in such suit shall be assessed and determined in the same manner as in the original suit, and execution shall be awarded accordingly, and the like proceedings may be repeated, upon occasion of any further breaches of the same contract, as often as they shall occur, until the whole of the penalty is exhausted.

Proceedings thereon. 1798, 77, § 6.

SECT. 12. Nothing herein contained shall prevent any person from bringing an action, for the breach of any covenant or other contract, instead of suing for the penalty by which the performance of the covenant or contract may have been secured.

Plaintiff may sue for damages, instead of penalty. 1798, 77, § 6.

SECT. 13. The supreme judicial court may, by general rules, prescribe the mode of declaring in actions on bonds, or other contracts with penalties, and may allow or require the breaches, for which the action is brought, to be set forth in the declaration, or suggested on the record, in such cases, as shall be found expedient and useful.

Actions on bonds, &c. to be regulated by supreme court.

SECT. 14. The payment or tender of payment of the whole sum, due on any contract for the payment of money, although made after the money has become due and payable, may be pleaded to an action subsequently brought, in like manner and with the like effect, as if

Plea of payment or tender after the day, &c. 1830, 85 & 128.

such payment or tender had been made at the time prescribed in the contract.

Tender after action brought. 1830, 85, § 2.

SECT. 15. A tender may also be made, after an action is brought on such contract, of the whole sum due thereon, with the legal costs of suit incurred up to that time, provided it be made four days at least before the return day of the original writ.

How to be made and pleaded. 1830, 85, § 2.

SECT. 16. The tender last mentioned may be made either to the plaintiff, or to his attorney in the suit, and if not accepted, the defendant may plead it, in like manner as if it had been made before the commencement of the action, bringing into court the amount so tendered for costs, as well as for the debt or damages.

Proceedings when the tender is accepted. 1830, 85, § 2.

SECT. 17. If such tender is accepted, the plaintiff or his attorney shall, at the request of the defendant, sign a certificate or notice thereof to the officer, who has the writ, and shall deliver it to the defendant; and if any further costs shall be incurred, for any service made by the officer, after the tender and before he receives notice thereof, the defendant shall pay the same to the officer, or the tender shall be invalid.

Matter in one plea, no evidence on another. 5 S. & R. 411. 2 N Hamp. R. 89.

SECT. 18. When a defendant shall plead two or more pleas in his defence, no averment, confession, or acknowledgment, contained in any one of such pleas, shall be used or taken as evidence against him, on the trial of any issue joined on any other of the same pleas.

Plea of justification in slander, no proof of malice. 15 Mass. 48. 1 Pick. 1. 1826, 107, § 2.

SECT. 19. If the defendant, in any action for slander, or for publishing a libel, shall plead in his justification that the words spoken or published were true, such plea, though not maintained by the evidence, shall not in any case be of itself proof of the malice alleged in the declaration.

Mode of referring to statutes in pleading.

SECT. 20. Whenever, in any declaration or other pleading, it shall be necessary to mention or refer to any general statute, it may be done by specifying the chapter, containing the provision referred to, or by mentioning in general terms the subject of the statute, or by referring to it in some other manner that shall indicate, with sufficient certainty, the statute that is intended.

No writ, &c. to be abated for circumstantial errors. 1784, 28, § 14.

SECT. 21. No writ, process, declaration, or other proceeding in the courts, or course of justice, shall be abated, arrested, quashed or reversed, for any circumstantial errors or mistakes, when the person and case may be rightly understood by the court, nor through defect or want of form only.

Courts may allow amendments. 1784, 28, § 14.

SECT. 22. The court, in which any civil action is pending, may, at any time before judgment rendered therein, allow amendments, either in form or substance, of any process, pleading, or proceeding in such action, on such terms as shall be just and reasonable.

Same subject. 10 Mass. 251. 1784, 28, § 14.

SECT. 23. After judgment rendered in any civil action, any defects or imperfections in matter of form, found in the record or proceedings in the action, may be rectified and amended by the court in which the judgment is rendered, or by the court to which it shall be removed by writ of error, if substantial justice requires it, and if the amendment is in affirmance of the judgment.

No judgment to be reversed for defect that is amendable. 1784, 28, § 14.

SECT. 24. No judgment shall be reversed for any defect or imperfection in matter of form, which might by law have been amended.

Action may be brought by suc-

SECT. 25. When a bond, note, or other security or contract, is made to or with the treasurer of the Commonwealth, or of any county, city, town, parish, or other corporation, or to or with any other

public officer, an action thereon may be commenced and prosecuted by any successor in such office, in like manner as it might have been by the person with whom the contract was made.

cessor of an officer. 1797, 14.

SECT. 26. In every action brought against any justice of the peace, sheriff, coroner, town officer, or any other public officer, civil or military, for or concerning any act done by him, by virtue of his office, or in the execution thereof, or brought against any other person, for anything done by him, by command of such officer, or in his aid or assistance in the execution of his office, the defendant may plead the general issue, and give in evidence any special matter, which might have been pleaded in bar of the action; provided, that he shall file in the cause, within such time as the court shall direct, a brief statement of such special matter of defence.

The general issue may be pleaded by certain officers, &c. 1792, 41.

SECT. 27. In every suit or action, brought to recover any forfeiture, the defendant may plead the general issue, and give in evidence any special matter, which might have been pleaded in bar of the suit.

And by defendants in penal actions. 1788, 12, § 3.

SECT. 28. Every writ of scire facias, sued out by any private person, on a judgment or recognizance, shall be indorsed in the same manner as is prescribed with respect to original writs, and all the regulations, concerning the indorsement of original writs, contained in the ninetieth chapter, shall apply in like manner to the indorsement of such writs of scire facias.

Writs of scire facias to be indorsed. 1833, 50, § 2.

TITLE III.

Of actions relating to real property.

CHAPTER 101. Of the writ of entry for the recovery of the freehold.
CHAPTER 102. Of the writ of dower.
CHAPTER 103. Of the partition of lands owned by several persons.
CHAPTER 104. Of forcible entry and detainer.
CHAPTER 105. Of waste, and trespass on real estate.
CHAPTER 106. Of actions for private nuisances.
CHAPTER 107. Of suits to foreclose and redeem mortgages,
CHAPTER 108. Of informations of intrusion, and informations in the nature of inquests of office.

CHAPTER 101.

OF THE WRIT OF ENTRY FOR THE RECOVERY OF THE FREEHOLD.

SECTION
1. Action to recover the freehold.
2, 3. Declaration therein.
4. What shall be proof of the seizin alleged.

SECTION
5. Descent or discontinuance not to bar right of entry.
6, 7. What shall constitute a disseizin.
8, 9. Proceedings on the trial.
10. Joint tenants, &c. how they may sue.
11. Demandant may recover a part, &c.
12. Case of the death of either party.
13. Pleadings in the action.
14. Damages may be recovered in same action.
15. " may be assessed by the same jury, unless, &c.
16, 17, 18. Rents and profits, how to be estimated.
19, 20. Tenants, in what cases to be allowed for improvements.
21, 22. Proceedings for obtaining such allowance.
23. The amount may be assessed by the jury on the trial.
24. Or may be assessed afterwards.
25. How to be assessed upon default, &c.
26. May be assessed by arbitrators, &c.
27. Allowance for improvements, how limited.
28. Improvements and damages to be set off.
29. Demandant to pay for improvements, &c.
30. Further provisions as to set-off.
31. Demandant's remedy against other trespassers.
32. Value of the premises without the improvements, may be ascertained, &c.
33. How to be estimated and assessed.
34. Demandant may relinquish his estate, &c.
35. His attorney may enter such relinquishment.
36. Time may be allowed for making the election.
37. Tenant to hold the estate, upon paying the value assessed.
38. To be paid in three annual instalments.
39. Upon failure to pay, demandant entitled, &c.
40. Execution in such case may be issued after the year.
41, 42, 43. Remedy for tenant in case of a subsequent eviction.
44. Death of either party after judgment in writ of entry.
45. Writ of seizin in such a case, in whose name to issue.
46. Upon a recovery by tenant for life, reversioner, &c. to be liable.
47, 48, 49. Proceedings in such case.
50. This chapter not to apply to a mortgagee.
51. Certain real actions abolished.
52. Saving for minors and others.

Action to recover the freehold.

SECTION 1. All estates of freehold, whether in fee simple, fee tail, or for life, may be recovered by a writ of entry upon disseizin, unless when a different action is prescribed by law.

Declaration therein.

SECT. 2. The demandant shall declare on his own seizin within twenty years then last past, without specifying any particular day, and shall allege a disseizin by the tenant, but need not aver a taking of the profits.

Same subject.

SECT. 3. He shall then set forth the estate, that he claims in the premises, whether it is in fee simple, fee tail, or for life, and if the latter, whether it is for his own life, or for the life of another, but he shall not be required, in any case, to set forth the original gift, devise, or other conveyance or title, by which he claims the estate.

What shall be proof of the seizin alleged

SECT. 4. The demandant shall not be required to prove an actual entry under his title, but if he shall prove that he is entitled to such an estate, as he claims in the premises, whether as heir, devisee, purchaser or otherwise, and also that he has a right of entry therein, this shall be deemed sufficient proof of his seizin, as alleged in the declaration, and no such action shall be maintained, unless the demandant has, at the time of commencing the same, a right of entry into the premises.

Descent or discontinuance not to bar right of entry.

SECT. 5. No descent or discontinuance, which may hereafter occur, shall take away or defeat any right of entry or of action, for the recovery of real estate.

What shall con-

SECT. 6. Every person, who is in possession of the premises

demanded in such writ of entry, claiming any estate of freehold therein, may be considered as a disseizor, for the purpose of trying the right, whatever may have been the manner of his original entry on the premises.

stitute a disseizin.

SECT. 7. If the person in possession shall have actually ousted the demandant, or withheld from him the possession of the premises, he may, at the election of the demandant, be considered as a disseizor, for the purpose of trying the right, although he should claim therein an estate less than a freehold.

Same subject.

SECT. 8. Every suit, upon such writ of entry, shall be prosecuted and conducted in the same manner as if the demandant had, at the time of commencing the action, made an actual entry on the demanded premises, and had been immediately ousted by the tenant; so that on a trial upon the general issue, if the demandant shall prove that he is entitled to such estate in the premises, as is set forth in the declaration, and that he had a right of entry on the day, when the action was commenced, he shall recover the premises, unless the tenant shall prove a better title in himself.

Proceedings on the trial.

SECT. 9. The law and the practice, relating to the pleadings and evidence, in the said action or writ of entry on disseizin, as now recognized and established, shall continue in force, except so far as they are altered by the provisions of this chapter.

Same subject.

SECT. 10. Persons, claiming the same premises as joint tenants, tenants in common, or coparceners, may all join or any two or more of them may join, in a suit for the recovery thereof, or any one may sue alone for his particular share.

Joint tenants, &c. how they may sue.
1785, 62, § 3.
1828, 137, § 3.

SECT. 11. The demandant may, in all cases, recover any specific part of the premises, or any undivided portion thereof, to which he shall prove a sufficient title, though such part or portion is less than is demanded in the writ.

Demandant may recover a part, &c.
2 Pick. 387.
3 Pick. 52.
9 Pick. 259.

SECT. 12. In case of the death of any party, either demandant or tenant, the action may proceed by or against the survivors, and the heirs of the deceased party, in the manner prescribed in the ninety third chapter.

Case of death of either party.

SECT. 13. The pleas of nontenure, disclaimer, several tenancy, and sole tenancy, may be pleaded either in bar or in abatement, but no costs shall be allowed to the party pleading the same, except such as shall accrue after the filing of the plea.

Pleadings in the action
1828, 137, § 4.
2 N. Hamp. R. 10. 442.
14 Mass. 239.
13 Mass. 439.

SECT. 14. If the demandant recovers judgment in a writ of entry, he shall also be entitled to recover in the same action damages against the tenant, for the rents and profits of the premises, from the time when the demandant's title accrued, subject to the limitations hereinafter contained, and he shall also recover damages for any destruction or waste of the buildings or other property, for which the tenant is by law chargeable.

Damages may be recovered in the same action.

SECT. 15. If any issue of fact is tried in the case, and found for the demandant, the jury shall at the same time assess his damages, unless it shall be otherwise ordered by the court, as hereinafter provided.

—may be assessed by the same jury, unless, &c.

SECT. 16. The rents and profits, for which the tenant shall be liable, shall be the clear annual value of the premises, for the time during which he was in possession thereof, after deducting all lawful

Rents and profits, how to be estimated.

taxes and assessments on the premises, that shall have been paid by the tenant, and all the necessary and ordinary expenses of cultivating the land, or of otherwise collecting the rents, profits or income of the premises.

Same subject. 12 Mass. 314. 4 Cowen, 168.

SECT. 17. In estimating the rents and profits, the value of the use, by the tenant, of any improvements, whether made by himself or those under whom he claims, shall not be computed nor allowed to the demandant.

Same subject.

SECT. 18. The tenant shall never be liable for the rents and profits for any longer term than six years, nor for any waste or other damage committed before that time, unless when the rents and profits are allowed, by way of set-off to his claim for improvements, as hereinafter provided.

Tenants, in what cases to be allowed for improvements. 12 Mass. 329. 15 Mass. 291. 13 Mass. 241. 5 Pick. 140. 1807, 75, § 3. 1819, 144.

SECT. 19. If the demanded premises have been actually held and possessed by the tenant in the action, and by those under whom he claims, for six years next before the commencement of the action, he shall, in case of judgment against him, be entitled to compensation in the manner hereinafter provided, for the value of any buildings or improvements made or erected on the premises by himself, or by any person under whom he claims.

Same subject. 6 Mass. 303. 2 Gallis. 105.

SECT. 20. The tenant shall also be entitled to the like compensation, although the premises should not have been so held so long as six years, provided he holds them under a title which he had reason to believe good.

Proceedings for obtaining such allowance. 1807, 75, § 3.

SECT. 21. When the tenant in the action claims allowance for any such improvements, he shall enter on the record a suggestion of his claim, with a request that the value of the improvements may be ascertained and allowed to him, in case judgment shall be rendered for the demandant.

Same subject.

SECT. 22. The suggestion shall be entered at the same term with the plea, if any, made by the tenant, unless the court shall, for sufficient reasons, allow it to be made afterwards, and if judgment is rendered for the demandant, on default or otherwise, without any plea, the suggestion shall be entered at such seasonable stage of the proceedings, as the court shall prescribe or allow.

The amount may be assessed by the jury on the trial.

SECT. 23. If any issue of fact is tried in the case and found for the demandant, the jury shall at the same time ascertain and determine the sum to be allowed to the tenant for such improvements, unless it shall be otherwise ordered by the court, as provided in the following section.

Or may be assessed afterwards.

SECT. 24. If it shall appear to the court, on the motion of either party, that it would be more convenient to postpone the assessment of the sums due respectively to the demandant for the rents and profits or other damages, or to the tenant for improvements, until after the trial of the title and a verdict thereon, the court may make an order for that purpose, at any time before the verdict on the title is recorded.

How to be assessed upon default, &c.

SECT. 25. If the assessment of the sums due to either party is so postponed, or if there is no issue of fact tried in the cause, and judgment is to be rendered for the demandant on demurrer, default or otherwise, the said sums shall be assessed by the court, unless either party shall move to have them assessed by a jury, or unless the court

shall think proper to have them so assessed, in which cases a jury shall be empannelled to assess the same.

SECT. 26. The sums due for rents and profits, or other damages, and for improvements, may in all cases be assessed by arbitrators or assessors, appointed by the court with the consent of the parties. May be assessed by arbitrators, &c.

SECT. 27. The sum to be allowed for improvements shall never exceed the amount actually expended by the tenant and those under whom he claims, nor shall it exceed the amount to which the value of the premises is actually increased thereby at the time of the assessment. Allowance for improvements, how limited.

SECT. 28. In all cases, when any sum is allowed to the tenant for improvements, it shall be set off against the sum found due from him for rents and profits and other damages, and if there is a balance due from him, the demandant shall have judgment and execution therefor, as well as for his seizin of the demanded premises. Improvements and damages to be set off.

SECT. 29. If there is any sum due to the tenant for improvements, after deducting the rents and profits, and other damages for which he may be found chargeable, the demandant shall pay the same before taking out his execution for seizin of the premises, and the money may be paid in such case to the tenant himself, or to the clerk of the court for his use; and the demandant shall not be entitled to recover against the tenant, or any person claiming under him, any rents and profits that shall accrue after the judgment, and before he shall have paid the sum so due to the tenant. Demandant to pay for improvements, &c.

SECT. 30. If the sum, found due to the tenant for improvements, exceed the sum due from him for the rents and profits accrued within the six years, he shall be chargeable with the rents and profits accrued before that time, so far as may be necessary to balance his claim for improvements, but in such case he shall not be liable to repay the excess, if any, of the rents and profits beyond the value of the improvements. Further provisions as to set-off.

SECT. 31. Nothing contained in this chapter shall prevent the demandant from maintaining an action of trespass for mesne profits, or for damage done to the premises, against any person, except the tenant in the writ of entry, who may have had possession of the premises, or may be otherwise liable to such action. Demandant's remedy against other trespassers.

SECT. 32. When the tenant in the action shall claim allowance for improvements, as before provided, the demandant may, by a like entry on the record, require that the value of his estate in the demanded premises, without the improvements, shall also be ascertained and determined. Value of the premises without the improvements, may be ascertained, &c. 1807, 75, § 3.

SECT. 33. The value of the premises in such case shall be estimated, as it would have been at the time of the inquiry, if no such buildings or improvements had been made or erected on the premises by the tenant, or by any person under whom he claims, and this sum shall be ascertained and determined, either by the court or jury, or by arbitrators or assessors, in the same manner as is provided for assessing the sums due for rents and profits, and for improvements. How to be estimated and assessed. 1807, 75, § 3.

SECT. 34. The demandant in such case, if judgment is rendered for him, may, at any time during the same term, enter on the record his election to relinquish his estate in the premises to the tenant, at the price or value thereof, so ascertained and determined. Demandant may relinquish his estate, &c. 1807, 75, § 3.

His attorney may enter such relinquishment.

SECT. 35. Such entry, if made by the demandant's attorney in the cause, shall have the same effect as if made by himself.

Time may be allowed for making the election.

SECT. 36. If the demandant shall require further time to make his election, as to relinquishing the premises, the court may, on his motion, suspend the entry of the judgment, and continue the cause, but without any further costs for the demandant.

Tenant to hold the estate, upon paying the value assessed. 1807, 75, § 3.

SECT. 37. If the demandant shall relinquish the premises, as before provided, the tenant shall thenceforth hold all the estate that the demandant had therein at the commencement of the action, provided that he shall pay therefor the said estimated price or value thereof, in the manner following.

To be paid in three annual instalments. 1809, 84.

SECT. 38. The said price shall be paid in three equal instalments, with interest annually, the first instalment to be paid on or before the expiration of one year from the time when the demandant's election to relinquish the premises shall be entered on the record, the second instalment to be paid on or before the expiration of two years from the time before mentioned, and the third instalment to be paid on or before the expiration of three years from the same time.

Upon failure to pay, demandant entitled, &c. 1809, 84.

SECT. 39. The said sums shall be paid to the demandant, or to the clerk of the court for his use, and if the tenant shall fail to make either of the said payments, within the times before limited therefor, respectively, the demandant shall be entitled forthwith to take out his writ of seizin on the judgment recovered by him, and shall take and hold the premises, without allowance for any improvements that may have been made thereon.

Execution in such case may be issued after the year

SECT. 40. The expiration of a year after the judgment shall not prevent the issuing of the execution or writ of seizin, in the case mentioned in the preceding section, but it may be taken out, at any time within three months after such default of payment on the part of the tenant.

Remedy for tenant in case of a subsequent eviction. 1807, 75, § 3.

SECT. 41. If the tenant or his heirs or assigns shall, after the premises are so relinquished to him, be evicted thereof, by force of any better title than that of the original demandant, the person so evicted may recover from such demandant or his executors or administrators, heirs or devisees, as the case may be, the amount so paid for the premises, as so much money had and received by such demandant in his life time, for the use of the plaintiff, with lawful interest therefor, from the time of such payment.

Same subject. 1807, 75, § 3.

SECT. 42. If the tenant, or the person holding under him, when impleaded in such second action for the recovery of the premises, shall give notice thereof to the person, who is so liable to refund the purchase money, and shall permit such person to defend the action, the judgment, if rendered against the tenant in the action, shall be conclusive as to his right to recover the amount so paid for the premises.

Same subject.

SECT. 43. If the person impleaded does not give such notice to the other party, and permit him to defend the suit, the latter shall be permitted, in the suit afterwards brought against him for the price paid for the premises, to deny the title upon which the second recovery was had, and the party so evicted shall not recover the said price, unless he shall prove that he was evicted by force of a better title than that of the original demandant.

SECT. 44. If, after judgment is rendered for the demandant, in a writ of entry, either party die before the writ of seizin is executed, or before the case is otherwise settled, according to the foregoing provisions, any money payable by the tenant may be paid by him or his executors or administrators, or by any person who is entitled to the estate under him, to the demandant or his executors or administrators, in like manner and with the like effect, as if both parties were living; and any money payable by the demandant may be paid by him or his executors or administrators, or by any person who is entitled to the estate under him, to the tenant or his executors or administrators, in like manner and with the like effect, as if both parties were living.

Death of either party after judgment in writ of entry. 1809, 84.

SECT. 45. The writ of seizin, if issuable in any such case, shall be issued in the name of the original demandant against the original tenant, although either or both of them be dead, and when executed, it shall enure to the benefit of the demandant, or whoever is then entitled to the premises under him, in like manner as if it had been executed on the day when the judgment was rendered.

Writ of seizin, in whose name to issue in such case.

SECT. 46. If the demandant in a writ of entry shall claim an estate for life only in the premises, and if he shall pay any sum allowed to the tenant for improvements, he or his executors or administrators, at the determination of his estate, shall be entitled to receive of the remainder-man or reversioner the value of the said improvements, as they then exist, and shall have a lien therefor on the premises, in like manner as if they had been mortgaged for the payment thereof, and may keep possession thereof accordingly, until the sum be paid.

Upon a recovery by tenant for life, reversioner, &c., to be liable.

SECT. 47. If the amount, so due from the remainder-man or reversioner, shall not be agreed on by the parties, it may be ascertained and determined, as is provided for the redemption of a mortgage, upon a bill in equity, to be brought by the remainder-man or reversioner as mortgagor; and the like proceedings shall be had, as are prescribed in that case, for ascertaining the sum due for redemption of the premises, and for the recovery thereof by the remainder-man or reversioner.

Proceedings in such case.

SECT. 48. The remainder-man or reversioner, or those claiming under him, shall not, in such case, be limited to the three years prescribed for the redemption of a mortgage, but they shall not, in any case, be entitled to recover from the adverse party any balance in money, although the rents and profits of the premises, which accrued after the determination of the estate for life, exceed the amount due for the improvements.

Same subject.

SECT. 49. The remainder-man or reversioner, and those claiming under him, shall, in such case, be considered as disseized at the time of the determination of the life estate, so far as to bar their bill in equity, and all other remedy by action or by entry, for the recovery of the premises, after the expiration of the time prescribed for the limitation of the right of entry and of action, in cases of disseizin.

Same subject.

SECT. 50. Nothing contained in this chapter, concerning the rents and profits to be recovered in a writ of entry, or the allowance for improvements made on the demanded premises, or concerning the estimated value of the premises without the improvements, shall extend or apply to any action, brought by a mortgagee or his heirs or

This chapter not to apply to a mortgagee. 1807, 75, § 3.

assigns against a mortgagor or his heirs or assigns, for the recovery of the mortgaged premises.

Certain real actions abolished.

SECT. 51. All writs of right, and of formedon, and all writs of entry, except that which is allowed and provided for in this chapter, shall be abolished from and after the thirty first day of December, in the year one thousand eight hundred and thirty nine, except as is provided in the following section.

Saving for minors and others.

SECT. 52. If any person, who, on the said thirty first day of December, shall be entitled to maintain any of the said actions, which are to be abolished after that day, shall then be within the age of twenty one years, a married woman, insane, imprisoned, or without the limits of the United States, the action may be brought at any time within five years after the disability shall cease, or after the death of the person so disabled; provided, that no such action shall be maintained, after it would have been barred by the statutes of limitation, in force at and immediately before the time when this chapter shall take effect.

CHAPTER 102.

OF THE WRIT OF DOWER.

SECTION
1. Dower may be recovered by action.
2. Must be previously demanded.
3. Damages may be recovered.
4. Action to be brought against the tenant of the freehold.—Damages.
5. Damages may be recovered against a prior tenant, in case, &c.
6. Writ of seizin, how to be executed.
7. How, when the tenement cannot be divided.
8. Divorce, in what cases it entitles a woman to dower.
9. General provisions.

Dower may be recovered by action.
1 Pick. 189. 317.
1783, 40, § 1.

SECTION 1. When any woman is entitled to dower, and it is not set out to her by the heir or other tenant of the freehold, to her satisfaction, according to the true intendment of law, nor assigned to her by the judge of probate, she may recover the same by a writ of dower, in the manner hereinafter provided.

Must be previously demanded.
1783, 40, § 1.
1828, 137, § 5.

SECT. 2. She shall demand her dower of the person, who is seized of the freehold at the time of making the demand, and shall not commence her action therefor before the expiration of one month, nor after the expiration of one year from such demand; but this shall not preclude her from making a new demand and commencing an action thereon.

Damages may be recovered.
1783, 40, § 2.

SECT. 3. If the demandant recovers judgment for her dower, she shall also in the same suit recover damages for the detention thereof.

Action to be brought against tenant of the freehold. Damages.
12 Mass. 485.
16 Mass. 55.

SECT. 4. The action shall be brought against the person, who is tenant of the freehold at the time when it is commenced; but if he is not the same person of whom the demand was made, he shall be liable for damages only for the time during which he held the premises.

SECT. 5. In the case mentioned in the preceding section, if the demandant shall recover her dower and damages in the writ of dower, she may afterwards maintain an action on the case, against the prior tenant of the freehold, of whom her demand was made, for the rents and profits, for the time during which he held the premises, after the making of the demand.

Damages may be recovered against a prior tenant, in case, &c.

SECT. 6. If the demandant recovers judgment for her dower, a writ of seizin shall be issued, requiring the officer to cause the dower to be set out by three disinterested persons, to be appointed by the court, and they shall be sworn, before a justice of the peace, to set out the same equally and impartially, and as conveniently as may be, according to their best skill and judgment.

Writ of seizin, how to be executed. 1783, 40, § 2.

SECT. 7. When the estate, out of which the dower is to be assigned, consists of a mill, or other tenement, which cannot be divided without damage to the whole, the dower may be assigned of the rents, issues or profits thereof, to be had and received by the demandant, as tenant in common with the other owners of the estate.

How, when the tenement cannot be divided. 5 N. Hamp. R. 134. 13 Pick. 237. 1783, 40, § 2.

SECT. 8. Any woman who is divorced from her husband, for the cause of adultery committed by him, or on account of his being sentenced to confinement to hard labor, may recover her dower, in the manner provided in this chapter, against her former husband, or whoever shall be the tenant of the freehold.

Divorce, in what cases it entitles a woman to dower. 1785, 69, § 5.

SECT. 9. The provisions, contained in the sixtieth chapter, as to the lands, out of which dower may be claimed, the manner in which it may be barred, and the liability of the tenant for waste, shall be applied and enforced in all cases, when dower is demanded or recovered by force of this chapter.

General provisions.

CHAPTER 103.

OF THE PARTITION OF LANDS OWNED BY SEVERAL PERSONS.

SECTION
1. Partition, when and how to be made.
2. " upon petition by one or more.
3. " by one who has an estate in possession.
4. " by a tenant for years, in what cases.
5. Duration thereof.
6. Substance of the petition.
7. Filing, and notice thereof.
8. Notice how to be served.
9. Notice to persons absent or unknown.
10. Proceedings in such case.
11. Defects in service, how supplied.
12. Time to be allowed for absent parties.
13. Guardian to be appointed for an infant or insane person.
14. Pleadings
15. Replication by petitioner, in case, &c.
16. Proceedings thereon.
17. Costs of the trial of an issue.
18. Interlocutory judgment.
19. Appeal allowed from C. C. Pleas.
20. Partition to be made by commissioners.
21. How, among several petitioners.
22. Commissioners to be sworn.
23. To give notice to all parties.
24. Acts of majority valid.
25. When money may be awarded to equalize partition.
26. Alternate occupancy may be assigned.
27. Liability of occupant to his co-tenants in such case.

SECTION
28. Remedy of co-tenants for trespass by a stranger.
29. Return of the commissioners, and judgment thereon.
30. Return may be set aside.
31. Appeal allowed from C. C. Pleas.
32. Appeals on writ of partition, regulated.
33. Final judgment, how far conclusive.
34. Absent part owner may apply for a new partition.
35. Proceedings thereon.
36. New partition, how to be made.
37. Case of improvements after the first partition.
38. " " a stranger, claiming in severalty.
39, 40. " " " claiming one of the shares.
41, 42. " " two respondents, claiming the same shares.
43, 44. " " a stranger, claiming an additional share.
45. " " a share, left for or assigned to a part owner who is dead.
46. " " a party, evicted of his share.
47. Mortgagee, &c. bound by the partition.
48. Case of the death of any party.
49. Costs, by whom to be paid.
50. Partition may be made in the probate court.
51. Commissioners to be appointed and sworn, &c.
52. Partition of lands lying in different counties.
53. Proceedings for partition in probate court.
54. Guardian to be appointed for a minor or insane person.
55. Partition to be made of the whole, &c.
56. And a share to be assigned to each owner, unless, &c.
57. When money may be awarded to equalize partition
58. Preference of males, and of elder children.
59. Return may be set aside and new partition ordered.
60. Costs to be paid by all the parties.
61. No partition in the probate court, when the shares are disputable.
62. Questions of advancement to be determined in probate court;
63. Or in the court, where the suit for partition is pending.
64. Estate of deceased to be severed from that of others.
65. Notice to be given to such co-tenants.
66. If they are absent, the proceedings to be stayed.
67. Appeal allowed.
68, 69. Partition, on whom it is binding.
70, 71. Case of improvements after a first partition.
72. Jurisdiction of the respective courts.
73. Petition for partition to be indorsed.

Partition, when and how to be made.
7 Mass. 475.
14 Mass. 434.
1783, 41, § 1.
1785, 62, § 2.

SECTION 1. All persons, holding lands as joint tenants, coparceners, or tenants in common, may be compelled to divide the same, either by writ of partition at the common law, or in the manner provided in this chapter.

— upon petition by one or more.
7 Mass. 503.
1783, 41, § 1.

SECT. 2. Any one or more of the persons, so holding lands, may apply by petition to the court of common pleas, or the supreme judicial court, held within or for the county in which the lands lie, for a partition of the same; and the said courts are severally empowered to cause partition to be made accordingly, and the share or shares of the petitioners to be set off and assigned to them, and the residue of the premises shall remain for the person or persons entitled thereto, and subject to a future partition among them, if there is more than one person so entitled.

— by one who has an estate in possession.

SECT. 3. Such petition may be maintained by any person, who has an estate in possession, but not by one who has only a remainder or reversion.

— by a tenant for years, in what cases.
15 Mass. 155.

SECT. 4. No tenant for any term of years, unless twenty years thereof at least remain unexpired, shall maintain such a petition against any tenant of the freehold; but when two or more persons hold jointly, or in common, as tenants for any term of years, either of them may have his share set off and divided from the others, in the same manner as if they had all been tenants of the freehold.

SECT. 5. Such partition, between two or more tenants for years, shall continue in force only so long as their estates endure, and shall not affect the premises, when they revert to the respective landlords or reversioners. Duration thereof.

SECT. 6. Every petition for partition shall set forth the rights and titles, so far as known to the petitioner, of all persons interested in the premises, who would be bound by the partition, whether they have an estate of inheritance or for life or years, and whether it be an estate in possession, or in remainder or reversion, and whether vested or contingent; and if the petitioner holds an estate for life or years, the person, entitled to the remainder or reverson after his estate, shall be considered as one of the persons so interested, and shall be entitled to notice accordingly. Substance of the petition

SECT. 7. The petition may be filed in vacation or in term time, in the office of the clerk of the court, in which the suit is brought; and a summons, to appear and answer thereto, shall be signed by the clerk, and shall, together with a copy of the petition, be served on each of the parties, who are named in the petition as interested in the premises, if they shall be found within the state, fourteen days at least before the sitting of the court, at which the petition is to be entered or the petitioner may, fourteen days at least before the sitting of the court, to which he intends to present his petition, cause the parties interested to be served with a copy of the petition, as is provided in the following section. Filing, and notice thereof.

SECT. 8. If the petition shall have been so filed in the clerk's office, the service shall be made by delivering to each of the said parties, an attested copy of the petition and of the summons, or by leaving such copies at the place of his abode; the copies to be attested by the clerk or by the officer who serves the process; and if the petition shall be served, without being previously filed in the clerk's office, the service shall be made by delivering or leaving as aforesaid, a copy of the petition attested in manner aforesaid. Notice, how to be served. 1783, 41, § 3.

SECT. 9. If any of the persons, so named as interested, are absent from the state, or if there are any persons interested in the premises, and who would be bound by the partition, whose names are unknown to the petitioner, the court shall order notice to be given to the persons interested, who are absent or unknown, by a publication of the petition, or of the substance thereof, with the order of the court thereon, in one or more newspapers, to be designated in the order, or by delivering to any absent party, who is known, an attested copy of the petition and order, or in such other manner, as the court shall consider to be most proper and effectual. Notice to persons absent or unknown. 1783, 41, § 3.

SECT. 10. The petition, in the case last mentioned, may be presented to the court, when sitting in any county, without being previously filed in the clerk's office; but the cause shall be heard and determined by the court, when held within or for the county, in which the lands lie, and the summons or notice shall be made returnable to that court. Proceedings in such case. 4 Mass. 122.

SECT. 11. If any person, entitled to notice, shall fail to appear, and if the service of the summons, or other notice to him, shall appear to the court to be in any way defective or insufficient, the court may order such further notice to him, as they shall think proper. Defects in service, how supplied.

SECT. 12. If, in any stage of the proceedings, it shall appear to Time to be al-

lowed for absent parties.

the court, that any person interested as aforesaid, whether named in the petition or not, is out of the state, and has not had opportunity to appear and answer to the suit, it shall be continued from term to term, until sufficient time has been allowed, to enable him to appear and answer thereto.

Guardian to be appointed for an infant or insane person. 1783, 41, § 3.

SECT. 13. The court may assign a guardian for the suit, for any infant or insane person, who is interested in the premises, in the same manner, as a guardian is admitted for an infant defendant, in actions at the common law.

Pleadings. 1786, 53, § 1.

SECT. 14. Any person, interested as aforesaid in the premises of which partition is prayed for, may appear and answer to the petition, and may plead, either separately, or jointly with any other respondents, any matter tending to show that the petitioner ought not to have partition as prayed for, either in whole or in part; and the replication and further pleadings shall be conducted, as in actions at the common law, until an issue or issues, in law or in fact, shall be joined, which shall be tried and determined as in other cases.

Replication by petitioner, in case, &c. 9 Pick. 66. 2 Mass. 473. 5 N. Hamp. R. 216.

SECT. 15. If any person, who is not named in the petition, shall appear and plead as a respondent, the petitioner may reply, that such person has no estate or interest in the lands described in the petition, and may pray judgment, if he shall be admitted to object to the partition; and the petitioner may, in the same replication, plead over, in answer to such plea, any other matter, in like manner, as he might have done, if he had not disputed the respondent's right to appear.

Proceedings thereon.

SECT. 16. If, upon such a replication, it shall appear, that the respondent has no estate or interest in the lands the matter of his plea or objection to the partition shall be no further inquired of.

Costs of the trial of an issue. 4 Pick. 246 1786, 53 § 1.

SECT. 17. If, upon the trial of any issue, of law or of fact, it shall appear, that the petitioner is entitled to have partition as prayed for, he shall recover his costs of such trial, against the party who objected thereto, and shall have execution therefor in the common form; but if such issue is found or decided against him, in whole or in part, the adverse party shall recover against him the costs of the trial, and shall have execution therefor; and judgment may notwithstanding be rendered for the petitioner to have partition, and to have assigned to him such part of the premises, if any, as he shall appear to be entitled to.

Interlocutory judgment. 1786, 53, § 1. 3 Mass. 299. 5 Greenl. 458. 1 Greenl. 369.

SECT. 18. If, upon such a trial, or upon the fault [*default*] of the respondent, or otherwise, it shall appear that the petitioner is entitled to have partition, whether for the share or proportion claimed in his petition, or for any less share, the court shall award the interlocutory judgment, that partition shall be made.

Appeal allowed from C. C. P. 1786, 53, § 2.

SECT. 19. Upon such a judgment, rendered in the court of common pleas, either party may appeal to the supreme judicial court; and the cause shall be there heard and determined, and the proceedings therein shall be conducted, in like manner, as in appeals in other suits.

Partition to be made by commissioners. 1783, 41, § 1.

SECT. 20. When partition is to be made, the court shall appoint three or five disinterested persons as commissioners, to make the partition, and to set off to the petitioner or petitioners, the share or shares belonging to them, which shall be expressed in the warrant.

How, among several petitioners.

SECT. 21. If there are several petitioners, they may have their

shares set off together, or the share of each one may be set off in severalty, at their election.

SECT. 22. The commissioners, before proceeding to the execution of their duties, shall be sworn, before any justice of the peace, faithfully and impartially to execute the same, a certificate of which oath shall be made on the warrant, by the person who administered it.

Commissioners to be sworn. 3 Mass. 299. 1783, 41, § 1.

SECT. 23. The commissioners shall give sufficient notice of the time and place, appointed for making the partition, to all persons interested therein, who are known and within the state, that they may be present at the making thereof.

To give notice to all parties. 1783, 41, § 3.

SECT. 24. All the commissioners shall meet for the performance of any of their duties, but the acts of a majority of them shall be valid.

Acts of majority valid. 4 N. Hamp. R. 53.

SECT. 25. When the premises, of which partition is demanded, consist of a mill or other tenement which cannot be divided without damage to the owners, or when any specific part of the estate is of greater value than either party's share, and cannot be divided without damage to the owners, the whole estate, or the part thereof so incapable of division, may be set off to any one of the parties, who will accept it, he paying to any one or more of the others, such sums of money as the commissioners shall award, to make the partition just and equal; but the partition, in such case, shall not be established by the court, until all the sums so awarded shall be paid to the parties entitled thereto, or secured to their satisfaction.

When money may be awarded to equalize partition. 13 Pick. 237. 5 N. Hamp. R. 134. 1783, 41, § 2. 7 Pick. 209.

SECT. 26. In the case mentioned in the preceding section, the commissioners, instead of setting off the premises, or a part thereof, in the manner therein provided, may assign the exclusive occupancy and enjoyment of the whole, or the part, as the case may be, to each of the parties, alternately, for certain specified times, in proportion to their respective interests therein.

Alternate occupancy may be assigned.

SECT. 27. When the whole or any specific part of the premises is assigned, in the manner provided in the preceding section, the person, entitled for the time being to the exclusive occupancy, shall be liable to his co-tenants for any injury to the premises, occasioned by his misconduct, in like manner and to the like extent, as a tenant for years under a common lease, without express covenants, would be liable to his landlord, and the other tenants in common may have their remedy therefor against him, by an action on the case, either jointly or severally, at their election.

Liability of occupant to his co-tenants in such case.

SECT. 28. Whilst any estate is in the exclusive occupancy of any co-tenant, under such an assignment as before mentioned, he shall be entitled to the same remedy against any person, who shall trespass upon, or otherwise injure the premises, as if he held the same under a lease for the same term, for which they were so assigned to him, and he and all the other tenants in common shall also be entitled to recover, against the wrongdoer, such other and further damages, as they shall have sustained by the same trespass or injury, in like manner, as if the premises had been leased by them, for the term aforesaid; and all joint damages, recovered by any such tenants in common, by force of this or the preceding section, shall be apportioned and divided among them, according to their respective rights, by the court in which the judgment is recovered.

Remedy of co-tenants for trespass by a stranger.

Return of the commissioners, and judgment thereon. 1783, 41, § 1.

SECT. 29. The commissioners shall make a return of their doings under their hands, together with their warrant, to the court which appointed them, and if their doings are confirmed by the court, judgment shall be thereupon rendered, that the said partition be firm and effectual forever; and the return shall then be recorded in the clerk's office, and also in the registry of deeds for the county where the lands lie.

Return may be set aside. 5 N. Hamp. R. 329.

SECT. 30. The court may, for any sufficient reason, set aside the return and commit the case anew to the same or to other commissioners, to be appointed as aforesaid, whereupon the same proceeding shall be had as are before directed.

Appeal allowed from C. C. P. 13 Mass. 211. 1786, 53, § 2.

SECT. 31. If the judgment, upon the report of the commissioners, is rendered in the court of common pleas, either party may appeal therefrom to the supreme judicial court, and the proceedings thereupon shall be conducted in like manner as in appeals in other suits, excepting, that upon this appeal, the interlocutory judgment, awarding that partition be made, shall not be drawn in question.

Appeals on writ of partition regulated. 1786, 53, § 3.

SECT. 32. The same regulations, which are herein prescribed, as to appeals from the first and the second judgment, on a petition for partition, shall apply and be enforced, in like manner, in the case of a writ of partition.

Final judgment, how far conclusive. 13 Mass. 213. 2 Mass. 472.

SECT. 33. The final judgment, confirming and establishing the partition, shall be conclusive as to all rights, both of property and of possession, of all parties and privies to the judgment, including all persons, who might by law have appeared and answered to the petition, except as is hereinafter provided.

Absent part owner may apply for a new partition. 1783, 41, § 3.

SECT. 34. If any person, who was a part owner with the petitioner, and for whom a share is left upon the partition, should be out of the state, when the summons or notice to him is served, and should not return, in time to appear and answer to the suit, he may at any time, within three years after the final judgment, apply to the same court for a new partition of the premises.

Proceedings thereon. 1783, 41, § 3.

SECT. 35. If upon such an application, and after a hearing of all parties interested therein, it shall appear to the court that the share left for the applicant was less than he was entitled to, or that the part left for him was not, at the time of the partition, equal in value to his share of the premises, they may order a new partition thereof, which shall be made in the manner before provided.

New partition, how to be made. 1783, 41, § 3.

SECT. 36. In such new partition, the commissioners shall not be required to make a new division of the whole premises, but they may take from any one share or shares, and add to any other or others, so much as shall in their judgment be necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided; or, if an equal partition of the lands cannot be made, without inconvenience to the owners, the commissioners may award money to be paid by one party to another as before provided, to equalize the shares.

Case of improvements after the first partition. 1783, 41, § 3.

SECT. 37. If, after the first partition, any improvements shall have been made on any part of the premises, which, by the new partition, shall be taken from the share of the party who made the improvements, he shall be entitled to compensation therefor, to be estimated and awarded by the commissioners, and to be paid by the

party, to whom such part of the premises shall be assigned, on the new partition, and the court may issue an execution therefor in the common form.

SECT. 38. If any person, who has not appeared and answered to the petition for partition, shall claim to hold in severalty the premises therein mentioned, or any part thereof, he shall not be concluded by the judgment for partition, but may bring his action, for the land claimed by him, against any or all of the petitioners or respondents, or of the persons holding under them, as the case may require, within the same time, in which he might have brought it, if no such judgment for partition had been rendered.

Case of a stranger claiming in severalty. 2 Mass. 462.

SECT. 39. When any person, who has not appeared and answered as aforesaid, shall claim the share that was assigned to, or left for, any of the supposed part owners, in the judgment for partition, he shall be concluded by the judgment, so far as it respects the partition, and the assignment of the shares, in like manner as if he had been a party to that suit, but he shall not be prevented thereby from bringing his action, for the share claimed by him, against the person to whom it was assigned, or for whom it was left.

Of a stranger claiming one of the shares.

SECT. 40. The action in such case shall be brought against the tenant in possession, in like manner as if the demandant had originally claimed the specific piece demanded, instead of an undivided part of the whole land, and it may be brought within the same time in which it might have been brought, if no such judgment for partition had been rendered.

Same subject.

SECT. 41. If two or more persons appear as respondents, claiming the same share of the premises to be divided, it shall not be necessary to decide on their respective claims, except only for the purpose of determining which of them shall be admitted to appear and plead in the suit; and if partition is made, the share so claimed shall be left for whichever of the said parties shall prove to be entitled to it, in a suit to be thereafter brought between themselves.

Case of two respondents claiming the same share.

SECT. 42. If, in such a case, it shall be decided in the original suit for partition, upon the replication of the petitioner, or otherwise, that either of the said respondents is not entitled to the share that he claims, he shall be concluded by the judgment, so far as it respects the partition, and the assignment of the shares; but he shall not be prevented thereby from bringing his action, for the share claimed by him, against the other claimant thereof, in the manner provided in the three preceding sections.

Same subject.

SECT. 43. If any person, who has not appeared and answered as aforesaid, shall claim any part of the premises mentioned in the petition, as a part owner with those who were parties to that suit, or any of them, and if the part or share so claimed was not known, or not allowed and left for him, in the process for partition, he shall be concluded by the judgment, so far as it respects the partition; but he shall not be prevented thereby from bringing an action, for the share or proportion claimed by him, against each of the persons, who shall hold any part of the premises, under the judgment for partition.

Case of a stranger claiming an additional share.

SECT. 44. If the demandant shall prevail, in the case last mentioned, he shall not be entitled to demand a new partition of the whole premises, but he shall recover against each of the persons, holding

Same subject.

under the judgment for partition, the same proportion or share of the part held by him, that the demandant was entitled to claim out of the whole premises, before the partition thereof.

Case of a share left for, or assigned to, a part owner, who is dead.

SECT. 45. If, after the making of partition, it shall appear that any person, for whom a share was left, or to whom a share was assigned, had died before the partition was made, the heir or devisee of such deceased person shall not, by reason of his having been a party to the suit, either as a petitioner or a respondent, be barred from claiming the share, that belonged to the deceased person; but the heir or devisee, in such case, shall have the same rights and the same remedies, in all respects, as if he had not been a party to the suit, and had not had notice of the pendency thereof.

— of a party evicted of his share.

SECT. 46. If any person, to or for whom any share shall have been assigned or left, upon any judgment for partition, shall be evicted thereof by any person, who, at the time of the partition, had a title thereto, older and better than the title of those who were parties to the suit for partition, the person so evicted shall be entitled to a new partition of the residue, in like manner as if the former partition had not been made.

Mortgagee, &c. bound by the partition.

SECT. 47. Any person, having a mortgage, attachment, or other lien, on the share of any part owner, shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, but his lien shall remain in full force upon the part, that shall be assigned to, or left for, such part owner.

Case of the death of any party.
2 Mass. 479.
10 Mass. 5.
1822, 71, §§ 1 & 2.
1826, 70, § 1.

SECT. 48. In case of the death of any party in a petition for partition, the suit shall not abate, but shall be conducted and prosecuted, in the manner provided in the ninety third chapter.

Costs, by whom to be paid.
1783, 41, § 2.

SECT. 49. The expenses and charges of the commissioners shall be ascertained and allowed by the court, and all the other costs of the proceeding shall be taxed in the usual manner, and the whole shall be paid by the petitioner, except only the costs of a trial of any issue joined in the case, as to which a different provision is before made; and when there is more than one petitioner, the whole costs and charges, that are payable by them, shall be paid in proportion to the shares or interests that they respectively hold in the premises.

Partition may be made in the probate court.
5 Pick. 210.
13 Mass. 413.
1817. 190, § 24.

SECT. 50. The probate court, in which the estate of any deceased person is settled, or in a course of settlement, may make partition of all his real estate, lying within the state, among his heirs or devisees, and all persons holding under them, in the manner and under the restrictions hereinafter provided.

Commissioners to be appointed and sworn, &c.
1817, 190, §§ 24 & 27.

SECT. 51. The partition shall be made by three or five disinterested persons, to be appointed as commissioners for that purpose by the judge of probate, and they shall, before proceeding to the execution of their duties, be sworn before the said judge or before any justice of the peace, faithfully and impartially to execute the same, and shall proceed therein, in the manner before prescribed with regard to commissioners appointed by the supreme judicial court, or the court of common pleas, except as is hereinafter otherwise provided.

Partition of lands in different counties.

SECT. 52. If there is estate to be divided, lying in different counties, the judge of probate may, if he shall think fit, issue a separate warrant, and appoint different commissioners, for each county; and the partition in such case shall be made of the estate in each county, in like manner as if there were no other estate to be divided.

SECT. 53. Such partition may be ordered on the petition of any of the said parties interested, after due notice to all the others to appear and show cause against it; which notice shall be served, fourteen days at least before the time appointed for the hearing, on the said parties personally, if they can be found within the state, and if not, the notice shall be given by publishing it, in such newspapers as the court shall order, once in each week for three weeks at least before such hearing.

Proceedings for partition in probate court. 7 Pick. 209.

SECT. 54. If it shall appear to the court that any infant or insane person is interested in the premises, and has no guardian within the state, the court shall assign him a guardian for the suit, to appear for him and defend his interests therein, in the same manner as a guardian is admitted for an infant defendant, in actions at the common law.

Guardian to be appointed for a minor or insane person. 1817, 190, § 26.

SECT. 55. The partition, when made on the application of an heir, shall be made of all the estate, that descended from the ancestor, and which any party interested, whether the applicant or others, shall require to have included in the partition, and when made on the application of a devisee, it shall be made of all the estate, held by the applicant jointly or in common with others holding under the testator, which he or any other devisee shall require to have included; and the same rule shall apply, when the application is made by any person, holding under an heir or devisee.

Partition to be made of the whole, &c.

SECT. 56. Upon every such partition, the court shall not only assign and set off to the applicant his share in the premises, that are to be divided, but shall also cause the residue thereof, to be divided among the parties interested therein, and the share of each one to be assigned to him, unless any two or more of the parties shall consent to hold their shares together and undivided.

And a share to be assigned to each owner, unless, &c.

SECT. 57. When any messuage, piece of land, or other part of the premises, of which partition is to be made, is of greater value than either party's share, and cannot be divided without great inconvenience to the owners, the same may be set off to any one of the parties, who will accept it, he paying to any one or more of the others, such sums of money as the commissioners shall award, to make the partition just and equal; but the partition in such case shall not be established by the court, until all the sums so awarded shall be paid to the parties entitled thereto, or secured to their satisfaction.

When money may be awarded to equalize partition. 7 Pick. 209. 1817, 190, § 29.

SECT. 58. In the assignment of any part of the premises, as provided in the preceding section, males shall be preferred to females, and among the children of the deceased, elder shall be preferred to younger sons.

Preference of males and of elder children. 1817, 190, § 24.

SECT. 59. The court may, for any sufficient reason, set aside the return of the commissioners, and commit the case anew to the same or to other commissioners; and the return, when finally accepted and confirmed by the court, shall be recorded in the probate office, and also in the registry of deeds for the county in which the lands lie.

Return may be set aside and new partition ordered. 1820, 54, § 2.

SECT. 60. The expenses and charges, incurred in making the partition, shall be ascertained and allowed by the court, and shall be paid by all the parties interested in the partition, in proportion to their respective shares or interests in the premises; and if any one shall neglect to pay the part assessed on him by the court, an execution

Costs to be paid by all the parties. 1817, 190, § 30.

therefor in common form may be issued against him, in favor of the person or persons entitled thereto.

No partition in probate court when the shares are disputable. 1817, 190, § 28.

SECT. 61. No partition shall be made by the probate court, when the shares or proportions of the respective parties are in dispute between them, or shall appear to the judge to be uncertain, depending upon the construction or effect of any devise or other conveyance, or upon any other questions, that he shall think proper for the consideration of a jury and a court of common law.

Questions of advancement to be determined in probate court.

SECT. 62. All questions, as to any advancement made or alleged to be made by the deceased to any heir, may be heard and determined by the judge of probate, saving an appeal, as in other cases, to the supreme court; and the final decree or sentence, if any is made thereon, shall be binding on all parties interested in the estate, whether the partition is made by the probate court, or by writ or petition in the courts of common law.

Or in the court where the suit for partition is pending. 16 Mass. 200.

SECT. 63. If any writ or petition shall be brought in the courts of common law, for partition among co-heirs, and either party shall allege, that an advancement has been made to any other party, the court may hear and determine the question concerning the advancement, or they may suspend their proceedings in the suit for partition, until that question shall be decided in the probate court, in which the estate of the deceased is settled.

Estate of deceased to be severed from that of others. 1817, 190, § 25. 1820, 54, § 1.

SECT. 64. When the real estate of the deceased, or any part of it, shall lie in common and undivided with that of any other person, the probate court may cause it to be divided and set off from the part held by such co-tenant, before making partition thereof among the heirs or others claiming under the deceased.

Notice to be given to such co-tenants. 1820, 54, § 1.

SECT. 65. The court, in such case, shall order notice of the intended partition to be given to the co-tenant, which notice shall contain a description of the premises to be divided, with a statement of the share or proportion, claimed as belonging to the estate of the deceased, and shall express the time and place, appointed for hearing the case; and it shall be served on the co-tenant, by delivering to him an attested copy thereof, or by leaving such copy at the place of his abode in this state, fourteen days at least before the time appointed for the hearing.

If they are absent, the proceedings to be stayed.

SECT. 66. If it shall appear, in any stage of the proceedings, that any person interested in the premises, other than the heirs and devisees of the deceased, and those claiming under them, was absent from the state, at the time when the notice was served, and has not returned, the probate court shall either dismiss the application for partition, or shall stay all further proceedings therein, until such absent party shall appear and answer thereto, or shall signify in writing, to the probate court, his consent that partition be made as proposed.

Appeal allowed. 1817, 190, § 28.

SECT. 67. Any person, aggrieved by any order, sentence, decree, or denial of a judge of probate, in any process of partition, may appeal therefrom in the manner prescribed in the eighty third chapter.

Partition, on whom it is binding. 1817, 190, § 26.

SECT. 68. The partition, when finally confirmed and established, shall be conclusive on all the heirs and devisees of the deceased, and all persons claiming under them: it shall also be conclusive on all other persons interested in the premises, who shall have appeared and answered in the case, or who shall have assented to the proposed

partition, as before provided, and also on every person so interested, on whom notice was served, as before provided, by delivering to him a copy thereof, or by leaving it at the place of his abode, at a time when he was within the state.

SECT. 69. Such partition shall not be conclusive upon any persons, other than those mentioned in the preceding section; but all such other persons may pursue their legal remedies for recovering the premises, or as much thereof as may belong to them, and also for obtaining partition thereof, in like manner as if the proceedings in the probate court had not been had. Same subject.

SECT. 70. If, after a partition by the probate court, any improvements shall be made on any part of the premises, which shall afterwards, upon a new partition, in the same or any other court, be assigned to any other person, the party, from whom such part is taken, shall be entitled to compensation for the improvements thereon, to be estimated and awarded by the commissioners, who shall make the second partition, and to be paid by the party, to whom that part of the premises shall be thereby assigned, and the court may issue an execution therefor in the common form. Case of improvements after a first partition.

SECT. 71. Every person, holding any lands under a partition, made by any of the courts mentioned in this chapter, shall be considered as holding them under an apparently good title, so that in case of an eviction, he shall be entitled to compensation for any improvements made thereon, in the manner prescribed in the one hundred and first chapter. Same subject.

SECT. 72. When proceedings for obtaining partition shall have been lawfully commenced, in either of the courts mentioned in this chapter, that court shall retain jurisdiction of the case, saving the right of appeal, in all cases, where an appeal is allowed by law. Jurisdiction of the respective courts. 16 Mass. 167.

SECT. 73. Every petition for partition, filed originally either in the supreme judicial court, or court of common pleas, shall be indorsed in the same manner as is prescribed with respect to original writs, and all the regulations, concerning the indorsement of original writs, contained in the ninetieth chapter, shall apply in like manner to the indorsement of such petitions for partition. Petition for partition to be indorsed. 1833, 50, § 2.

CHAPTER 104.

OF FORCIBLE ENTRY AND DETAINER.

SECTION

1. Forcible entry forbidden.
2. The person ousted or unlawfully held out may be restored.
3. Suit to be commenced within three years.
4. Form of writ and declaration.
5. Proceedings in the suit.
6. Judgment, when for the plaintiff.
7. " " " defendant.
8. Appeal allowed, as in other civil actions.
9. Proceedings, when title to the freehold is in question.
10. Defendant to recognize to pay rent, &c.
11. Liability of deft. for frivolous plea, &c.
12. The premises or further damages may be afterwards recovered.
13. The suit may be brought before any police or justices' court.

Forcible entry forbidden. 1784, 8, § 1.

SECTION 1. No person shall make any entry into lands or tenements, except in cases where his entry is allowed by law; and in such cases, he shall not enter with force, but in a peaceable manner.

The person ousted or unlawfully held out may be restored. 3 Pick. 31. 10 Mass. 403. 1825, 89, § 1.

SECT. 2. When any forcible entry shall be made, or when an entry shall be made in a peaceable manner, and the possession shall be unlawfully held by force, and also when the lessee of any lands or tenements, or any person holding under such lessee, shall hold possession of the demised premises, without right, after the determination of the lease, either by its own limitation, or by a notice to quit, as provided in the sixtieth chapter, the person, entitled to the premises, may be restored to the possession thereof, in the manner hereinafter provided.

Suit to be commenced within three years. 1784, 8, § 3.

SECT. 3. No restitution shall be made, under the provisions of this chapter, of any lands or tenements, of which the party complained of, or his ancestors, or those under whom he holds the premises, have been in the quiet possession, for three years next before the filing of the complaint, unless his estate therein is ended.

Form of writ and declaration. 1825, 89, § 1.

SECT. 4. The person, entitled to the possession of the premises, may take, from any justice of the peace, a writ in the form used for an original summons in common civil actions before justices of the peace, in which the defendant shall be summoned to answer to the complaint of the plaintiff, for that the defendant is in possession of the lands or tenements in question, describing them, which he holds unlawfully, and against the right of the plaintiff, as it is said; and no other declaration shall be required.

Proceedings in the suit. 1825, 89, § 1.

SECT. 5. The writ shall be served seven days at least before the return day, and the suit shall be conducted like other civil actions before justices of the peace.

Judgment, when for the plaintiff. 1825, 89, § 1.

SECT. 6. If the defendant shall be defaulted, or if on a trial it shall be proved to the satisfaction of the justice, that the plaintiff is entitled to the possession of the premises, he shall have judgment for the possession thereof, and for his costs, and execution shall issue accordingly.

When for the defendant. 1825, 89, § 1.

SECT. 7. If the plaintiff shall become nonsuit, or shall fail to prove his right to the possession, the defendant shall have judgment, and execution for his costs.

Appeal allowed, as in other civil actions. 1825, 89, § 2.

SECT. 8. Either party may appeal from the judgment of the justice, and the suit shall be thereupon conducted in the same manner, as is prescribed in cases of appeals from justices of the peace, in other civil actions.

Proceedings, when title to the freehold is in question. 1825, 89, § 3.

SECT. 9. If it shall appear by the pleadings or otherwise, in any such suit, that the title to the freehold is brought in question, the case shall, at the request of either party, be transferred to the court of common pleas, and be conducted in all respects thereafter, in the same manner as is prescribed in the eighty fifth chapter, when the title to real estate is concerned or brought in question, in any other civil action pending before a justice of the peace.

Defendant to recognize to pay rent, &c. 1825, 89, § 2.

SECT. 10. If the plaintiff shall claim any rent, as due on any lease, whether in writing or otherwise, and if the defendant shall appeal, or if the case shall be transferred to the court of common pleas, at his request, he shall recognize to the plaintiff, with sufficient surety or sureties, not only to enter the action, but also to pay all rent then

due, and all intervening rent, damages, and costs; and in case of final judgment for the plaintiff, all such rent, damages and costs may be recovered, upon a writ of scire facias upon the recognizance, or in an action of debt thereon.

Liability of defendant for frivolous plea, &c. 1825, 89, § 3.

SECT. 11. If the case shall be transferred to the court of common pleas, at the request of the defendant, upon any plea or suggestion by him, that shall bring in question the title to the freehold, and if it shall appear to the court of common pleas, or to the supreme judicial court, in case the action should be there determined, that the defendant originally entered on the premises, under a lease from the plaintiff, or from any person, under whom the plaintiff claims, or that he held them under any such lease, and that his said plea or suggestion was frivolous and intended for delay, the court shall cause a certificate thereof to be entered on the record, and the defendant shall thereupon be liable to pay double the yearly value of the demised premises, from the time of the notice to quit the same, which may be recovered of the defendant and his sureties in the recognizance, upon a scire facias or an action of debt thereon.

The premises or further damages may be afterwards recovered.

SECT. 12. The judgment in such action shall not be a bar to any action, thereafter to be brought by either party, to recover the premises in question, or to recover damages for any trespass thereon; but the sum, if any, recovered for rent, according to the provisions of the two preceding sections, shall be allowed and deducted in any assessment of damages, upon such a subsequent action by the original plaintiff.

The suit may be brought before any police or justices' court. 1825, 89, § 1.

SECT. 13. If any suit, under the provisions of this chapter, shall be commenced in any place, within or for which a police court or justices' court may be established, with jurisdiction of common civil actions, which are triable before a justice of the peace, the suit may be commenced in such police court or justices' court, and shall be prosecuted in like manner as if it had been commenced before a justice of the peace, as herein before provided.

CHAPTER 105.

OF WASTE, AND TRESPASS ON REAL ESTATE.

SECTION
1. Action of waste may be brought by a reversioner.
2. By an heir.
3. Mode of trial.
4. Action on the case for waste.
5. By whom it may be brought.
6. May be prosecuted or brought against executors, &c.
7. Penalty for waste on lands held in joint tenancy, &c.
8. Damages, how recovered and appropriated.
9. Penalty for waste after action for possession.
10. Penalty for wilful trespass on lands.
11. Exception.
12. Tender allowed in case of involuntary trespass:
13. Or money may be brought into court.
14. Equity jurisdiction in cases of waste.
15. Injunction to stay waste.
16. How to be dissolved.
17. Injunction in case of land attached.
18. Further proceedings in such case.

Action of waste may be brought by reversioner. 8 Pick. 309. 7 Pick. 152. 5 Pick. 192.

SECTION 1. If any tenant in dower, tenant by the curtesy, or tenant for term of life or years, shall commit or suffer any waste on the premises, the person, having the next immediate estate of inheritance therein, may have an action of waste against such tenant, wherein he shall recover the place wasted, and the amount of the damage done to the premises.

— by an heir.

SECT. 2. An heir may bring an action for waste done in the time of his ancestor, as well as in his own time.

Mode of trial.

SECT. 3. If any issue of fact is joined in the cause, it shall be tried by a jury in a court in the usual manner, either with or without a view of the premises, as the court shall order; and in all cases, the jury that inquire of the waste shall assess the damages.

Action on the case for waste.

SECT. 4. Any person, who is entitled to such action of waste, may, instead thereof, bring an action on the case in the nature of waste, in which he shall recover such damages as he shall have suffered by reason of the waste complained of.

By whom it may be brought. 3 Pick. 203.

SECT. 5. Such an action on the case may also be maintained by one who has the remainder or reversion, in fee simple or fee tail, after an intervening estate for life, and also by one who has a remainder or reversion for life or years only, and each of them shall recover such damages as it shall appear that he has suffered by the waste complained of.

May be prosecuted or brought against executors, &c.

SECT. 6. An action on the case for waste, if commenced in the life time of the tenant, may be prosecuted against his executors or administrators, in the manner prescribed by law, as to actions which survive, and such action may be originally brought against the executors or administrators of the tenant, for waste committed or suffered in his life time.

Penalty for waste on lands held in joint tenancy, &c. 1785, 62, § 1.

SECT. 7. If any joint tenant, coparcener, or tenant in common, of undivided lands, shall cut down, destroy or carry away any trees, timber, wood or underwood, standing or lying on such lands, or shall dig up or carry away any stone, ore, or other valuable thing found thereon, or shall commit any other strip or waste thereon, without first giving thirty days notice in writing, under his hand, to all the other persons interested therein, or to their respective agents or attorneys, of his intention to enter upon and improve the land, or if he shall do any of the said acts during the pendency of a petition or other suit, for the partition of the premises, he shall forfeit three times the amount of the damages that shall be assessed therefor, to be recovered and appropriated as provided in the following section.

Damages, how recovered and appropriated. 1785, 62, § 1.

SECT. 8. The said damages may be recovered in an action of trespass, by any one or more of the other co-tenants, without naming any one except the plaintiff, and said damages shall be appropriated, one half to the persons who shall sue for the same, and the other half to the same persons, together with all the other co-tenants, except the defendant in the action, to be divided among them in proportion to their respective interests in the land.

Penalty for waste after action for possession. 8 Pick. 514. 1795, 75, § 3.

SECT. 9. If, during the pendency of any action for the recovery of lands, the tenant or person in possession shall, with the knowledge of the pendency of the action, commit any strip or waste thereon, the demandant, if he recovers judgment in the suit, may afterwards recover, in an action of trespass against the person who committed the

waste, three times the amount of the damages that shall be assessed therefor.

SECT. 10. If any person shall wilfully cut down, carry away, girdle, or otherwise destroy any trees, timber, wood or underwood, on the land of another person without license therefor, the owner may recover, in an action of trespass against him, three times the amount of the damages that shall be assessed therefor, except as provided in the following section. Penalty for wilful trespass on lands. 1817, 173.

SECT. 11. If, upon the trial of such an action, it shall appear that the defendant had good reason to believe that the land on which the trespass was committed was his own, or that he was otherwise lawfully authorized to do the acts complained of, he shall be liable only for the single damages assessed therefor. Exception.

SECT. 12. When any trespass on lands shall have been casual and involuntary, the trespasser may tender to the party injured sufficient amends therefor, before any action is brought for the same, and if afterwards sued for such trespass, he may in his plea disclaim all title to the land, and allege that the trespass was casual and involuntary, and set forth the tender in the usual form, bringing into court the money so tendered; and if upon the trial, the allegations in the plea shall appear to be true, and the damages assessed for the trespass shall not exceed the amount so tendered, the defendant shall recover his costs of the suit. Tender allowed in case of involuntary trespass. 1786, 52, § 2.

SECT. 13. If the trespasser, in such a case, shall not have made a tender before the commencement of the action, he may in his plea disclaim all title to the land, and allege that the trespass was casual and involuntary, and bring into court sufficient amends for the trespass, together with the costs of suit up to that time, and if the plaintiff shall not accept the same, in satisfaction of the trespass, and if, upon the trial, the allegations in the plea shall appear to be true, and the damages assessed for the trespass shall not exceed the amount so brought into court, the defendant shall recover his costs of the suit. Or money may be brought into court. 1786, 52, § 2.

SECT. 14. The supreme judicial court may hear and determine in equity all matters concerning waste, in which there is not a plain, adequate and complete remedy at law, and when it shall be necessary or proper to have any fact in such a case tried by a jury, it shall be done in such manner as the court shall direct. Equity jurisdiction in cases of waste. 1827, 88.

SECT. 15. The said court, or any one of the justices thereof, may, either in term time or vacation, at any time after the filing of the bill in such suit, or other commencement thereof, issue a writ of injunction, to stay waste on the premises in question, and issue all such other writs and processes, and make all such orders and decrees in the case, according to the course of proceedings in chancery, as justice and equity may require, and as may be necessary or proper to carry into effect the powers hereby granted. Injunction to stay waste. 1827, 88.

SECT. 16. Every such injunction to stay waste may be dissolved, either in term time or vacation, by the supreme judicial court, or by any one of the justices thereof, whenever he or they shall think it proper. How to be dissolved. 1827, 88.

SECT. 17. If any person, whose real estate is attached in any civil action shall do any act of waste thereon, or shall threaten or Injunction in case of land attached. 1829, 121.

make preparations to commit waste thereon, the court, in which the suit is pending, or any one of the justices thereof may, on the application of the plaintiff, either in term time or vacation, issue a writ of injunction to stay such waste.

Further proceedings in such case. 1829, 121.

SECT. 18. The same court may arrest and commit the defendant for any violation of such injunction, and issue such other process as may be necessary or proper to enforce obedience thereto, in like manner as the supreme judicial court may do upon a bill in equity pending before them, and the injunction may be dissolved, either in term time or vacation, by the court in which the suit is pending, or by any one of the justices thereof, whenever he or they shall think it proper.

CHAPTER 106.

OF ACTIONS FOR PRIVATE NUISANCES.

SECTION	SECTION
1. Judgment may be for abatement of the nuisance.	5. Expenses of executing it.
2. Warrant therefor.	6. Equity jurisdiction concerning nuisances.
3. " may be postponed.	7, 8. Injunction may be issued.
4. " when demandable of right.	9. Injunction, how dissolved.

Judgment may be for abatement of the nuisance. 11 Pick. 452. 1828, 137, § 6.

SECTION 1. In actions on the case for a nuisance, when the plaintiff prevails, the court may, in addition to the usual judgment for damages and costs, also enter judgment, that the nuisance be abated and removed.

Warrant therefor. 1828, 137, § 6.

SECT. 2. The court, in such a case, may award an execution in common form, for the damages and costs, and a separate warrant to the proper officer, requiring him to abate and remove the nuisance, at the expense of the defendant, in like manner as public and common nuisances are abated and removed.

— may be postponed.

SECT. 3. The court may on the motion of the defendant, order a stay of the said warrant, for any time not exceeding six months, to give him opportunity to remove the nuisance, upon his undertaking to do so, within the time so ordered.

— when demandable of right.

SECT. 4. If the plaintiff shall recover judgment in a second suit, for the continuance or repetition of the same nuisance, whether there had been in the first suit a judgment for the abatement and removal thereof or not, he shall, in such second suit, be entitled as of right to a judgment for the abatement and removal of the nuisance, and to a warrant to be issued thereon, as before provided.

Expenses of executing it. 1786, 81, § 6.

SECT. 5. The expense of abating and removing the nuisance shall be collected by the officer, in the same manner as damages and costs are collected upon execution ; except, that the materials of any buildings, fences, or other things, that shall be removed as a nuisance, may be sold by the officer, in like manner, as goods are sold on exe-

cution for the payment of debts; and the officer shall apply the proceeds of such sale to defray the expenses of the removal, and shall pay over the balance thereof, if any, to the defendant upon demand, and if the proceeds of the sale are not sufficient to defray the said expenses, he shall collect the residue thereof as before provided.

Equity jurisdiction concerning nuisances. 6 Pick. 376. 13 Pick. 169. 1827, 88.

SECT. 6. The supreme judicial court may hear and determine in equity, all matters concerning nuisances, in which there is not a plain, adequate and complete remedy at law, and whenever it is necessary or proper to have any fact in such a case tried by a jury, it shall be done in such manner, as the court shall direct.

Injunction may be issued. 1827, 88.

SECT. 7. The said court or any one of the justices thereof may either in term time or vacation, at any time after the commencement of such suit, issue an injunction to stay or prevent any nuisance on the premises in question, and may issue all such other writs and processes, and make all such orders and decrees in the case, according to the course of proceedings in chancery, as justice and equity may require, and as may be necessary or proper, to carry into effect the powers hereby granted.

Same subject.

SECT. 8. When an action on the case for a nuisance is pending, either in the court of common pleas, or the supreme judicial court, an injunction may be issued and enforced by the same court, or any one of the justices thereof, in the manner provided in the preceding section.

Injunction, how dissolved. 1827, 88.

SECT. 9. Every injunction, issued as provided in the two preceding sections, may be dissolved, either in term time or vacation, by the court by which it was issued, or by any one of the justices thereof, whenever he or they shall think it proper.

CHAPTER 107.

OF SUITS TO FORECLOSE, AND TO REDEEM, MORTGAGES.

SECTION
1. Foreclosure by action or by entry, &c.
2. Certificate of such entry to be recorded.
3, 4. Form of the action, and judgment therein.
5, 6. Form of the conditional judgment.
7. Assignee of the mortgage may enter, or sue thereon.
8. Proceedings in such case.
9. Mortgagee may enter before breach, and hold subject to account.
10, 11. Mortgage, how foreclosed in such case.
12. Certificate of notice or of entry to be recorded.
13. Mortgage, when redeemable.
14. Upon payment or tender of the debt.
15. Account to be taken of rents, and improvements, &c.
16. Tender, when to be made—Bill for redemption thereon.
17. Suit to be brought within one year after tender.
18. " may be brought without a previous tender.
19. Costs in such case.
20. Proceedings when the tender is insufficient.
21. Suit, in what court to be brought.
22. Process therein.
23. Decree for redemption.
24. Plaintiff may have execution thereon.
25, 26, 27. Case of a balance due from mortgagee.

SECTION
28. New parties may be brought in.
29. General powers of the courts in suits on mortgages.
30. Executors, &c. may tender and redeem.
31. May bring a suit upon a tender by the deceased.
32. Tender may be made to a guardian.
33. Foreclosure to be opened, in case, &c.
34. Kinds of mortgages, mentioned in this chapter.
35. Provision for mortgages to the Commonwealth.
36. Proceedings for foreclosing them.
37. 38, 39. " for redeeming them.
40. Mortgage of personal property, when redeemable.
41. Proceedings for redemption and recovery thereof.

Foreclosure by action or by entry, &c. 1785, 22, § 2.

SECTION 1. After the breach of the condition of a mortgage of real estate, the mortgagee may recover possession of the mortgaged premises by action, in the manner hereinafter provided, or he may make an open and peaceable entry thereon, if not opposed by the mortgagor or other person claiming the premises; and such possession, obtained in either mode, being continued peaceably for three years, shall forever foreclose the right of redemption.

Certificate of such entry to be recorded. 4 Pick. 468. 17 Mass. 429. 13 Mass. 309.

SECT. 2. When an entry, for breach of the condition, is made without a judgment, a memorandum or certificate thereof shall be made on the mortgage deed, and signed by the mortgagor or the person claiming under him, and the same shall, within thirty days thereafter, be recorded in the registry of deeds, where the mortgage is recorded, with a note of reference from each record to the other; or else, a certificate of two competent witnesses to prove the entry shall be made and sworn to before a justice of the peace, and recorded within thirty days after the entry, in the registry of deeds, where the mortgage is recorded, with notes of reference as before provided; and no such entry shall be effectual, for the purposes mentioned in the preceding section, unless a certificate, or a deposition in proof thereof, shall be made and recorded in the manner herein provided.

Form of the action, and judgment therein. 16 Mass. 348. 15 Mass. 487. 2 Mass. 496. 13 Mass. 519. 1785, 22, § 1.

SECT. 3. The mortgagee, in an action for possession, may declare on his own seizin, as in a writ of entry, without mentioning the deed of conveyance, or the condition or defeasance thereof, and if it shall appear to the court, upon the default of the defendant, or upon demurrer, or verdict, or otherwise, that the plaintiff is entitled to the possession of the premises, for breach of the condition of the mortgage, the court shall, at the motion of either party, award the conditional judgment hereinafter mentioned, except as is provided in the following section.

Same subject.

SECT. 4. If the defendant in the action is not the mortgagor nor an assignee of the mortgagor, and not entitled to hold or claim the premises under him, such defendant shall not redeem the premises, nor have a conditional judgment rendered in the manner before mentioned, unless with the consent of the plaintiff in the action, but the suit shall be conducted, in all respects, like a writ of entry; and in all cases, when the plaintiff prevails, the judgment may be entered for possession as at common law, unless one or the other of the parties shall move for the conditional judgment.

Form of the conditional judgment.

SECT. 5. When the conditional judgment is to be entered, the court shall inquire and determine how much is due to the plaintiff on the mortgage, and shall then enter judgment, that if the defendant

shall, within two months after the judgment, pay to the plaintiff the sum so found due on the mortgage, with interest and the costs of the suit, the mortgage shall be void, and the defendant shall hold the premises discharged thereof; otherwise, that the plaintiff shall have his execution for possession of the premises, and for the costs of the suit. 1785, 22, § 1.

SECT. 6. When the condition of the mortgage is for the doing of something other than the payment of money, the court shall vary the terms of the judgment, as the case may require, but shall award execution as before provided, unless the defendant shall, within two months after the judgment, perform what shall be therein prescribed. Same subject.

SECT. 7. An entry for breach of the condition may be made, and an action for possession may be brought, by any assignee of the mortgagee, whether the assignment be by deed or by operation of law, and the action shall be conducted in like manner, as if brought by the original mortgagee; and when brought by an executor or administrator, it shall be conducted in the manner prescribed in the sixty fifth chapter. Assignee of the mortgage may enter, or sue thereon. 1788, 51, § 1.

SECT. 8. The action may be brought, in the same manner as a writ of entry, against whoever is tenant of the freehold, and the mortgagor may, in all cases, be joined as a defendant, whether he then has any estate in the premises or not; but he shall not be liable for any costs, when he has no estate in the premises, and makes no defence to the suit. Proceedings in such case. 7 Pick. 31.

SECT. 9. Nothing contained in this chapter shall prevent a mortgagee, or any person claiming under him, from entering on the premises, or recovering possession thereof, before any breach of the condition of the mortgage, when there is no agreement to the contrary; but, in such case, if the debt is afterwards paid, or the mortgage redeemed, the amount of the clear rents and profits, from the time of the entry, shall be accounted for, and deducted from the sum due on the mortgage. Mortgagee may enter before breach, and hold subject to account. 3 Mass. 138.

SECT. 10. In case of such an entry, before a breach of the condition, the three years limited for the redemption shall not begin to run, until after the condition is broken, nor until after a notice in writing, given by the mortgagee or the person claiming under him, to the mortgagor or the person claiming under him, that the former will thenceforward hold the premises for the breach of the condition, or for the purpose of foreclosing the mortgage. Mortgage, how foreclosed in such case. 2 Mass. 496. 3 Mass. 155. 12 Mass. 514.

SECT. 11. In the case mentioned in the preceding section, the person, entitled to hold the premises for breach of the condition, may, instead of such notice in writing, make a new formal entry for the breach of the condition, or may bring an action therefor, in the manner before provided in this chapter; and such action, if brought against the mortgagor, or any person claiming under him, may be maintained, notwithstanding the premises are at that time in the possession of the plaintiff. Same subject. 13 Mass. 313.

SECT. 12. No such notice of an intention to hold for breach of the condition, and no such new entry for breach of the condition, as are mentioned in the two preceding sections, shall be effectual for the purposes there mentioned, unless a certificate thereof, or a deposition to prove the same, shall be made and recorded in like manner, as Certificate of notice or of entry to be recorded.

is before provided, in the case of an original entry for breach of the condition.

Mortgage, when redeemable. 1785, 22, § 2. 1798, 77, § 1.

SECT. 13. When the condition of any mortgage of real estate has been broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same, in the manner provided in the following sections, unless the mortgagee, or some person lawfully holding or claiming under him, has obtained possession of the premises for the breach of the condition, and has continued that possession for three years, as before provided in this chapter.

Upon payment or tender of the debt. 1798, 77, § 1.

SECT. 14. The person entitled to redeem the estate shall pay or tender to the mortgagee, or to the person lawfully claiming or holding under him, the whole sum then due and payable on the mortgage, and shall perform, or tender performance of, every other condition contained therein; and if there has been any suit for recovering the premises, he shall also pay or tender the costs of such suit, if not before paid.

Account to be taken of rents and improvements, &c. 2 Pick. 505. 5 Pick. 259.270. 10 Pick. 398. 9 Pick. 171. 1798, 77, § 1.

SECT. 15. If the mortgagee or any person under him has had possession of the premises, he shall account for the rents and profits thereof, and shall be allowed for all sums expended thereon in reasonable repairs and improvements, all sums paid for lawful taxes and assessments, and all other necessary expenses in the care and management of the premises; and if on such account there shall be a balance due from him, that balance shall be considered as so much paid towards the debt due on the mortgage, and if there shall be a balance due to him, it shall be added to the debt, and be paid or tendered as before provided.

Tender when to be made. Bill for redemption thereon. 1798, 77, § 2.

SECT. 16. Such tender may be made at any time within the three years before limited for the redemption, and before as well as after an entry for breach of the condition; and if the mortgagee, or the person claiming or holding under him, shall not accept the same, and thereupon discharge the mortgage in the manner prescribed by law, the mortgagor, or the person claiming or holding under him, may recover the premises by a bill in equity for redemption, to be prosecuted as hereinafter provided.

Suit to be brought within one year after tender. 1821, 85, § 1.

SECT. 17. Such tender, if not accepted, shall not prevent the foreclosure of the right of redemption, unless a suit thereon be commenced within one year after the tender is made.

— may be brought without a previous tender. 1821, 85, § 1. 1833, 201, § 1.

SECT. 18. The person entitled to redeem, may bring a bill for redemption without any previous tender, and may in his bill offer to pay such sum as shall be found due from him, or to perform such other condition as the case may require; and such suit may be brought at any time within the three years limited for the redemption, and either before or after an entry for breach of the condition.

Costs in such case. 1821, 85, § 1. 1833, 201, § 2.

SECT. 19. If the suit is brought without a previous tender, and if it shall appear that any thing is due on the mortgage, the plaintiff shall pay to the defendant his costs of the suit, unless it shall appear that the defendant has unreasonably refused or neglected, when requested, to render a just and true account of the money due on the mortgage, and of the rents and profits of the mortgaged premises, and of the money, if any, paid for taxes and expended in repairs and improvements and other necessary expenses, or that he has otherwise, by his default, prevented the plaintiff from performing or tendering

performance of the condition, before the commencement of the suit; and in all other cases of a bill for redemption, the court may, in their discretion, award costs to either party, as equity shall require.

SECT. 20. When a bill for redemption is founded on a previous tender, and it shall appear that the tender was insufficient, the plaintiff shall nevertheless be entitled to a decree for redemption, in the same manner as if no tender had been set forth in the bill, according to the provisions of the two preceding sections, provided the suit be commenced within the three years limited for the redemption. Proceedings, when the tender is insufficient.

SECT. 21. The bill for redemption may be brought, either in the court of common pleas, or in the supreme judicial court, held for the county where the land lies, and if brought in the court of common pleas, an appeal may be had to the supreme judicial court, as in other civil actions. Suit in what court to be brought. 1798, 77, § 1.

SECT. 22. The bill may be inserted in a writ of original summons, or the suit may be commenced by a subpœna, according to the course of proceedings in chancery, and in either case, the process shall be served as in other civil actions. Process therein. 1798, 77, § 1.

SECT. 23. If it shall appear that the plaintiff is entitled to redeem the mortgaged premises, the court shall inquire and determine what sum is due on the mortgage, or what other act the plaintiff is bound to perform for the redemption thereof, and shall enter a decree, that upon the payment of such sum, or the performance of such other thing, within such time as the court shall order, the plaintiff shall have possession of the premises, to hold discharged of the mortgage. Decree for redemption. 1798, 77, § 2.

SECT. 24. The court may at the same time order or decree, that if the defendant shall refuse or neglect to accept the money, or other thing, required by the decree to be paid or performed, the money shall be left for his use with the clerk of the court, or that such other thing shall be done as the case may require; and the plaintiff, in all cases, after having performed every thing required of him by the decree of the court, may have an execution in common form, for possession of the mortgaged premises. Plaintiff may have execution thereon. 1798, 77, § 2.

SECT. 25. If, upon a bill for redemption, it shall appear that the defendant has received, from the rents and profits of the estate, or otherwise, more than is due on the mortgage, the court shall award judgment and execution against him, in the common form, for such sum as shall be due to the plaintiff; and if there are several defendants, such judgment and execution may be awarded against them, either jointly or severally, as the case may require, for the sums received by them or either of them respectively. Case of a balance due from mortgagee. 9 Pick. 171. 6 Mass. 264. 1818, 98.

SECT. 26. When the money tendered and brought into court, shall exceed the sum found to be due on the mortgage, and also when any sum shall be awarded to the plaintiff, on account of the rents and profits received by the defendant, or for costs of the suit, the court may order the whole amount, so due to the plaintiff, to be deducted from the money brought into court, and the same shall be restored to the plaintiff, and the residue of the money brought into court shall be paid to the defendant. Same subject. 1818, 98.

SECT. 27. If a mortgagee, or any person claiming or holding under him, shall receive from the rents and profits of the premises, or Same subject. 1818, 98.

upon a tender made to him, or in any other manner, more than is due on the mortgage, and if no bill for redemption is brought against him, the mortgagor or other person entitled to such excess may recover it, in an action of assumpsit for money had and received to his use.

New parties may be brought in. 1818, 98.

SECT. 28. If, during the pendency of a bill for redemption, it shall appear that any other person is interested therein, the court may cause him to be made a party to the suit, upon such terms as they shall think proper, and may order a summons or a subpœna to be issued and served on him, in such manner as they shall direct; and he shall thereupon be required and allowed to appear and answer to the suit, and shall be considered as a defendant therein, in like manner as if he had been originally sued as a defendant.

General powers of the courts in suits on mortgages. 5 Pick. 268. 1798, 77, § 2.

SECT. 29. In all suits, brought under the provisions of this chapter, either for the redemption of mortgaged premises, or for the purpose of foreclosing the right of redemption, the court shall have power, as to all things not herein provided for, to make such order, judgment or decree, as justice and equity may require, and to issue such process as may be necessary or proper, according to the course of proceedings in chancery.

Executors, &c., may tender and redeem.

SECT. 30. If any person, entitled to redeem any mortgaged estate, shall die without having made a tender for that purpose, a tender may be made, and a bill for redemption commenced and prosecuted, as well by the executors or administrators, as by the heirs or devisees, of the deceased person.

May bring a suit upon a tender by the deceased.

SECT. 31. If a tender has been made by any such deceased person, in his life time, a bill for redemption, founded thereon, may be commenced and prosecuted, either by his heirs or devisees, or by his executors or administrators, in like manner as it might have been by the party himself; and if the plaintiff in any bill in equity shall die pending the suit, whether it is founded on a previous tender or not, the suit may be prosecuted to final judgment, by his heirs or devisees, or his executors or administrators.

Tender may be made to guardian. 12 Mass. 16.

SECT. 32. When the mortgagee, or the person, claiming or holding under him, is under guardianship, as an infant or otherwise, the tender may be made to the guardian, and he may, upon receiving payment of the sum due on the mortgage, or upon the performance of such other condition, as the case may require, execute a release of the mortgage.

Foreclosure to be opened, in case, &c. 3 Mass. 150.562. 8 Pick. 336.

SECT. 33. If, after the foreclosure of any mortgage, the person, entitled to the debt secured by the mortgage, shall recover judgment for any part of the debt, on the ground that the value of the mortgaged premises, at the time of the foreclosure, was less than the sum due thereon, such a recovery shall open the foreclosure, and the mortgagor, or the person claiming or holding under him, may redeem the premises, notwithstanding the three years limited in that behalf may have expired, provided his bill for redemption be brought within one year after the recovery of such judgment.

Kinds of mortgages mentioned in this chapter.

SECT. 34. The mortgages, mentioned in this chapter, shall include not only those made by a common deed of mortgage, but also such as are made by a conveyance, with a separate deed of defeasance.

Provisions for mortgages to

SECT. 35. When any mortgage is made or assigned to the Com-

monwealth, the treasurer may demand and receive the money due thereon, and upon payment thereof, he shall make and acknowledge a discharge of the mortgage.

the Commonwealth. 1804, 103, § 1.

SECT. 36. If the condition of such mortgage is not duly performed, the treasurer may cause an entry, for the breach of the condition, to be made by himself, or by any person whom he shall appoint for that purpose, in the name and behalf of the Commonwealth, or he may bring an action, in the name of the Commonwealth, to recover possession of the mortgaged premises; and such possession, obtained either by entry or by action, shall have the same effect towards foreclosing the right of redemption, as is before provided in the case of such possession by any other mortgagee.

Proceedings for foreclosing them. 1804, 103, § 2.

SECT. 37. The mortgagor or his assigns may redeem such mortgaged premises from the Commonwealth, in like manner, and upon the same terms, as if they were held by any other mortgagee, and the payment, or performance of the condition for that purpose, shall be made or tendered to the treasurer, for the use of the Commonwealth.

— for redeeming them. 1804, 103.

SECT. 38. If the treasurer, and the person applying to redeem such mortgage, shall disagree as to the sum due thereon, the person so applying may bring a bill in equity against the Commonwealth, for the redemption thereof.

Same subject. 1804, 103.

SECT. 39. The suit shall be brought in the supreme judicial court for the county of Suffolk, and the process thereon shall be served on the treasurer, whose duty it shall be to appear and answer thereto, in behalf of the Commonwealth, and the like proceedings shall be had thereon, and the like judgment rendered, as are before provided, in the case of a bill for redemption, against any other mortgagee; except, that the treasurer shall accept the payment, if any, due to the Commonwealth, and upon the receipt thereof, or upon the performance of such other act, as the court shall order, the treasurer shall discharge the mortgage, in like manner as when the debt is paid without any suit.

Same subject.

SECT. 40. When the condition of any mortgage of personal property has been broken, the mortgagor, or any person lawfully claiming or holding under him, may redeem the same, at any time within sixty days thereafter, unless the property shall, in the mean time, have been sold, in pursuance of the contract between the parties.

Mortgage of personal property, when redeemable.

SECT. 41. The person, entitled to redeem the property, shall pay or tender to the mortgagee, or to the person holding under him, the sum due on the mortgage, with all reasonable and lawful charges and expenses, incurred in the care and custody of the property, or otherwise arising from the mortgage thereof; and if the property is not forthwith restored, the person, entitled to redeem the same, may recover it in [*an*] action of replevin, or may recover such damages, as he may have sustained by the withholding thereof, in any action adapted to the circumstances of the case.

Proceedings for redemption and recovery thereof.

CHAPTER 108.

OF INFORMATIONS OF INTRUSION, AND INFORMATIONS IN THE NATURE OF INQUESTS OF OFFICE.

SECTION
1. Information of intrusion, when it lies.
2, 3. Proceedings thereon.
4. Costs.
5. Commonwealth to be seized, without execution.
6. Suits, when not to be commenced, unless by order of the legislature.
7. When to be brought without such order.
8. Public notice, in what cases to be given.
9. Who may appear as defendants.
10. Costs, when there are several defendants.
11. Provision as to rents, and as to improvements.
12. Judgment, how far conclusive.
13, 14. Provision for a claimant who is not concluded.
15. Provision as to rents, and as to improvements.

Information of intrusion, when it lies. 1791, 13. 1796, 43.

SECTION 1. When any person shall unlawfully enter and intrude upon or hold any lands belonging to the Commonwealth, the same may be recovered, upon an information filed and prosecuted as provided in this chapter.

Proceedings thereon. 1791, 13.

SECT. 2. The information shall be filed by the attorney general or any district attorney, in the supreme judicial court in any county, describing the premises, and setting forth the title and claim of the Commonwealth thereto; and a summons shall thereupon issue to the persons therein named as intruders or trespassers, and shall be made returnable in the county where the lands lie.

Same subject.

SECT. 3. The service of the summons, and all the other proceedings in the suit, shall be conducted in the same manner, substantially, as in real actions between private persons, unless where a different course is prescribed.

Costs. 1791, 13.

SECT. 4. Costs shall be awarded and taxed, as in other cases, for the party prevailing, and if the judgment is in favor of the Commonwealth, an execution for the costs shall issue in common form, and if it is in favor of the defendant, the costs shall be paid out of the treasury, by warrant of the governor and council.

Commonwealth to be seized, without execution. 1791, 13.

SECT. 5. If the judgment is in favor of the Commonwealth, it shall not be necessary to take out a writ of possession, or any like process, but the Commonwealth shall be deemed and taken to be actually seized and possessed of the premises, as soon as the judgment is rendered.

Suits, when not to be commenced, unless by order of the legislature. 1791, 13. 1796, 4.

SECT. 6. When the title of the Commonwealth is founded on a forfeiture for the breach of a condition, in any grant or conveyance made by the Commonwealth, or by the late province or colony of Massachusetts Bay, no suit therefor shall be commenced, unless by an order of the legislature.

When to be brought without such order. 3 Pick. 224. 1798, 43.

SECT. 7. If the claim of the Commonwealth is founded on an escheat, for want of heirs of the last owner of the premises, or on any other title, except that of the forfeiture mentioned in the preceding section, the attorney general or district attorney may commence and prosecute a suit therefor, whenever he shall have good reason

to believe that the claim of the Commonwealth can be established by proof.

SECT. 8. In case of any supposed escheat, when no person appears as the heir of the person last seized, and in all cases when there is reason to suppose that there is any person claiming any estate or interest in the premises, whose name is unknown, or who is absent from the state, or cannot be found therein, to be served with process, the court shall, in addition to any other service, order notice to be given to all persons interested, to appear and answer to the information, by causing the substance thereof, with the order of the court thereon, to be published, three weeks successively, in such newspaper as the court shall direct, the first publication to be ninety days at least before the time appointed for the appearance of the parties.

Public notice, in what cases to be given. 1791, 43.

SECT. 9. Any person, who claims any estate or interest in the premises, though he is not named in the information, nor served with process, may appear and answer thereto, but no defendant, who is not named in the information, shall recover costs against the Commonwealth, unless it shall appear that he has some estate or interest in the premises, although the Commonwealth should fail to establish their claim thereto.

Who may appear as defendants. 1791, 13.

SECT. 10. When there are several defendants, the court may award costs for or against any one of them, as the justice of the case may require, in like manner as if he had been the only defendant in the case.

Costs, when there are several defendants.

SECT. 11. If the Commonwealth prevail in the suit, the defendant shall be chargeable for the rents and profits of the premises, and be entitled to an allowance for all improvements made thereon, in like manner as is provided in the case of a writ of entry between private persons.

Provision as to rents, and as to improvements.

SECT. 12. The judgment on any such information shall be conclusive between the Commonwealth and the defendants, who appear and answer thereto, and also against every person named as a defendant, and upon whom the summons has been duly served, within the state, and against all persons claiming under any such defendant.

Judgment, how far conclusive. 1791, 13.

SECT. 13. If judgment is rendered for the Commonwealth, any person, who is not concluded thereby according to the provisions of the preceding section, may, at any time until his claim is barred by the law for the limitation of real actions or otherwise, bring a writ of entry, to recover the premises from the Commonwealth, or any person who may then hold under them, and in such action he may deny and disprove any facts alleged and proved in the first suit, and may allege and prove any other facts, in support of his claim, and if it shall appear that he is entitled to the premises, he shall have judgment and execution therefor in common form.

Provision for a claimant who is not concluded. 1798, 43.

SECT. 14. If the Commonwealth shall continue seized of the premises, at the time when such new action is commenced, it shall be brought against the tenant or occupant of the premises, and in addition to the service on him, a copy of the original writ or summons shall be left with the attorney general or district attorney, fourteen days at least before the return day thereof, that he may appear and defend the suit; and if the Commonwealth shall have granted away the premises, the action shall be brought against the tenant of the

Same subject.

freehold, and in either case, it shall be conducted and disposed of, in like manner and upon the same principles, as if no such information had been filed.

Provision as to rents and as to improvements. 1798, 43.

SECT. 15. If the demandant in such action shall recover the premises, he shall be entitled to recover the rents and profits thereof, and he shall also be chargeable for all improvements made thereon, in like manner as is provided in the one hundred and first chapter, although the premises should not have been held and possessed, under the adverse title, as much as six years.

TITLE IV.

Of proceedings in special cases.

CHAPTER 109. Of foreign attachment, or the trustee process.
CHAPTER 110. Of suits by and against executors and administrators.
CHAPTER 111. Of the writ of habeas corpus.
CHAPTER 112. Of writs of audita querela, of error, and of certiorari.
CHAPTER 113. Of distraining cattle, and of the action of replevin.
CHAPTER 114. Of reference to arbitration by agreement before a justice of the peace.
CHAPTER 115. Of proceedings for improving meadows, swamps, and low lands.
CHAPTER 116. Of proceedings for the support and regulation of mills.
CHAPTER 117. Of the lien of mechanics and others, for the cost of repairs and improvements on real estate.
CHAPTER 118. Of recognizances for debts, seizing and libelling forfeited goods, and the recovery of pecuniary forfeitures.

CHAPTER 109.

OF FOREIGN ATTACHMENT, OR THE TRUSTEE PROCESS.

SECTION
1. In what actions, this process lies.
2. Writ, how issued.
3. Form of the writ.
4, 5. Who liable as trustees.
6. Corporations may be summoned; how they shall answer.
7. Action, in what county to be brought.
8. Manner of serving the writ.
9. New trustees, and new service, when allowed.
10. Case of the discharge of all the trustees.
11. Trustee, when and how to be discharged.
12, 13. " may be examined on oath.
14. " not appearing, shall be defaulted.
15, 16. Mode of trial, when he appears.
17. Adverse claimant may become a party to the suit.
18. Proceedings in such case.
19. Evidence to be in writing.

SECTION
20. Principal defendant may be a witness, unless, &c.
21. Cost for or against such adverse claimant.
22, 23. Case of trustee having specific goods, &c.
24. The suit not to prevent his delivering them, unless, &c.
25, 26. Case of a trustee having a lien on the goods.
27. Such goods, how to be disposed of.
28. " " may be sold by the trustee, in case, &c.
29. Trustee, when liable for non-delivery of such goods.
30. What demands are not attachable by this process.
31. Case of attachment of a demand already in suit.
32, 33. Proceedings in such case.
34. Debt may be attached before it is payable.
35. Case of a fraudulent conveyance to the trustee.
36. Case of mutual demands between principal and trustee.
37. Certain demands excluded.
38. Scire facias against the trustee, after judgment.
39, 40. Proceedings therein, upon default.
41. Proceedings therein, upon examination of the trustee.
42. Forms of judgment against trustee.
43, 44, 45, 46. Foreign attachment, how and when dissolved.
47. Judgment against trustee shall protect him, &c.
48. Judgment for him not to bar his principal.
49. Costs and expenses of trustee.

SECTION
50. Costs to be retained out of the effects, if any;
51. Or to be paid by the plaintiff.
52. Costs when trustee is out of the state.
53. " when in another county.
54. When trustee shall pay costs.
55. Proceedings in such case.
56. When several trustees are liable for costs.
57, 58, 59. Costs against trustee on the scire facias.
60. Execution for costs against trustee.
61. Scire facias against several trustees—Costs in such case,
62. Executor and administrator, liable as trustee.
63. Upon the death of a trustee, his executor, &c. liable.
64, 65. Proceedings when the trustee dies before judgment.
66. Scire facias against the executor, &c. in such case.
67. When the trustee dies after judgment.
68. When within thirty days after judgment.
69, 70. Judgment against executor, &c., how to be enforced.
71. Trustee process, in suits before a justice of the peace.
72. Trustee, not liable out of his county.
73. Form of the writ, and course of proceedings.
74. Costs for trustee, and allowance for expenses.
75. Justice may issue scire facias, although, &c.
76. Jurisdiction of police court.
77. Limitation of jurisdiction of justices' and of police courts.
78. Penalty for perjury on examination as trustee.

SECTION 1. All personal actions, brought either in the court of common pleas or the supreme judicial court, may be commenced by the process of foreign attachment, or trustee process, in the manner hereinafter provided, except actions of replevin, actions on the case for malicious prosecution, or for slander, either by writing or speaking, and actions of trespass for assault and battery.

In what actions, this process lies. 1794, 65, § 1. 1833, 171.

SECT. 2. The writ of foreign attachment shall be signed, sealed bear teste, and be issued, like other original writs in civil actions.

Writ, how issued.

SECT. 3. It shall be made in the form heretofore established, authorizing an attachment of the goods and estate of the principal defendant, in his own hands, and also in the hands of the trustees, and shall be subject to such alterations, from time to time, as may be made by the courts, according to the authority vested in them in the ninetieth chapter.

Form of the writ. 1794, 65, § 1.

Who liable as trustees.
3 Pick. 302.
7 Mass. 259.
5 Pick. 28. 178.
6 Pick. 120.
2 Pick. 617.
1794, 65, § 1.

SECT. 4. Every person, having any goods, effects, or credits of the principal defendant, entrusted or deposited in his hands or possession, may be summoned as a trustee, and such goods, effects, and credits shall be thereby attached and held to respond the final judgment in the suit, in like manner as goods or estate, when attached by the ordinary process.

Same subject.
3 Pick. 65.

SECT. 5. If, after the service on the trustee, but before he has any knowledge thereof, he shall in good faith make any payment, or become in any way liable to any third person, for or on account of the goods, effects or credits in his hands, or shall have delivered the same to the original defendant, or to any other person entitled thereto, he shall be allowed therefor, in the same manner as if the payment or delivery had been made, or the liability incurred, before the service of the writ on him.

Corporations may be summoned; how they shall answer.
2 Mass. 37.
1832, 164, § 1.

SECT. 6. All corporations may be summoned as trustees, and they may appear and answer by their cashier, treasurer, secretary, or such other officers, as they shall appoint, or as the court shall require, to attend for that purpose; and the answer and examination on oath of such officers or persons shall be received as the answer and examination of the corporation.

Action, in what county to be brought.
1794, 65, § 1.

SECT. 7. If all the persons, named in the writ as trustees, dwell in one county, the writ shall be returnable in that county, otherwise it may be returnable in any county, in which either of the trustees dwells, without regard to the domicil of the principal parties.

Manner of serving the writ.
1794, 65, § 1.

SECT. 8. The attachment of the goods and estate of the principal defendant, in his own hands and possession, if any, shall be made in the usual manner, and the writ shall be further served on the principal, and also on each of the trustees, in the manner prescribed for the service of an original summons, in other civil actions.

New trustees, and new service, when allowed.
1798, 5, § 2.

SECT. 9. At any time before the writ is served on the principal defendant, the plaintiff may insert therein the names of any other persons, as trustees, and may cause the writ to be served on them; and after a service on any trustee, the writ may be served again on the same person, in like manner and with the same effect, as if he had not been previously served therewith, provided such second service be made before the writ is served on the principal defendant.

Case of the discharge of all the trustees.
1798, 5, § 1.

SECT. 10. If all the persons, summoned as trustees, shall be discharged, the plaintiff shall not proceed in the suit against the principal defendant, unless there has been such a service of the writ on him, as would be sufficient in an action, commenced in the ordinary mode of process, or unless the principal shall actually appear and answer to the suit.

Trustee, when and how to be discharged.
1794, 65, § 3.

SECT. 11. If any supposed trustee shall appear, either in person or by attorney, and declare in writing that he had not, in his hands or possession, at the time when the writ was served on him, any goods, effects or credits of the principal, and shall submit himself thereupon to examination upon his oath, and if the plaintiff shall decline to examine him, or if upon such examination his declaration shall appear to the court to be true, he shall be discharged.

—may be examined on oath.
8 Pick. 25.
1817, 148, § 2.

SECT. 12. Every such declaration may be signed by attorney, and if the plaintiff proceeds to examine the supposed trustee thereupon, he shall propose interrogatories in writing, which shall be an-

swered in writing, and signed by the supposed trustee, and sworn to by him in open court, or before any justice of the peace.

SECT. 13. If any person so summoned shall admit that he has in his hands any goods, effects or credits of the principal, or shall wish to refer that question to the court, upon the facts, he may, instead of the declaration before mentioned, make a declaration, setting forth such facts as he shall deem material, and submit himself thereupon to a further examination on oath; and such declaration, with the further examination, if any, shall be sworn to, in the manner before provided. Same subject.

SECT. 14. When any person, who has been duly summoned as a trustee, shall neglect to appear and answer to the suit, he shall be defaulted, and shall be thereupon adjudged a trustee. —not appearing, shall be defaulted.

SECT. 15. The answers and statements, sworn to by any person summoned as a trustee, shall be considered as true, in deciding how far he is chargeable, but either party may allege and prove any other facts, not stated nor denied by the supposed trustee, that may be material in deciding that question. Mode of trial when he appears. 7 Pick. 194. 8 Pick. 67. 11 Mass. 488. 4 Mass. 85. 2 Mass. 96. 1817, 148, § 2.

SECT. 16. Any question of fact, arising upon such additional allegations, may be tried and determined by the court, or may be submitted to a jury, in such manner as the court shall direct. Same subject. 1817, 148, § 1.

SECT. 17. If it shall appear that any goods, effects or credits, in the hands of any supposed trustee, are claimed by any other person, by force of an assignment from the principal defendant, or otherwise, the court may permit such claimant to appear, if he see cause, and maintain his right, and if he does not voluntarily appear, notice for that purpose may be issued and served on him, in such manner as the court shall direct. Adverse claimant may become a party to the suit. 1817, 148, § 1.

SECT. 18. If any such claimant shall appear, either voluntarily or upon notice given, as before provided, he may be admitted as a party to the suit, so far as it respects his title to the goods, effects or credits in question, and may allege and prove any facts, not stated nor denied by the supposed trustee, and such allegations shall he tried and determined, in the manner before provided. Proceedings in such case. 1817, 148, § 1.

SECT. 19. Upon the trial of any question, arising upon the additional allegations of any party, the testimony shall all be given by depositions, taken and reduced to writing, in the usual form, and filed in the case. Evidence to be in writing.

SECT. 20. Upon any trial, between the attaching creditor and any other person claiming the same effects, in the manner before mentioned, the principal defendant may be examined as a witness for either party, if there is no other objection to his competency, except his being a party to the original suit. Principal defendant may be a witness, unless, &c. 1817, 148, § 1.

SECT. 21. When any such claimant is admitted as a party, in the manner before mentioned, the court may, at their discretion, award costs, between him on the one part, and the attaching creditor and the supposed trustee, or either of them, on the other part, as justice and equity may require. Costs for or against such adverse claimant. 1817, 148, § 1.

SECT. 22. When any person is chargeable as a trustee, by reason of any goods or chattels, other than money, which he holds or is bound to deliver to the principal defendant, he shall deliver the same, or as much thereof as may be necessary, to the officer who holds the execution, and the goods shall be sold by the officer, and the pro- Case of trustee having specific goods, &c. 1794, 65, § 1.

ceeds thereof applied and accounted for, in the same manner as if they had been taken on an execution in the common form.

Same subject.

SECT. 23. The value of any goods, so delivered by the trustee, shall be ascertained and fixed, as between him and the principal defendant, in like manner and upon the same principles, as if they had been delivered to the defendant; and upon the application of either party, the court may, either pending the original suit, or upon the scire facias, if any is afterwards brought against the trustee, determine the said value, and may make any other order, in relation to such goods and the delivery thereof, that may be necessary or proper to protect the rights of the trustee and of the principal defendant.

The suit not to prevent his delivering them, unless, &c. 6 Mass. 60.

SECT. 24. When any person, who is summoned as a trustee, is bound by contract to deliver any specific goods to the principal defendant, at any certain time and place, he shall not be compelled, by reason of the foreign attachment, to deliver them at any other time or place; and he may, notwithstanding such process, tender or deliver them to the person entitled under the contract, at the time and place therein mentioned, unless he shall have been previously adjudged a trustee on account thereof.

Case of a trustee, having a lien on the goods. 1829, 124, § 1.

SECT. 25. When it appears that any such goods, in the hands of any person summoned as a trustee, are mortgaged or pledged, or in any way liable, for the payment of any debt to him, the attaching creditor may be allowed, under an order of the court for that purpose, to pay or tender the amount due to the trustee, and the trustee shall thereupon deliver the goods, in the manner before provided, to the officer who holds the execution.

Same subject. 1829, 124, § 1.

SECT. 26. If the goods in such a case are held for any purpose, other than to secure the payment of money, and if the contract, condition, or other thing to be performed, is such as can be performed by the attaching creditor, without damage to the other parties, the court may make an order for the performance thereof by him; and, upon such performance, or a tender thereof, the trustee shall deliver the goods, in the manner before provided, to the officer who holds the execution.

Such goods, how to be disposed of. 1829, 124, § 2.

SECT. 27. All goods received by the officer, by force of the two preceding sections, shall be sold and disposed of in the same manner as if they had been taken on an execution in the common form; except, that out of the proceeds of the sale, the officer shall repay to the attaching creditor the amount paid by him to the trustee for the redemption of the goods, with interest thereon, or shall indemnify the creditor for such other act or thing as he shall have done or performed, pursuant to the order of the court, for the redemption of the goods.

— may be sold by the trustee, in case, &c.

SECT. 28. Nothing contained in any of the preceding sections shall prevent the trustee from selling the goods in his hands, for the payment of the demand, for which they are mortgaged, pledged or otherwise liable, at any time before the amount due to him shall be paid or tendered, as before mentioned, provided such sale would be authorized by the terms of the contract between him and the principal defendant.

Trustee, when liable for non-

SECT. 29. If any trustee shall refuse or neglect to deliver any goods in his hands, when thereto lawfully required by the officer, who

serves the execution, he shall be liable to the plaintiff in the action for the value thereof, after deducting the amount, if any, of his lien thereon, to be recovered in like manner as money is recovered, when not paid on the first execution, pursuant to the judgment against a trustee.

delivery of such goods. 1794, 65, § 6. 1824, 124, § 1.

SECT. 30. No person shall be adjudged a trustee, in either of the cases following, to wit:

What demands, not attachable by this process. 1794, 65, § 12.

First, by reason of having drawn, accepted, made, or indorsed any negotiable bill, draft, note, or other security:

Secondly, by reason of any money or other thing, received or collected by him, as a sheriff or other officer, by force of an execution or other legal process, in favor of the principal defendant in the foreign attachment, although the same should have been previously demanded of him by the principal defendant:

3 Mass. 289. 5 Mass. 319.

Thirdly, by reason of any money in his hands as a public officer, and for which he is accountable, merely as such officer, to the principal defendant:

7 Mass. 259.

Fourthly, by reason of any money or other thing due from him to the principal defendant, unless it is, at the time of the service of the writ on him, due absolutely and without depending on any contingency: nor

3 Mass. 33. 68. 6 Pick. 120. 3 Pick. 1. 65.

Fifthly, by reason of any debt due from him on a judgment, so long as he is liable to an execution on the judgment.

2 Mass. 94. 3 Mass. 121.

SECT. 31. If, during the pendency of any action, the defendant therein is summoned as the trustee of the plaintiff, the first suit may nevertheless proceed so far as to ascertain, by a verdict, award, or otherwise, what sum, if any, is due from the defendant; and the suit shall not be delayed, on account of the foreign attachment, unless the court, for good cause shown, shall see fit to continue the same for judgment, until the termination of the trustee suit, or until the attachment therein shall be dissolved, by the discharge of the trustee, or by the satisfaction of the judgment, or otherwise.

Case af attachment of a demand already in suit. 7 Mass. 149.

SECT. 32. The court may, on the application of the plaintiff in the foreign attachment, continue the other suit, on such terms as they shall think just and reasonable, and if it is not so continued, and the judgment is rendered against the defendant therein, he shall not be afterwards adjudged a trustee, on account of the demand so recovered against him, so long as he is liable to an execution on the judgment.

Proceedings in such case.

SECT. 33. If, before final judgment is rendered in the first suit, the defendant in that suit shall be adjudged a trustee in the other, and shall pay thereon the money demanded in the first suit, or any part thereof, the fact shall be stated on the record of the first suit, and judgment therein shall be rendered, for the costs due to the plaintiff, and for such part of the debt or damages, if any, as shall remain due and unpaid.

Same subject.

SECT. 34. Any money or other thing, due to the principal defendant, may be attached before it has become payable, provided it be due absolutely and without any contingency, as before mentioned; but the trustee shall not be compelled to pay or deliver it, before the time appointed therefor by the contract.

Debt may be attached before it is payable.

SECT. 35. If any person, who is summoned as a trustee, shall have in his possession any goods, effects or credits of the principal

Case of a fraudulent convey-

ance to the trustee. 4 Mass. 508. 12 Mass. 140. 5 Mass. 390.

defendant, which he holds by a conveyance or title, that is void as to the creditors of the defendant, he may be adjudged a trustee, on account of such goods, effects and credits, although the principal defendant could not have maintained an action therefor against him.

Case of mutual demands between principal and trustee. 16 Mass. 473.

SECT. 36. Every trustee shall be allowed to retain or deduct out of the goods, effects and credits in his hands, all his demands against the principal, of which he could have availed himself, if he had not been summoned as a trustee, whether by way of set-off on a trial, or by the set-off of judgments or executions, between himself and the principal; and he shall be liable for the balance only, after all mutual demands between him and the principal are adjusted.

Certain demands, excluded.

SECT. 37. In the demands, mentioned in the preceding section, to be adjusted between the trustee and the principal defendant, there shall not be included, on either side, any claim for unliquidated damages for wrongs or injuries.

Scire facias against the trustee, after judgment. 1794, 65, § 6.

SECT. 38. If any person, who is adjudged a trustee in the original suit, shall not pay over to the officer, upon demand, goods, effects or credits, sufficient to satisfy the execution, and if the execution is not otherwise satisfied, the plaintiff may sue out a writ of scire facias against the trustee, from the same court in which the judgment was rendered, to show cause why judgment and execution should not be awarded against him and his own goods and estate, for the sum remaining unsatisfied on the judgment against the principal defendant.

Proceedings therein, upon default. 1794, 65, § 7.

SECT. 39. If the trustee, having been duly served with the scire facias, shall neglect to appear and answer thereto, he shall be defaulted, and if he shall not have been examined in the original suit, judgment shall be rendered against him, upon such default, for the whole sum remaining unsatisfied on the judgment against the principal defendant.

Same subject.

SECT. 40. If the trustee, who is defaulted on the scire facias, shall have been examined in the original suit, judgment in the scire facias shall be rendered upon the facts stated in that examination, or proved in the trial that may have been had thereon, for such part, if any, as shall remain in his hands, of the goods, effects or credits, for which he was originally chargeable as a trustee, or for so much thereof, as shall be then remaining unsatisfied, on the judgment against the principal defendant.

Proceedings therein, upon examination of the trustee. 1794, 65, § 6.

SECT. 41. If the trustee appears and answers to the scire facias, and if he had not been examined in the original suit, he shall be liable to be examined, in the same manner, as he might have been in that suit, and if he had been examined in the original suit, the court may require or permit him to be examined anew, in the suit on the scire facias, and in either case, he shall be permitted to plead and prove any matter, that may be necessary or proper, for his defence in the suit on the scire facias; and upon the whole matter appearing upon such examination and trial, the court shall render such judgment, as law and justice shall require.

Forms of judgment against trustee.

SECT. 42. When any person is adjudged to be a trustee in the original suit, it shall not be necessary to specify in the judgment the sum for which he is chargeable; but if, upon a writ of scire facias against him, it shall appear that he is chargeable as a trustee, the sum, for which he is chargeable, shall be expressed in the judgment.

SECT. 43. If, after any person is adjudged a trustee, the goods, effects and credits in his hands shall not be demanded of him, by force of the execution, within thirty days after final judgment, the same goods, effects and credits shall be liable to another attachment, whether made before or after the said judgment, in like manner as if such prior attachment had not been made.

Foreign attachment, how and when dissolved. 1 Mass. 117.

SECT. 44. If there shall be no such second attachment, the principal defendant in the suit may recover the goods, effects and credits, if not demanded, as aforesaid, within the said thirty days, in like manner as if they had not been attached.

Same subject.

SECT. 45. If no such second attachment is made of the same goods, effects and credits, and no action is brought therefor by the principal defendant, and if they shall not have been paid or delivered to him, before the same are demanded of the trustee by the officer, the trustee shall be liable to pay and deliver the same, when so demanded, although it should be after the expiration of the said thirty days.

Same subject.

SECT. 46. If the trustee cannot be found in the state, by the officer to whom the execution is committed for service, a copy of the execution may be left at his dwelling house, or at his last and usual place of abode, with a notice to the trustee, indorsed thereon and signed by the officer, signifying that he is required to pay and deliver, towards satisfying the execution, the goods, effects and credits, for which he is liable; and this shall be deemed a sufficient demand, for all the purposes expressed in the three preceding sections.

Same subject.

SECT. 47. The judgment, against any person as a trustee, shall acquit and discharge him from all demands by the principal defendant, or his executors or administrators, for all goods, effects and credits, paid, delivered or accounted for by the trustee, by force of such judgment; and if he is afterwards sued therefor, by the said defendant, or his executors or administrators, he may plead the general issue, and give the special matter of discharge in evidence.

Judgment against trustee shall protect him, &c. 1794, 65, § 8.

SECT. 48. If any person, who is summoned as a trustee, is discharged, the judgment shall be no bar to an action, brought against him by the principal defendant, for the same demand.

Judgment for him not to bar his principal.

SECT. 49. If any person, summoned as a trustee, shall appear at the first term, and submit himself to an examination upon oath, as before provided, he shall be allowed his costs for travel and attendance, and such further sum as the court shall think reasonable, for his counsel fees and other necessary expenses.

Costs and expenses of trustee. 1794, 65, § 3. 1829, 128, § 2.

SECT. 50. If such person shall be adjudged a trustee, his said costs and charges shall be deducted and retained, out of the goods, effects and credits in his hands, and he shall be chargeable for the balance only, to be paid on the execution.

— to be retained out of the effects, if any. 1829, 128, § 2.

SECT. 51. If such person shall be discharged as a trustee, whether by reason of his having no goods, effects or credits in his hands, or because the plaintiff shall not recover judgment against the principal defendant, or for any other cause, his said costs and charges shall be paid by the plaintiff, and the trustee shall have judgment and execution therefor accordingly.

— or to be paid by the plaintiff. 1794, 65, § 4.

SECT. 52. If the person, summoned as a trustee, is out of the state at the time of the service of the original writ on him, and if he

Costs, when the trustee is out of the state.

10 Mass. 25.

shall appear as before provided, at the first term after his return, he shall be allowed for his said costs and charges, in the same manner as if he had appeared at the term when the action was entered.

When he is in another county. 1794, 65, §§ 3 & 6.

SECT. 53. If the person so summoned does not dwell in the county in which the writ is returnable, he shall in all cases be allowed his said costs and charges, which shall be retained or recovered as before provided, whether he appears at the first or at any other term, and whether in the original suit, or upon a scire facias against him.

Trustee, when liable to pay costs. 1794, 65, § 3.

SECT. 54. If any person, who is summoned as a trustee, and who dwells in the county in which the writ is returnable, shall, without any reason which the court shall deem sufficient, neglect to appear at the first term and submit himself to an examination as before provided, he shall be liable for all costs for the plaintiff's travel and attendance, until the trustee shall appear as aforesaid, provided the plaintiff recovers judgment in the suit, and that his said costs are not otherwise recovered and received by him.

Proceedings in such case.

SECT. 55. If the person, so liable for costs, shall not voluntarily pay the amount thereof, when demanded by the officer who serves the execution, the officer shall state that fact in his return on the execution, and if it appears by the same return, that the said costs have not been paid by any other person, or in any other manner, the court shall award a new execution, against the person so summoned as a trustee, for the costs due from him.

When several trustees are liable for costs. 1794, 65, § 3

SECT. 56. If there are several persons summoned as trustees, and liable for costs, according to the provisions of the two preceding sections, the second execution shall be awarded against them all jointly, and if any one shall pay more than his proportion thereof, the others shall be bound to contribute equally, to indemnify him for the excess.

Costs against trustee on the scire facias. 1794, 65, §§ 3 & 6.

SECT. 57. If any person, who is summoned as a trustee, and who dwells in the county in which the writ is returnable, shall be defaulted in the original suit, and a writ of scire facias shall be issued against him, he shall be liable for all the costs of the suit on the scire facias, to be paid out of his own goods and estate, whether he is finally adjudged to be a trustee or not, except as hereinafter provided.

Same subject. 1794, 65, § 6.

SECT. 58. If it shall appear that the person so defaulted had in his hands goods, effects or credits, liable to the attachment, and that he has paid and delivered the whole amount thereof on the execution issued on the original judgment, he shall not be liable for any costs in the suit on the scire facias, nor shall he be entitled to recover any costs.

Same subject.

SECT. 59. If the person so defaulted shall have been prevented from appearing in the original suit, by his absence from the state, or for any other reason that the court shall deem sufficient, he shall not be liable for any costs in the suit on the scire facias, but the court may, if it shall appear to them reasonable, allow him his costs and charges for travel and attendance, and for his counsel fees and other necessary expenses, to be retained or recovered, in like manner as if he had appeared in the original suit.

Execution for costs against trustee.

SECT. 60. If any person, who is summoned as a trustee, shall be held liable to pay, out of his own estate, the costs of suit on the

scire facias, as before provided, and if he is at the same time liable for the costs, for the plaintiff's travel and attendance, in the original suit, one execution against him shall be issued for both sums.

Scire facias against several trustees.

SECT. 61. When there are several trustees liable to the writ of scire facias, the plaintiff may have one writ against them all jointly, or may have separate writs against each one, or against any two or more of them, but if he shall, without any reason which the court shall deem sufficient, sue out two or more writs, when he might have joined all the trustees in one writ, he shall recover no more costs in the whole than if he had sued out only one writ, and the court may apportion the costs equally and proportionally, among all the trustees who are liable therefor.

Costs in such case.

Executor and administrator, liable as trustees. 7 Mass. 271. 8 Mass. 246.

SECT. 62. Any debt or legacy due from an executor or administrator, and any other goods, effects or credits, in the hands of an executor or administrator as such, may be attached in his hands by the process of foreign attachment.

Upon the death of a trustee, his executor, &c. liable.

SECT. 63. If any person, who is summoned as a trustee in his own right, shall die before the judgment, if any, recovered by the plaintiff, shall be fully satisfied, the goods, effects and credits in his hands, at the time of the attachment, shall remain bound thereby, and his executors or administrators shall be liable therefor, in like manner as if the writ had been originally served on them.

Proceedings when the trustee dies before judgment.

SECT. 64. If the person so summoned shall die before judgment in the original suit, his executor or administrator may appear voluntarily, or may be cited to appear, in like manner as is provided in case of the death of any defendant in a common action, and the further proceedings shall then be conducted in the same manner as if the executor or administrator had been originally summoned as a trustee, except that the examination of the deceased, if any had been filed, shall have the same effect as if he were still living.

Same subject.

SECT. 65. If the executor or administrator in such case shall not appear, the plaintiff, instead of suggesting the death of the testator or intestate, may take judgment against him by default or otherwise, as if he were living, and the executor or administrator shall pay on the execution the amount which he would have been liable to pay to the principal defendant, and he shall be thereby discharged from all demands on the part of the principal defendant in the suit, for the amount so paid, in like manner as if the executor or administrator had been himself adjudged the trustee.

Scire facias against the executor, &c. in such case.

SECT. 66. If the executor or administrator, in the case last mentioned, shall not voluntarily pay the amount in his hands, the plaintiff may proceed against him, by a writ of scire facias, in like manner as if the judgment in the first suit had been against the executor or administrator himself as trustee.

When the trustee dies after judgment.

SECT. 67. If the person, originally summoned as a trustee, shall die after judgment in the original action, the executor or administrator may pay, on the execution, the amount which the deceased would have been liable to pay, if living, and he shall be discharged from all further demands on account thereof, in the manner before mentioned; and if he shall refuse so to do, the plaintiff may proceed against him, by a writ of scire facias, in the manner provided in the preceding section.

When, within thirty days after judgment.

SECT. 68. If any person, against whom execution shall issue as a trustee, shall not be living at the expiration of thirty days after final judgment in the trustee suit, the demand, to be made by force of the execution, for the purpose of holding the attachment, may be made of the executor or administrator of the deceased person, at any time within thirty days after the appointment of such executor or administrator, and it shall have the same effect as if made within thirty days after the judgment.

Judgment against executor, &c. how to be enforced.

SECT. 69. When an executor or administrator is adjudged to be a trustee, for or on account of any goods, effects or credits in his hands or possession, merely as such executor or administrator, whether in a suit originally commenced against him as a trustee, or against the deceased testator or intestate, and whether the judgment be in the original suit, or on a writ of scire facias, the execution shall not be served on his own goods or estate, nor on his person, but he shall be liable for the amount in his hands, in like manner and to the same extent only as he would have been to the principal defendant, if there had been no foreign attachment.

Same subject.

SECT. 70. If, after a final judgment against an executor or administrator, for any certain sum due from him as a trustee, he shall neglect to pay the same, the original plaintiff in the foreign attachment shall have the same remedy for recovering the amount, either upon a suggestion of waste, or by a suit on the administration bond, as the principal defendant in the foreign attachment would have had, upon a judgment recovered by himself, for the same demand, against the executor or administrator.

Trustee process, in suits before a justice of the peace. 1835, 141, § 1.

SECT. 71. All personal actions, which may by law be brought before a justice of the peace, except those which are excepted in the first section of this chapter, may be commenced by the process of foreign attachment, in the manner hereinafter provided.

Trustee, not liable out of his county.

SECT. 72. No person shall be summoned, nor held to answer as a trustee, in any action before a justice of the peace, in any other county than that in which he dwells; and if he is out of the county, at the time of the service of the original writ on him, and shall not return before the final judgment in the suit, he shall not be chargeable as a trustee.

Form of the writ and course of proceedings.

SECT. 73. The form of the writ, and all the proceedings in such suit, before a justice of the peace, shall be substantially the same, as are before provided in this chapter, in the case of a like suit in the court of common pleas.

Costs for trustee, and allowance for expenses.

SECT. 74. When any person, summoned as a trustee, before a justice of the peace, shall be entitled to costs, his travel and attendance shall be taxed at the same rate as if he were a principal defendant, and he shall be allowed such further sum, as the justice shall think reasonable, for his counsel fees and other necessary expenses.

Justice may issue scire facias, although, &c.

SECT. 75. When it shall become necessary to sue out a writ of scire facias against any person, who has been summoned as a trustee, before a justice of the peace, it may be issued by the justice by whom the judgment was rendered, although the amount of the debt and costs therein should exceed twenty dollars.

Jurisdiction of police courts.

SECT. 76. The provisions, contained in the five preceding sections, shall extend to all police courts, and other courts exercising the

jurisdiction of justices of the peace, and the said police and other courts may hear and determine, in the manner before provided, all actions duly brought before them by the said process of foreign attachment.

SECT. 77. No action shall be maintained, before any justice of the peace, or before a police court, or other court exercising the jurisdiction of a justice of the peace, unless it be one of which the same justice or court would have had jurisdiction, if it had been commenced by the ordinary process.

Limitation of jurisdiction of justices and of police courts. 1835, 141, § 1.

SECT. 78. If any person, summoned as a trustee, or the executor or administrator of any such person, or if any officer, agent or other person, who shall appear and answer for a corporation, so summoned, shall, upon his examination on oath, knowingly and wilfully answer falsely, he shall, out of his own goods and estate, pay to the plaintiff in the foreign attachment, or to his executors or administrators, the full amount due on the judgment recovered therein, with interest therefor, to be recovered in a special action on the case, and he shall, moreover, on conviction thereof upon indictment, be adjudged guilty of perjury.

Penalty for perjury on examination as trustee. 4 Mass. 272. 10 Mass. 258. 1794, 65, § 9.

CHAPTER 110.

OF SUITS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

SECTION
1. Writs against executors and administors, how to run.
2. Executor, &c. when personally liable for costs.
3, 4. Execution in such case.
5. Such costs to be allowed in their administration accounts, unless, &c.
6. Scire facias against executor, &c. on suggestion of waste.
7. Death of executor, &c. pending a suit.
8. Proceedings in such case.
9. Death of executor, &c. after judgment.
10. Writ of error, how brought in such case.

SECTION 1. All writs of attachment, and all executions, against executors or administrators, for debts due from the deceased testator or intestate, shall run only against the goods and estate of the deceased in their hands, and not against their own bodies, or their goods or estate.

Writs against executors and administrators, how to run. 1783, 32, § 9.

SECT. 2. When a judgment for costs shall be rendered against an executor or administrator, in any action commenced by or against him, or in any action commenced by or against the testator or intestate, wherein the executor or administrator has appeared and taken upon himself the prosecution or defence, he shall be personally liable for the costs.

Executor, &c. when personally liable for costs. 16 Mass. 530.

SECT. 3. When judgment is recovered against an executor or administrator for costs only, the execution shall be awarded against his body and his goods and estate, as if it were for his own debt.

Execution in such case.

SECT. 4. When the judgment is for debt or damages, and for

Same subject.

costs also, an execution, for the debt or damages, shall be awarded against the goods and estate of the deceased, in the hands of the executor or administrator, and another execution, for the sum due for costs, shall be awarded against the goods and estate of the executor or administrator, and also against his body, as if it were for his own debt.

Such costs to be allowed in their administration accounts, unless, &c.

SECT. 5. All costs, paid by executors or administrators, and for which they are made personally liable, shall be allowed them in their administration accounts, unless the judge of probate shall decide that the suit was prosecuted or defended without reasonable cause.

Scire facias against executor, &c. on suggestion of waste. 1783, 32, § 9. 1819, 157.

SECT. 6. When an execution against an executor or administrator, for a debt due from the estate of the deceased, is returned unsatisfied, the creditor may sue out a scire facias, upon a suggestion of waste, against the executor or administrator, and if the defendant shall not appear and show sufficient cause to the contrary, he shall be deemed guilty of waste, and shall be personally liable for the amount of such waste, when it can be ascertained, otherwise for the amount due on the original judgment, with interest thereon, from the time when it was rendered, and judgment and execution shall be awarded accordingly as for his own debt.

Death of executor, &c. pending a suit. 4 Mass. 611. 613. 1817, 190, § 18.

SECT. 7. When an executor or administrator shall die or be removed from office, during the pendency of any suit, in which he is a party, the suit may be prosecuted by or against the administrator de bonis non, if any shall be appointed, in like manner as if it had been originally commenced by or against such last administrator.

Proceedings in such case. 1817, 190, § 18.

SECT. 8. The proceedings in such case, with respect to the appearance of the administrator de bonis non, whether voluntarily, or upon a citation, and with respect to his nonsuit or default, if he does not appear, shall be conducted in the manner prescribed in the ninety third chapter, upon occasion of the death of either party during the pendency of a suit.

Death of executor, &c. after judgment. 1817, 190, § 18.

SECT. 9. If any executor or administrator shall die or be removed, after judgment is rendered, either for or against him, a scire facias may be sued out, either by or against the administrator de bonis non, and a new execution may be issued accordingly, in like manner as it may be done by or against an original executor or administrator, in case of the death of his testator or intestate, after a judgment rendered for or against him, except only, that a judgment against the first executor or administrator for costs, for which he was personally liable, shall be enforced only against his executor or administrator, and not against the administrator de bonis non.

Writ of error, how brought in such case. 4 Mass. 611. 613. 1812, 105. 1817, 190, § 18.

SECT. 10. When a judgment is rendered in any case for or against an executor or administrator, a writ of error may be brought thereon, by or against an administrator de bonis non, if any should be appointed, in like manner as it might have been brought by or against the executor or administrator, who was party to the judgment.

CHAPTER 111.

OF THE WRIT OF HABEAS CORPUS.

SECTION
1. Writ of habeas corpus for discharge of prisoners.
2. In what cases, not issuable as of right.
3. Application therefor, how and to whom made.
4. To be issued and returned without delay—Returnable to S. J. Court or to one justice thereof.
5. Form of writ in certain cases.
6. Writ, how signed and served.
7, 8. " by whom issued.
9. " how returned and proceeded on, in certain cases.
10. The officer, &c., how to be named or described.
11. The party, how to be namedor described.
12. Costs of service to be advanced, when the party is in legal custody.
13. Writ, when to be returned.
14. Substance of the return.
15. Return to be signed; and sworn to, unless, &c.
16. The party to be produced with the writ.
17. Proceedings when the party is sick, &c.
18. Examination to proceed without delay; adjournment thereof.
19. Notice, when to be given to other persons.
20. " when to be given to the attorney for the Commonwealth.
21. Mode of examination and trial.
22. Party, in what case to be discharged.
23. " when and how to be bailed.
54. How, when committed on mesne process.
25. In what case to be remanded.
26. Custody of the party, pending the examination.
27. Penalty on officer refusing copy of warrant.
28. Proceedings against one refusing to obey the writ.
29. Proceedings against a sheriff, &c. in such case.
30. New precept to issue to another officer, &c.
31. Penalty on the person so refusing.
32. " for removing or concealing a prisoner.
33. These penalties not to bar an action by the party.
34. Party discharged, not to be imprisoned again, unless, &c.
35. Discretionary power of supreme court to bail, &c.
36. Person committed, &c. how and by whom bailable.
37. Habeas corpus, in what other cases to be issued.
38. Writ de homine replegiando, abolished.

SECTION 1. Every person, imprisoned in any common jail, or otherwise restrained of his liberty, by any officer or other person, except in the cases mentioned in the following section, may prosecute a writ of habeas corpus, according to the provisions of this chapter, to obtain relief from such imprisonment or restraint, if it shall prove to be unlawful.

Writ of habeas corpus for discharge of prisoners.
11 Mass. 63. 67. 83.
6 Mass. 273.
2 Mass. 553.
10 Pick. 434.
1784, 72, § 1.

SECT. 2. The following persons shall not be entitled, as of right, to demand and prosecute the said writ:

In what cases, not issuable as of right.

First. Persons committed for treason or felony, or for suspicion thereof, or as accessories before the fact to a felony, when the cause is plainly and specially expressed in the warrant of commitment:

Secondly. Persons convicted, or in execution upon legal process, civil or criminal:

2 Pick. 172.

Thirdly. Persons committed on mesne process in any civil ac-

1784, 72, § 1.

tion on which they were liable to be arrested and imprisoned, unless when excessive and unreasonable bail is required.

Application therefor, how and to whom made.

SECT. 3. Application for such writ shall be made to the court or magistrate authorized to issue the same, by complaint in writing, signed by the party for whose relief it is intended, or by some person in his behalf, setting forth,

First, the person by whom, and the place where, the party is imprisoned or restrained, naming the prisoner and the person detaining him, if their names are known, and describing them if they are not known:

Secondly, the cause or pretence of such imprisonment or restraint, according to the knowledge and belief of the person applying:

Thirdly, if the imprisonment or restraint is by virtue of any warrant, or other process, a copy thereof shall be annexed, or it shall be made to appear that a copy thereof has been demanded and refused, or that for some sufficient reason a demand of such copy could not be made: and

1784, 72, § 1. 1808, 80.

Fourthly, the facts set forth in the complaint shall be verified by the oath of the person making the application, or by that of some other credible witness, which oath may be administered by the court or magistrate to whom the application is made, or by any justice of the peace.

To be issued and returned without delay.

SECT. 4. The court or magistrate, to whom such complaint shall be made, shall, without delay, award and issue a writ of habeas corpus, which shall be substantially in the form heretofore established and used in this state, except in the cases provided for in the following section, and shall, in all cases, be made returnable forthwith, either before the supreme judicial court, or before any one of the justices thereof, and at such place as shall be designated in the writ.

Returnable to S. J. Court, or to one justice thereof. 1784, 72, §§ 1, 2.

SECT. 5. In cases of imprisonment or restraint, by any person not a sheriff, deputy sheriff, coroner or jailer of this state, nor a marshal, deputy marshal or other like officer of the courts of the United States, the writ shall be in the form following:

Commonwealth of Massachusetts.

Form of writ in certain cases.

[SEAL.] To the sheriffs of our several counties, and their respective deputies. Greeting.

We command you, that the body of of by of imprisoned and restrained of his liberty, as it is said, you take and have before a justice of our supreme judicial court, at , immediately after receipt of this writ, to do and receive what our said justice shall then and there consider, concerning him in this behalf; and summon the said , then and there to appear before our said justice, to show the cause of the taking and detaining of the said , and have you there this writ with your doings thereon. Witness at , this day of in the year

Writ, how signed and served.

SECT. 6. When the writ is issued by the supreme judicial court, in session, it shall be signed by the clerk, otherwise by the magistrate or magistrates issuing the same, and may, in either case, be served in any county, by any sheriff or deputy sheriff of the same or of any other county.

SECT. 7. The writ may in all cases be issued by the supreme judicial court, or by any of the justices thereof. — by whom issued.

SECT. 8. The writ may be issued by any judge of the court of common pleas, if no justice of the supreme judicial court is known to him to be within ten miles of the place, where the party is imprisoned or restrained, or by any judge of probate, if no justice of the supreme judicial court nor judge of the court of common pleas is known to him to be within that distance, or by any two justices of the peace and of the quorum, if no justice of the supreme judicial court, judge of the court of common pleas, nor judge of probate is known to them to be within that distance, and whether the place of imprisonment be within or without the county, for which such judge of probate or justices of the peace may have been appointed. Same subject.

SECT. 9. If the court, to which the writ is returnable, shall be adjourned before it is returned, the return shall be made before any one of the justices of the said court; and if the writ is in any case returned before one judge, at a time when the court is in session, he may adjourn the case into the court, to be there heard and determined, in like manner as if the writ had been returned into the same court. Writ, how returned and proceeded on, in certain cases. 1784, 72, § 4.

SECT. 10. The person, having the custody of the prisoner, may be designated by his name of office, if he have any, or by his own name, or if both such names are unknown or uncertain, he may be described by an assumed appellation, and any one, who is served with the writ, shall be deemed the person intended thereby. The officer, &c., how to be named or described.

SECT. 11. The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way, so as to make known who is intended. The party, how to be named or described.

SECT. 12. If the party is confined in a common jail, or in the custody of any civil officer, the court or judge, who grants the writ, shall certify thereon the sum to be paid for the expense of bringing him from the place of imprisonment, and the officer, to whom the writ is directed, shall not be bound to obey it, unless that sum be paid or tendered to him. Costs of service to be advanced, when the party is in legal custody. 1784, 72, § 3.

SECT. 13. Any person, to whom the writ is directed, shall receive it, and upon payment or tender of the charges, if any, demandable for the execution of it, he shall make due return thereof, within three days after receiving it, if the place of return is within twenty miles from the place of imprisonment, and if it is more than twenty, and within one hundred miles, he shall return the writ within seven days, and if it is more than one hundred miles, he shall return it within fourteen days. Writ, when to be returned. 1784, 72, § 3.

SECT. 14. In cases, other than those provided for in the fifth section, the person, who makes the return, shall state therein, and in the cases provided for in the fifth section, the person, in whose custody the prisoner shall be found, shall state, in writing, to the court or justice before whom the writ is returnable, plainly and unequivocally, Substance of the return.

First, whether he has or has not the party in his custody or power, or under restraint:

Secondly, if he has the party in his custody or power, or under restraint, he shall set forth at large the authority, and the true and

whole cause of such imprisonment or restraint, with a copy of the writ, warrant or other process, if any, upon which the party is detained : and

Thirdly, if he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause, and by what authority, such transfer was made.

Return, to be signed; and sworn to, unless, &c.

SECT. 15. The return or statement shall be signed by the person making it, and it shall also be sworn to by him, unless he is a sworn public officer and shall make the return in his official capacity.

The party to be produced with the writ. 1784, 72, § 3.

SECT. 16. The person, who makes the return or statement, shall, at the same time, bring the body of the party, if in his custody or power, or under his restraint, according to the command of the writ, unless prevented by the sickness or infirmity of the party.

Proceedings when the party is sick, &c.

SECT. 17. When, from the sickness or infirmity of the party, he cannot, without danger, be brought to the place appointed for the return of the writ, that fact shall be stated in the return ; and if it is proved to the satisfaction of the court or judge, he may proceed to the jail or other place, where the party is confined, and there make his examination, or may adjourn the same to another time, or may make such other order in the case, as law and justice shall require.

Examination to proceed without delay; adjournment thereof. 1784, 72, § 5.

SECT. 18. When the writ of habeas corpus is returned, the court or judge shall, without delay, proceed to examine the causes of the imprisonment or restraint ; but the examination may be adjourned, from time to time, as circumstances may require.

Notice, when to be given to other persons.

SECT. 19. When it appears, from the return of the writ or otherwise, that the party is detained on any process, under which any other person has an interest in continuing his imprisonment or restraint, the party shall not be discharged, until sufficient notice shall have been given to such other person or his attorney, if within the state, or within thirty miles of the place of examination, to appear and object to such discharge, if he thinks fit.

— when to be given to the attorney for the Commonwealth.

SECT. 20. When it appears, from the return of the writ or otherwise, that the party is imprisoned on any criminal accusation, he shall not be discharged, until sufficient notice shall have been given to the attorney general, or other attorney for the Commonwealth, that he may appear and object to such discharge, if he thinks fit.

Mode of examination and trial.

SECT. 21. The party imprisoned or restrained may deny any of the facts, set forth in the return or statement, and may allege any other facts, that may be material in the case, and the court or judge shall proceed, in a summary way, to examine the causes of the imprisonment or restraint, and to hear the evidence that may be produced by any person, interested or authorized to appear, both in support of such imprisonment or restraint, and against it, and thereupon to dispose of the party, as law and justice shall require.

Party, in what case to be discharged. 1784, 72, § 5.

SECT. 22. If no legal cause be shown for the imprisonment or restraint, the court or judge shall discharge the party therefrom.

— when and how to be bailed. 1784, 72, § 5.

SECT. 23. If the party is detained for any cause or offence, for which he is bailable, he shall be admitted to bail, if sufficient bail be offered, and if not, he shall be remanded, with an order of the court or judge, expressing the sum in which he shall be held to bail, and the court at which he shall be required to appear ; and any justice of

the peace may, at any time before the sitting of the said court, bail the party pursuant to such order.

How, when committed on mesne process. 1784, 72, § 5.

SECT. 24. If the party is committed on mesne process, in any civil action, for want of bail, and if it shall appear that the sum, for which bail is required, is excessive and unreasonable, the court or judge shall decide what bail is reasonable, and shall order, that on giving such bail, the party shall be discharged.

In what case to be remanded.

SECT. 25. If the party is lawfully imprisoned or restrained, and is not entitled to be enlarged on giving bail, he shall be remanded to the person, from whose custody he was taken, or to such other person or officer, as by law is authorized to detain him.

Custody of the party, pending the examination.

SECT. 26. Until judgment be given, the court or judge may remand the party, or may bail him to appear from day to day, or may commit him to the sheriff of the county, or place him under such other care and custody, as the circumstances of the case may require.

Penalty on officer refusing copy of warrant. 1784, 72, § 6.

SECT. 27. Any officer, who shall refuse or neglect, for six hours, to deliver a true copy of the warrant or process, by which he detains any prisoner, to any person who shall demand such copy, and tender the fees therefor, shall forfeit and pay to such prisoner the sum of two hundred dollars.

Proceedings against one refusing to obey the writ. 1784, 72, § 8.

SECT. 28. If any person, to whom such writ of habeas corpus shall be directed, shall refuse to receive the same, or shall neglect to obey and execute it, according to the provisions of this chapter, and no sufficient excuse shall be shown for such refusal or neglect, the court or judge, before whom the writ was returnable, shall proceed forthwith, by process of attachment, as for a contempt, to compel obedience to the writ, and to punish the person guilty of the contempt.

Proceedings against a sheriff &c. in such case.

SECT. 29. If such attachment shall be issued against a sheriff or his deputy, it may be directed to any coroner, or to any other person to be designated therein, who shall have full power to execute the same; and if the sheriff or his deputy should be committed upon such process, he may be committed to the jail of any county other than his own.

New precept to issue to another officer, &c.

SECT. 30. Upon such refusal or neglect of the person to whom the writ of habeas corpus is directed, the court or judge may also issue a precept to any officer or other person to be designated therein, commanding him to bring forthwith, before such court or judge, the person, for whose benefit the writ of habeas corpus was issued, and the prisoner shall be thereupon discharged, bailed, or remanded, in like manner as if he had been brought in upon the writ of habeas corpus.

Penalty on the person so refusing. 1784, 72, § 9.

SECT. 31. Every person, guilty of such refusal or neglect to receive and execute a writ of habeas corpus, shall moreover forfeit and pay, to the party aggrieved thereby, the sum of four hundred dollars.

— for removing or concealing a prisoner. 1784, 72, § 7.

SECT. 32. If any one, who has in his custody or under his power, any person entitled to a writ of habeas corpus, whether any writ has been issued or not, shall, with intent to elude the service of such writ, or to avoid the effect thereof, transfer such prisoner to the custody, or place him under the power or control, of any other person, or conceal him, or change the place of his confinement, the person

so offending shall forfeit and pay to the party aggrieved thereby the sum of four hundred dollars.

These penalties, not to bar an action by the party. 1784, 72, § 7.

SECT. 33. The recovery of any penalty, imposed by this chapter, shall not bar any action at the common law for false imprisonment, or for a false return to the writ of habeas corpus, or for any other injury or damage sustained by the aggrieved party.

Party discharged, not to be imprisoned again, unless, &c. 1784, 72, § 12.

SECT. 34. No person, who has been discharged upon a habeas corpus, shall be again imprisoned or restrained for the same cause, unless he shall be indicted therefor, or convicted thereof, or committed for want of bail by some court of record having jurisdiction of the cause, or, unless after a discharge for defect of proof, or for some material defect in the commitment, in a criminal case, he shall be again arrested on sufficient proof, and committed by legal process for the same offence.

Discretionary power of supreme judicial court to bail &c. 1784, 72, § 2.

SECT. 35. Nothing contained in this chapter shall be construed to restrain the power of the supreme judicial court, or any one of the justices thereof, to issue a writ of habeas corpus at their discretion, and thereupon to bail any person, for whatever cause he may be committed or restrained, or to discharge him, as law and justice shall require; except only persons committed by the governor and council, or by the senate, or the house of representatives, in the manner and for the causes, mentioned in the constitution.

Person committed &c., how and by whom bailable. 1812, 30.

SECT. 36. When any person is committed to jail on any criminal accusation, for want of bail, any justice of the court of common pleas, or any two justices of the peace and of the quorum, may admit him to bail, in like manner as might have been done by the court or magistrate who committed him; and the said justices, respectively, shall have power to issue a writ of habeas corpus, and to cause such prisoner to be brought before them, when it shall be necessary for the purpose expressed in this section.

Habeas corpus in what other cases to be issued.

SECT. 37. Nothing contained in this chapter shall be construed to restrain the power of any court to issue a writ of habeas corpus, when necessary, to bring before them any prisoner, for trial in any criminal case, lawfully pending in the same court, or to bring in any prisoner, to be examined as a witness in any suit or proceeding, civil or criminal, pending in such court, when they shall think the personal attendance and examination of the witness necessary for the attainment of justice.

Writ de homine replegiando, abolished. 1786, 58.

SECT. 38. The writ de homine replegiando is abolished.

CHAPTER 112.

OF WRITS OF AUDITA QUERELA, OF ERROR, AND OF CERTIORARI.

SECTION

WRIT OF AUDITA QUERELA.

1. Writ of audita querela, how sued out and served.
2. To what court returnable.
3. General issue, what; and trial thereon.
4. Judgment how rendered.

SECTION
5. Judgment, when for plaintiff, shall bar a new action.
6. Either party may appeal to supreme court.
7. Plaintiff may be discharged from prison, on giving bond, &c.
8. Condition of the bond.
9. Plaintiff after surrender, to be held, &c.

WRIT OF ERROR.

10. Writs of error to issue from the supreme court.
11. Bond required for stay of execution.
12. Sum and sureties, how determined.
13. Proceedings, when a bond is filed.
14. What costs, for the party prevailing.
15. Proceedings upon writs of error.
16. Writs of error in capital cases;
17, 18. And in other criminal cases.
19. All writs of error limited to six years after judgment;
20 Or to six years after a new suit on the judgment.

WRIT OF CERTIORARI.

21. Writs of certiorari to issue from the supreme court.
22. Costs, in what cases allowed—Court may allow costs in all cases.
23. Writ limited to six years.
24. What writs and petitions to be indorsed.

WRIT OF AUDITA QUERELA.

SECTION 1. The writ of audita querela may be sued out and served, like an original writ of attachment or summons in any civil action, and the forms of process in the suit shall be substantially the same as have been heretofore established and used in this state.

Writ of audita querela, how sued out and served. 1780, 47, § 1.

SECT. 2. When the writ is brought to prevent, set aside, or annul, any proceedings upon a judgment or execution, it shall be sued out of, and be returnable to, the court in which the judgment was rendered; and in all other cases, it shall be sued out of, and be returnable to, the court of common pleas for the county in which any personal action might be brought by the same plaintiff against the defendant.

To what court returnable. 1780, 47, § 1.

SECT. 3. The general issue, in actions upon this writ, shall be the plea of not guilty, upon which issue, the plaintiff shall be held to prove his whole case, and the defendant may give in evidence any special matter which he might have pleaded specially in his defence.

General issue, what; and trial thereon. 1780, 47, § 10.

SECT. 4. The court shall proceed to hear and determine the cause, upon any issue of law or fact that shall be joined therein, or upon the nonsuit or default of either party, as in other cases, and shall render such judgment as law and justice shall require.

Judgment, how rendered. 4 Mass. 485. 10 Mass. 101. 12 Mass. 270. 14 Mass. 443. 1780, 47, § 3.

SECT. 5. If the writ is brought to set aside or annul any proceedings under an execution, and the plaintiff shall prevail in the suit, he shall, at the same time, recover recompense for the damages that he may have suffered by the said proceedings, and the judgment in the suit on the audita querela, shall be a bar to any other action thereafter brought for the same damages.

— when for plaintiff, shall bar a new action. 1780, 47, § 9.

SECT. 6. Either party, aggrieved by the judgment of the court of common pleas, in a suit upon a writ of audita querela, may appeal therefrom to the supreme judicial court, in like manner as in other civil actions.

Either party may appeal to supreme court. 1780, 47, § 11.

SECT. 7. If the plaintiff in such suit is imprisoned by force of the execution or other process complained of, the court, in which the suit is pending, may enlarge him, upon his giving bond to the defendant, in such sum as the court shall order, with two or more sureties having sufficient within the county, and approved by the court, with condition as provided in the following section.

Plaintiff may be discharged from prison, on giving bond, &c. 1780, 47, § 12.

Condition of the bond. 1780, 47, § 12.

SECT. 8. The condition of the bond shall be, that if final judgment in the suit on the audita querela shall be rendered for the defendant, the plaintiff shall, within thirty days thereafter, surrender himself to the jailer or other officer by whom he was imprisoned, to be detained in custody under the former execution or process, or shall within that time pay the sum due on the former execution or process, together with such costs as may be recovered by the defendant.

Plaintiff after surrender, to be held, &c. 17 Mass. 153. 1780, 47, § 12.

SECT. 9. If the plaintiff shall surrender himself, as mentioned in the preceding section, he shall be in custody under the execution or other process, by force whereof he was imprisoned, in like manner as if the writ of audita querela had not been brought, and the plaintiff had not been enlarged.

WRIT OF ERROR.

Writs of error to issue from supreme court.

SECT. 10. Writs of error, in civil and criminal cases, may issue of course out of the supreme judicial court, in vacation as well as in term time, and shall be returnable to the same court.

Bond required for stay of execution. 1 Mass. 156.

SECT. 11. No writ of error shall operate to stay or to supersede the execution in any civil action, unless the plaintiff in error, or some person in his behalf, shall give bond to the defendant, with one or more sufficient sureties, with condition that the plaintiff shall prosecute his suit to effect, and shall pay and satisfy such judgment as shall be rendered thereon.

Sum and sureties, how determined.

SECT. 12. The sufficiency of the sureties, and the sum for which the bond shall be given, shall be determined, in each case, by any justice of the supreme judicial court, or by the clerk from whose office the writ of error is issued, according to such general rules as the court may from time to time establish.

Proceedings, when a bond is filed.

SECT. 13. The bond, if any is given, shall be filed in the clerk's office for the use of the defendant, and no execution shall be thereafter issued upon the judgment complained of, during the pendency of the writ of error; and if execution shall have been already issued, the clerk shall make and sign a certificate of the issuing of the writ of error and the filing of the bond, and after notice of such certificate to the officer holding the execution, all further proceedings thereon shall be stayed.

What costs, for the party prevailing. 1 Mass. 81. 208. 342. 411. 443. 4 Mass. 436. 6 Mass. 4.

SECT. 14. The party prevailing on a writ of error in any civil action shall, in all cases, be entitled to his costs against the adverse party, and if the judgment is affirmed, the court shall adjudge to the defendant in error damages for his delay, not less than at the rate of six per cent., and not exceeding twelve per cent. a year, on the amount recovered by the former judgment, and in such case they may also, in their discretion, award to the defendant double costs.

Proceedings upon writs of error. 8 Mass. 383. 16 Mass. 384.

SECT. 15. The proceedings upon writs of error, as to the assignment of errors, and the scire facias to the defendant, and the pleadings, judgment, and all other matters not herein provided for, shall be according to the course of the common law, as modified by the practice and usage in this state, and such general rules as shall be made by the supreme judicial court.

Writs of error in capital cases.

SECT. 16. No writ of error, upon a judgment for any capital offence, shall issue, unless allowed by one of the justices of the supreme

judicial court, after notice given to the attorney general, or other attorney for the Commonwealth.

And in other criminal cases.

SECT. 17. Writs of error, upon judgments in all other criminal cases, shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless they shall be allowed by one of the justices of the supreme judicial court, with an express order thereon for a stay of proceedings on the judgment or sentence.

Same subject.

SECT. 18. When a stay of proceedings shall be ordered, as provided in the preceding section, the judge may at the same time make such order as the case may require, for the custody of the plaintiff in error, or for letting him to bail, or the party may, upon a writ of habeas corpus, procure his enlargement upon giving bail, if entitled thereto.

All writs of error limited to six years, after judgment. 1805, 35.

SECT. 19. No judgment in any case whatever shall be reversed or avoided, for any error or defect therein, unless the writ of error thereon be sued out within six years next after the entering of the judgment, or within six years after this act shall take effect.

Or to six years after a new suit on the judgment.

SECT. 20. If an action of debt, or a writ of scire facias, should be brought on any judgment, a writ of error to reverse the judgment may be sued out, at any time within six years after the bringing of such action of debt or writ of scire facias.

WRIT OF CERTIORARI.

Writs of certiorari to issue from supreme court.

SECT. 21. All writs of certiorari, to correct errors in proceedings that are not according to the course of the common law, shall be issued from and returnable to the supreme judicial court, according to the practice heretofore established, and subject to such further regulations, as shall be made, from time to time, by the general rules of the supreme judicial court.

Court may allow costs in all cases. 4 Mass. 565. 11 Mass. 465.

SECT. 22. Upon every application for a certiorari, and also on the final adjudication, when a certiorari is granted, the court may, in their discretion, award costs against any party who shall appear and undertake to maintain or object to the proceeding in question.

Writ limited to six years.

SECT. 23. No such writ of certiorari shall be issued, unless application therefor be made within six years next after the proceeding which is complained of, or within six years after this act shall take effect.

What writs and petitions to be indorsed. 1833, 50, § 2.

SECT. 24. All writs of audita querela, writs of error in civil cases, and petitions for writs of certiorari, shall be indorsed in the same manner as is provided with respect to original writs, and all the regulations concerning the indorsement of original writs, contained in the ninetieth chapter, shall apply in like manner to the indorsement of writs and petitions mentioned in this section.

CHAPTER 113.

OF DISTRAINING CATTLE, AND OF THE ACTION OF REPLEVIN.

SECTION

OF DISTRAINING CATTLE.

1. Beasts distrained shall be impounded.
2. Fees to fielddriver and poundkeeper.
3. To be paid by the owner of the beasts.
4. Beasts, doing damage, may be distrained:
5. And shall be impounded.
6. The person distraining to state his demand.
7. Beasts, not to be delivered, until all costs and charges are paid.
8. Notice to be given to the owner or keeper;
9. Or posted up, and published in a newspaper, in case, &c.
10, 11. The sum due from the owner, how to be determined.
12. If not paid, the beasts to be sold.
13. Proceeds, how disposed of.
14. Beasts escaped or rescued, may be retaken.
15. Penalty for rescuing beasts distrained.
16. The legality of a distress to be tried only by replevin.

REPLEVIN OF CATTLE DISTRAINED.

17. Writ of replevin before a justice of the peace.
18. Proceedings thereon.
19. Plaintiff to give bond:
20. In double the value of the property as appraised.
21. Return of the writ, with the bond and appraisal.
22. Judgment for defendant, how to be rendered.
23. Beasts returned, how to be disposed of.
24. Judgment for the plaintiff.
25. Either party may appeal.
26. Certain cases to be removed to court of common pleas.

OF OTHER REPLEVIN OF GOODS.

27. Replevin of goods attached, &c.
28. Writ, how sued out, served and returned—Issue.
29. Plaintiff to give bond.
30. Judgment for the defendant.
31. Damages for delaying an execution.
32, 33. Sums recovered on the bond, &c., how disposed of.
34. Judgment for the plaintiff.
35. Damages by whom to be assessed.
36. Goods attached, held liable after return.
37. Writ of reprisal, when to be issued.
38. Forms of the writs of return and reprisal.
39. These proceedings not to bar action on the bond, &c.
40. Limitation of suit against surety on the replevin bond.

OF DISTRAINING CATTLE.

Beasts distrained shall be impounded. 1788, 65. 1834, 184, § 4.

SECTION 1. When any beasts are taken up and distrained by any field driver, for going at large contrary to law, they shall be forthwith impounded in the town pound, and the pound keeper shall furnish them with suitable food and water, so long as they are detained in his custody.

Fees to field driver and pound keeper. 1834, 184, § 4.

SECT. 2. The field driver shall be entitled to fifty cents per head for all horses, asses, mules, and neat cattle, and ten cents per head for all sheep, goats and swine, so distrained by him, and the pound keeper shall be entitled to four cents per head for all the said animals so impounded; provided, that if more than ten sheep are taken up at the same time, the fees for all above that number shall be only one half of the fees before mentioned.

To be paid by the owner of the beasts. 1834, 184, § 4.

SECT. 3. The pound keeper shall not deliver to the owner any beasts so impounded, until the owner shall pay him his fees and the expense of keeping the beasts, and also the fees due to the field driver, which latter, when received, he shall pay to the field driver.

SECT. 4. When any person is injured in his land, by sheep, swine, horses, asses, mules, goats, or neat cattle, he may recover his damages in an action of trespass against the owner of the beasts, or by distraining the beasts doing the damage, and proceeding therewith as herein after directed; provided, that if the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom, in consequence of the neglect of the person, who has suffered the damage, to maintain his part of the division fence, the owner of the beasts shall not be liable for such damage.

Beasts doing damage, may be distrained. 5 Greenl. 356. 6 Mass. 90. 16 Mass. 37. 1788, 65. 1834, 184, § 5.

SECT. 5. The beasts so distrained for doing damage shall be impounded, either in the town pound, or in some suitable place, under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water, so long as they remain impounded.

And shall be impounded. 1834, 184, § 5.

SECT. 6. If the beasts are impounded, in the town pound, the distrainer shall leave with the pound keeper a memorandum in writing, under his hand, stating the cause of impounding, and the sum that he demands from the owner, for the damage done by the beasts, and also for the daily charges of feeding them; and if they are impounded in any other place, he shall give a like memorandum to the owner of the beasts, if demanded by him.

The person distraining to state his demand. 1834, 184, § 5.

SECT. 7. The pound keeper, when the beasts are in his custody, shall not deliver them to the owner, until the owner shall pay him his fees, together with the sum so demanded by the distrainer, for the damages and charges aforesaid, and the expense of advertising the beasts, if they are advertised, and all other legal costs and expenses.

Beasts not to be delivered, until all costs and charges are paid. 1834, 184, § 5.

SECT. 8. When beasts are impounded, the person impounding them shall, within twenty four hours thereafter, give notice thereof, in writing, to the owner or the person having the care of them, if known, and living within six miles from the place of impounding, which notice shall be delivered to the party, or left at his place of abode, and shall contain a description of the beasts, and a statement of the time, place and cause of impounding.

Notice to be given to the owner or keeper. 1834, 184, § 6.

SECT. 9. If there is no person entitled to notice, according to the provisions of the preceding section, the person impounding the beasts shall, within forty eight hours thereafter, cause to be posted in some public place in the town, and in a public place in each of any two adjoining towns, if within four miles from the place where they were taken, a written notice, containing a description of the beasts, and a statement of the time, place and cause of impounding them; and in such case, if the value of the beasts shall exceed thirty dollars, and if no person shall appear to claim them, within seven days after the day of impounding, a like notice shall be published, three weeks successively, in some public newspaper, if there is any published within twenty miles from the place of impounding, the first publication to be within fifteen days after the day of impounding.

Or posted up, and published in a newspaper, in case, &c. 1834, 184, § 6.

SECT. 10. If the owner or keeper of the beasts shall be dissatisfied with the claim of the person impounding them, he may have the amount, for which he is liable, ascertained and determined by two disinterested and discreet persons, to be appointed and sworn for that purpose, by a justice of the peace or by the town clerk; and the sum so determined by them shall be received, instead of the sum demand-

The sum due from the owner, how to be determined. 1788, 65. 1834, 184, § 6.

ed by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

Same subject. 1834, 184, § 6.

SECT. 11. If the sum, for which the beasts are impounded and detained, shall not be paid within fourteen days after notice of the impounding shall have been given, as before directed, or after the last publication of such notice in a newspaper, the person who impounded them shall apply to a justice of the peace, or to the town clerk, and obtain a warrant to two disinterested and discreet persons, to be appointed and sworn by the justice or town clerk, and the persons so appointed shall ascertain and determine the sum, due from the owner or keeper of the beasts, for the damages, costs and expenses, for which they are impounded and detained, including a reasonable compensation for their own services.

If not paid, the beasts to be sold. 1834, 184, § 6.

SECT. 12. If the sum so found to be due shall not be forthwith paid, the person, who impounded the beasts, shall cause them to be sold by auction, in the town where they are impounded, first advertising the sale, by posting up a notice thereof, twenty four hours beforehand, at some public place in the same town.

Proceeds, how disposed of. 1834, 184, § 6.

SECT. 13. The proceeds of such sale, after paying all the said damages, costs and expenses, with the charges for advertising and selling the beasts, shall be deposited in the treasury of the town, for the use of the owner of the beasts, in case he shall substantiate his claim thereto within two years from the sale.

Beasts escaped or rescued may be retaken. 1834, 184, § 7.

SECT. 14. If any beasts, that have been lawfully distrained or impounded, shall escape or be rescued, the pound keeper, field driver, or other person who distrained them, may, at any time within seven days thereafter, retake the beasts, and hold and dispose thereof, as if no such escape or rescue had taken place.

Penalty for rescuing beasts distrained. 1 Mass. 168. 17 Mass. 342. 4 Mass. 471. 1788, 65. 1834, 184, § 8.

SECT. 15. If any person shall rescue any beasts, lawfully distrained or impounded, for any cause whatever, he shall be liable in an action on the case, to be brought by any person injured, to pay all damages which such person shall have sustained thereby, and all the fees and charges, that shall have been incurred before the rescue; and he shall moreover forfeit a sum not less than five, nor more than twenty dollars, to be recovered by complaint, before a justice of the peace or a police court.

The legality of a distress to be tried only by replevin. 4 Mass. 471. 5 Pick. 514. 1788, 65.

SECT. 16. The defendant, in any action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance, to show that the distress or impounding was illegal; but if there is any such ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof, in an action of replevin, to be brought as provided in the following sections.

REPLEVIN OF CATTLE DISTRAINED.

Writ of replevin before a justice of the peace. 1789, 26, § 1.

SECT. 17. Any person, whose beasts are distrained or impounded, in order to recover any penalty or forfeiture, supposed to have been incurred by their going at large, or to obtain satisfaction for any damages, alleged to have been done by them, may maintain a writ of replevin therefor, to be sued out, and prosecuted before any justice

of the peace for the county, in the same form, substantially, that has been heretofore established and used in such cases.

SECT. 18. The writ shall be sued out, served and returned, and the cause shall be heard and determined, in like manner as is provided in the case of other civil actions before a justice of the peace, in all particulars in which a different course is not prescribed. Proceedings thereon.

SECT. 19. The writ shall not be served, unless the plaintiff, or some one in his behalf, shall execute and deliver to the officer a bond to the defendant, with sufficient sureties, to be approved by the officer, in a penalty double the value of the property to be replevied, with condition to prosecute the replevin to final judgment, and to pay such damages and costs, as the defendant shall recover against him, and also to return the said property, in case such shall be the final judgment. Plaintiff to give bond. 1789, 26, § 1.

SECT. 20. The writ shall require that such bond shall be given in double the value of the property to be replevied, but shall not express the sum or amount, for which it shall be given; and the value of the property shall be ascertained by three disinterested and discreet persons, to be appointed and sworn by the officer, when the parties shall not agree as to the value, and the penalty of the bond shall be equal to double the value ascertained by the persons so appointed, or by any two of them. In double the value of the property as appraised. 1824, 106, § 1.

SECT. 21. The officer shall return with the writ the bond that he shall take, to be left with the justice, for the use of the defendant, and he shall also include in his return, indorsed on the writ, a certificate of the appointment of the said three appraisers, and of the appraisal, and of the expenses thereof. Return of the writ, with the bond and appraisal. 1789, 26, § 1. 1824, 106, § 1.

SECT. 22. If it shall appear, upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the beasts were lawfully taken or distrained, the defendant shall have judgment for such sum, as shall be found to be due from the plaintiff, for the penalty or forfeiture, or for the damages, for which the beasts were impounded, together with all the legal fees, costs, charges, and expenses, incurred by reason of the distress, and also the costs of the action of replevin; or instead of such judgment, the justice may in his discretion enter judgment for a return of the beasts to the defendant, to be held by him, irrepleviable by the plaintiff, and for the defendant's damages for the taking thereof by the replevin, and for his costs of the suit. Judgment for defendant, how to be rendered. 1789, 26, § 2.

SECT. 23. When the beasts are returned to the defendant, pursuant to such judgment, they shall be held and disposed of, in like manner as if they had not been replevied. Beasts returned, how to be disposed of.

SECT. 24. If it shall appear, upon the default of the defendant, or upon a trial or otherwise, that the beasts were taken or distrained, without any sufficient or justifiable cause, the plaintiff shall have judgment for his damages caused by the unjust taking and detaining of the beasts, and for his costs of the suit. Judgment for the plaintiff. 1789, 26, § 2.

SECT. 25. Either party may appeal from the final judgment of the justice, in like manner as in other civil actions tried before a justice of the peace. Either party may appeal.

SECT. 26. When it shall appear that the sum demanded for the penalty, forfeiture or damages, exceeds the sum of twenty dollars, or that the property of the beasts is in question, and that their value ex- Certain cases to be removed to court of common pleas. 1789, 26, § 3.

oeeds twenty dollars, or that the title to real estate is concerned or brought in question, the case shall, at the request of either party, be transferred to the court of common pleas, and be there disposed of, in like manner as is provided in the eighty fifth chapter, with respect to common civil actions, brought before a justice of the peace, in which the title to real estate is concerned or brought in question.

OF OTHER REPLEVIN OF GOODS.

Replevin of goods attached, &c.
1 Mason, 319.
4 Greenl. 306.
15 Mass. 359.
16 Mass. 147.
17 Mass. 610.
3 Pick. 255.
3 Greenl. 183.
1 Greenl. 133.
1789, 26, § 4.

SECT. 27. When any goods, of the value of more than twenty dollars, shall be unlawfully taken, or unlawfully detained, from the owner or the person entitled to the possession thereof, or when any goods of that value, which are attached on mesne process or taken in execution, are claimed by any person other than the defendant in the suit, in which they are so taken or attached, such owner or other person may cause them to be replevied, by a writ to be sued out and prosecuted, as hereinafter provided.

Writ, how sued out, served and returned. Issue.
1 Mass. 153.
6 Mass. 3.
1789, 26, § 4.

SECT. 28. The writ shall be sued out of, and returnable to, the court of common pleas for the county, in which the goods are detained; it shall be in the same form, substantially, that has been heretofore established and used, and shall be sued out, served and returned, like other writs in civil actions, in all particulars, in which a different course is not prescribed, and the general issue shall be joined on the plea of not guilty.

Plaintiff to give bond.
11 Mass. 232.
5 Pick. 226.
8 Mass. 153.
14 Mass. 313.
1789, 26, § 4.

SECT. 29. The officer, before serving the writ, shall take from the plaintiff or from some one in his behalf, a bond to the defendant, with sufficient sureties, in double the value of the goods to be replevied, with a condition like that of the bond before prescribed to be taken upon a writ of replevin, brought before a justice of the peace; and the officer shall proceed, with regard to the appraisal of the goods, and the return of the writ, in the manner provided with respect to such action before a justice, except that the bond shall be left with the clerk of the court, for the use of the defendant.

Judgment for defendant.
1789, 26, § 4.

SECT. 30. If it shall appear, upon the nonsuit of the plaintiff, or upon a trial or otherwise, that the defendant is entitled to a return of the goods, he shall have judgment therefor accordingly, with damages for the taking thereof by the replevin, and his costs of suit.

Damages for delaying an execution.
12 Mass. 406.
11 Pick. 223.
4 Mass. 614.
1789, 26, § 4.

SECT. 31. If the goods, when replevied, were taken in execution, or if they were then attached, and judgment be afterwards rendered for the attaching creditor, and if in either case the service of the execution be delayed, by means of the replevin, the damages to be assessed for the defendant, in case of a judgment for a return, shall be not less than at the rate of twelve per cent. by the year, on the value of the goods, for so long as the service of the execution shall be so delayed.

Sums recovered on the bond, &c. how disposed of.

SECT. 32. All sums, recovered in an action of replevin by any officer, for or on account of any goods attached or taken in execution by him, or recovered in an action upon the bond given upon the replevin of such goods, shall be applied and disposed of, as far as they will go, in the following manner:

First, to pay the lawful fees and charges of the officer, and the reasonable expenses of the action of replevin, and the action on the bond, so far as they are not reimbursed by the costs that may be recovered:

Secondly, to pay to the creditor, at whose suit the goods were attached or taken in execution, the sum, if any, recovered by him in that suit, or as much thereof as shall remain unpaid, with interest therefor, at the rate of twelve per cent. by the year, for such time, if any, as the money shall have been withheld from the creditor, or the service of his execution delayed, by reason of the replevin: and

Thirdly, if the attaching creditor, in such case, shall not recover judgment in the suit in which the attachment was made, or if any balance shall remain of the moneys so recovered by the officer, after paying what is due to the creditor, as before provided, such balance, or the whole amount, as the case may be, shall be applied and disposed of, in the same manner as would and ought to have been done with the surplus, if any, of the proceeds of sale, in case the same goods had been sold on execution.

Same subject.

SECT. 33. All sums, received by such creditor from the proceeds of the sale of any goods, that had been attached or taken in execution, and which are afterwards returned, and all sums, received for the value of any such goods, that are not returned, and also all sums recovered from the officer, for the insufficiency of the sureties in the bond, shall be applied towards the discharge of the judgment recovered by the creditor; and all sums, received as interest or damages for the delay of his execution, shall be retained to his own use, and shall not go in discharge of the judgment.

Judgment for the plaintiff. 1789, 26, § 2.

SECT. 34. If it shall appear, upon the default of the defendant, or upon a trial or otherwise, that the goods were unlawfully taken or attached, or unlawfully detained, by the defendant, the plaintiff shall have judgment for his damages caused thereby, and for his costs of the suit.

Damages, by whom to be assessed.

SECT. 35. The damages, in all cases of replevin before a justice of the peace, whether for the plaintiff or for the defendant, shall be assessed by the justice, or if it is heard and determined in the court of common pleas, or in the supreme judicial court, the damages shall be assessed by the jury, by which the cause is tried, if there is any trial by jury; otherwise they shall be assessed upon an inquiry by the court, or by a jury empannelled for that purpose, in like manner as damages are assessed in other civil actions.

Goods attached, held liable after return. 1789, 26, § 4.

SECT. 36. If the goods which are replevied had been attached, they shall, in case of judgment for a return, be held liable to the attachment, until final judgment in the suit, in which they were attached, and for thirty days thereafter, in order to their being taken in execution; and if such final judgment shall be rendered, before the return of the goods, or if the goods when replevied were seized and held on execution, they shall be held, subject to the same attachment or seizure, for thirty days after the return, in order that the execution may be served thereon, or the service thereof completed, in like manner as it might have been, if the goods had not been replevied.

Writ of reprisal when to be issued. 1789, 26, §

SECT. 37. If the officer, to whom the writ of return is committed, shall not be able to find the beasts or other goods, that were replevied, so as to deliver them to the defendant, he shall make a return of that fact upon the writ of return, and the defendant shall thereupon be entitled to a writ of reprisal, to be awarded and issued upon his motion, by the court in which the judgment was rendered,

to take the beasts or goods of the plaintiff and deliver them to the defendant, to be held and disposed of according to law.

Forms of the writs of return and reprisal. 1789, 26, §§ 6 & 7.

SECT. 38. The writ of return, in all actions of replevin, shall be substantially in the same form, that has been heretofore established and used in the like case, and the writ of reprisal shall be substantially in the same form with the writ heretofore called a writ of withernam.

These proceedings not to bar action on the bond, &c.

SECT. 39. The foregoing provisions shall not preclude the defendant from resorting to his remedy on the replevin bond, or to his remedy against the officer for the insufficiency of the sureties in the bond, to recover the value of the goods, together with the loss or damage caused by the replevin thereof, notwithstanding he may have endeavored to recover the same, by the writs of return and of reprisal, as before provided.

Limitation of suit against surety on the replevin bond.

SECT. 40. No action shall be maintained against any person, as surety in a replevin bond, unless the writ be served on him within one year after the final judgment in the action of replevin; or if the action shall not be entered by the plaintiff, and the defendant shall not obtain judgment upon a complaint, such writ against the surety may be served on him, within one year after the end of the term at which the action of replevin ought to have been entered and not afterwards.

CHAPTER 114.

OF REFERENCE TO ARBITRATION BY AGREEMENT BEFORE A JUSTICE OF THE PEACE.

SECTION
1. What controversies may be submitted.
2. Form of submission.
3. " may be varied, according to the agreement.
4. Construction of submission of all demands.
5. Neither party may revoke the submission.
6. Time within which the award shall be made.
7. The award to be delivered or sent to the court.
8, 9. Jurisdiction of the court thereon.
10. Award, at what term to be returned.
11. " by a majority, in what cases valid.
12. Power of the arbitrators, as to costs.
13. No appeal allowed. Writ of error may be brought.
14. Fees of the justice, &c.

What controversies may be submitted. 8 Mass. 1. 5 Greenl. 38.

SECTION 1. All controversies, which might be the subject of a personal action at law, or of a suit in equity, may be submitted to the decision of one or more arbitrators, in the manner provided in this chapter.

Form of submission. 1786, 21, § 1.

SECT. 2. The parties shall appear, in person or by their lawful agents or attorneys, before any justice of the peace, and shall there sign and acknowledge an agreement in substance as follows:

Know all men, that ———, of ———, and ———, of ———,

have agreed to submit the demand, a statement whereof is hereto annexed, [and all other demands between them, as the case may be] to the determination of ———, ———, and ———, the award of whom, or the greater part of whom, being made and reported within one year from this day to the court of common pleas, for the county of ———, the judgment thereon shall be final; and if either of the parties shall neglect to appear before the arbitrators, after due notice given them of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this ———, day of ———, in the year ———. ———. ———.

5 Mass. 489. 524.

And the justice shall subjoin to the said agreement his certificate, in substance as follows:

———, ss. ———, ———. Then the above named ———, and ———, personally appeared [or, the above named ———, personally, and the said ———, by the said ———, his attorney, appeared, as the case may be,] and acknowledged the above instrument by them signed to be their free act. Before me, ———, justice of the peace.

SECT. 3. If any specific demand is submitted to the exclusion of others, the demand submitted shall be set forth in the statement annexed to the agreement, otherwise it shall not be necessary to annex any statement of a demand, and the words in the agreement relating to such statement may be omitted, and the submission may then be of all demands between the parties, or of all demands which either of them has against the other; or the submission may be varied in this respect in any other manner, according to the agreement of the parties.

Form may be varied, according to the agreement.

SECT. 4. No such agreement to submit all demands shall include any demands, but such as might be the subject of a personal action at law, or of a suit in equity.

Construction of submission of all demands. 8 Mass. 1. 5 Greenl. 38.

SECT. 5. Neither party shall have power to revoke a submission, made as herein provided, without the consent of the other; and if either of them shall neglect to appear before the arbitrators, after due notice, the arbitrators may nevertheless proceed to hear and determine the cause, upon the evidence produced by the other party, as provided in the agreement of submission.

Neither party may revoke the submission.

SECT. 6. The time, within which the award shall be made and reported, may be varied, according to the agreement of the parties, and no award made after that time shall have any legal effect or operation, unless made upon a re-commitment of the award, by the court to which it is reported.

Time within which the award shall be made.

SECT. 7. The award shall be delivered by one of the arbitrators to the court designated in the agreement, or shall be enclosed and sealed by them, and transmitted to the court, and shall remain sealed until opened by the clerk.

The award to be delivered or sent to the court. 1786, 21, § 3.

SECT. 8. The court, to which the award is returned, shall have cognizance thereof, in the same manner, and the same proceedings shall be had thereon, as if it had been made by referees appointed by a rule of the same court.

Jurisdiction of the court thereon. 1786, 21, § 3.

SECT. 9. The award may be accepted or rejected by the court, for any legal and sufficient reason, or it may be recommitted to the

Same subject.

same arbitrators, for a re-hearing by them; and when an award is accepted and confirmed by the court, judgment shall be rendered thereon, in the same manner as upon a like award made by referees appointed by a rule of the court, and execution shall issue accordingly.

Award, at what term to be returned. 5 Mass. 489.524. 14 Mass. 148.

SECT. 10. The award may be returned at any term or session of the court, that shall be held within the time limited in the submission, and the parties shall attend at every such term or session, without any express notice for that purpose, in like manner as if an action for the same cause were pending between them in the same court; but the court may require actual notice to be given to either party, when it shall appear to them necessary or proper, before they proceed to act upon the award.

Award by a majority, in what cases valid. 6 Mass. 496. 14 Mass. 148.

SECT. 11. All the arbitrators shall meet and hear the parties, but an award by a majority of them shall be valid, unless the concurrence of the whole be expressly required in the submission.

Power of the arbitrators as to costs. 2 Mass 164. 6 Greenl. 247.

Their compensation.

SECT. 12. If there is no provision in the submission, concerning the costs of the proceedings, the arbitrators may make such award respecting the costs, as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum, charged for the compensation of the arbitrators, if it shall appear to them unreasonable.

No appeal allowed. 1791 42.

Writ of error may be brought.

SECT. 13. No appeal shall be allowed from any order or judgment of the court of common pleas, upon any award made under this chapter, but any party, aggrieved by such judgment, may bring a writ of error, for any error in law or fact, as in other cases, and the supreme judicial court shall thereupon render such judgment, as the court of common pleas ought to have rendered.

Fees of the justice, &c. 1786, 21, § 5.

SECT. 14. The fees of the justice of the peace, for making out the agreement of submission, and certifying the acknowledgment thereof, shall be forty cents; and the fees, payable in the court of common pleas, shall be the same as for the like services, with respect to an award made under a rule of that court.

CHAPTER 115.

OF PROCEEDINGS FOR IMPROVING MEADOWS, SWAMPS, AND LOW LANDS.

SECTION
1. Proprietors of meadows, &c. how to improve them.
2. Petition to C. C. P. and notice thereon.
3. Commissioners may be appointed.
4, 5. Their power and duty.
6. May employ persons to perform the work;
7. And may apportion the expense among the proprietors;
8. And appoint a collector thereof.
9. Penalty on collector for withholding money.
10. Compensation of commissioners, and collector.
11. Return to be made by commissioners.
12. Apportionment of expense between tenant and landlord, or reversioner.
13. Provision in case of a mortgage.

SECTION
14. Commissioners may make or open dams on land of other persons.
15. Damages caused thereby, how ascertained and paid.
16. Any person aggrieved may appeal to the court.
17. Proceedings thereon.
18. Notice to persons who are not parties.
19. No appeal from C. C. P. allowed—Bill of exceptions may be filed; and case removed into S. J. Court.

SECTION 1. When any meadow, swamp, marsh, beach, or other low land, shall be held by several proprietors, and it shall be necessary or useful to drain or flow the same, or to remove obstructions in rivers or streams leading therefrom, such improvements may be effected, under the direction of commissioners, in the manner provided in this chapter. Proprietors of meadows, &c. how to improve them. 1795, 62, § 1.

SECT. 2. The said proprietors, or the greater part of them in interest, may apply by petition to the court of common pleas for the county where the lands or any part of them lie, setting forth the proposed improvements, and the reasons therefor, and the court shall cause notice of the petition to be given, in such manner as they shall judge proper, to the proprietors, if any, who have not joined in the petition, that they may appear and object thereto. Petition to C. C. P. and notice thereon. 14 Mass. 387. 1795, 62, § 1.

SECT. 3. If, upon hearing the parties, it shall appear to the court that the improvements proposed will be for the general advantage of the proprietors, the court may appoint three, five, or seven suitable persons, commissioners, to cause the same to be effected. Commissioners may be appointed. 1795, 62, § 1.

SECT. 4. The commissioners shall be sworn to the faithful discharge of their duties; they shall view the premises, and notify and hear the parties concerned therein, as to the best manner of making the improvements, and shall determine and prescribe the measures to be adopted for that purpose. Their power and duty. 1795, 62, § 1.

SECT. 5. The commissioners, according to the tenor of the petition, and the order of court thereon, may cause dams or dikes to be erected on the premises, at such places and in such manner, as they shall direct, and may order the land to be flowed thereby, for such periods of each year, as they shall think most beneficial, and also cause ditches to be opened on the premises, and obstructions in any rivers or streams leading therefrom to be removed; and they shall meet from time to time, as may be necessary, to cause the work to be completed, according to their directions. Same subject.

SECT. 6. The commissioners may employ suitable persons, to erect the dams or dikes, or perform the other work, under their direction, for such reasonable wages, as they shall agree upon, unless the proprietors themselves shall do the same, in such time and manner, as the commissioners shall direct. May employ persons to perform the work. 1795, 62, § 1.

SECT. 7. The commissioners shall apportion the whole charge and expense of the improvements, and of executing the commission, among the proprietors of the lands, having regard to the quantity, quality, and situation of each person's part of the lands, and to the benefit that he will derive from the improvements; and they shall assess the same accordingly, upon the said proprietors. And may apportion the expense among the proprietors. 1795, 62, § 2.

SECT. 8. The commissioners may appoint a collector of the moneys so assessed, and shall give him a warrant to collect, pay over and account for the same, to such person as they shall appoint, and And appoint a collector thereof. 1795, 62, § 2.

the collector shall have the same power, and shall proceed in like manner, in collecting the said assessments, as may be provided for the collecting of town taxes.

Penalty on collector for withholding money. 1795, 62, § 2.

SECT. 9. If the collector shall neglect, for the space of twenty days after being thereto required by the commissioners, to account for and pay over the moneys, that he shall have collected, he shall be liable to pay the whole amount, committed to him to collect, to the commissioners, to be recovered by them, in an action of debt, and the money so recovered, after deducting the expenses of recovery, shall be applied and accounted for by the commissioners, in the same manner as if it had been collected and paid over by the collector, pursuant to his warrant.

Compensation of commissioners, and collector. 1795, 62, § 3.

SECT. 10. The collector shall be allowed such compensation for his services, as shall be agreed upon between him and the commissioners, and the commissioners shall be allowed such compensation for their services, as shall be ordered by the court, by which they were appointed.

Return to be made by commissioners. 7 Pick. 207. 1795, 62, § 3.

SECT. 11. The commissioners shall, as soon as may be, after the completion of the business, make a return to the court, by which they were appointed, of their doings under the commission, including an account of all moneys assessed and collected by their order, and of the disbursement thereof.

Apportionment of expense between tenant and landlord, or reversioner. 1795, 62, § 4.

SECT. 12. When it shall appear to the commissioners, that any part of the land is held by any tenant for life, or for years, the commissioners shall determine how much of the sum, apportioned on that part of the premises, shall be paid by the tenant for life or years, and how much thereof by the landlord or reversioner, and shall assess the same accordingly, unless the parties concerned shall agree on the apportionment thereof between them; and every such tenant for life or years, as well as the landlord or reversioner, shall be considered as a proprietor, for all the purposes of this chapter.

Provision in case of a mortgage. 1795, 62, § 4.

SECT. 13. If any part of the land shall be mortgaged, the person in possession, whether mortgagor or mortgagee, shall be considered as the proprietor, for all the purposes of this chapter, and all sums, paid by such mortgagee, by order of the commissioners, shall be allowed to him, in like manner as other sums paid by him for improvements are by law to be allowed.

Commissioners may make or open dams on land of other persons. 1795, 62, § 5.

SECT. 14. When the commissioners shall find it necessary or expedient to reduce or raise the waters, for the purpose of obtaining a view of the premises, or for the more convenient or expeditious removal of obstructions therein, they may open the flood-gates of any mill, or make other needful passages through or round the dam thereof, or erect a temporary dam, on the land of any person, who is not a party to the proceedings, and may maintain such dam, or such passages for the water, as long as shall be necessary for the purposes aforesaid.

Damages caused thereby, how ascertained and paid. 1795, 62, § 5.

SECT. 15. All damages, occasioned by any doings of the commissioners, that are authorized in the preceding section, shall be estimated and determined by the commissioners, unless agreed on between them and the parties concerned therein, and shall be paid by the commissioners out of the moneys to be assessed and collected by them, as before provided.

Any person ag-

SECT. 16. If any person, whether he is a party to the proceed-

ings, or is otherwise interested therein, or affected thereby, shall find himself aggrieved by any doings of the commissioners, he may appeal to the court which appointed them, at any time, either before or after the return of their doings; provided, it be not after the term next following that at which the return is made.

grieved may appeal to the court. 1795, 62, § 6.

SECT. 17. The court, upon such appeal, may affirm, reverse, or alter any adjudication or order of the commissioners, and make such order therein, as law and justice shall require; and all questions of fact, that shall arise upon the hearing of the appeal, shall, at the motion of either party, be tried by a jury, in such manner as the court shall direct.

Proceedings thereon.

SECT. 18. The commissioners, before proceeding to open flood gates, or to make other passages for water, through or around any dam, or to erect a dam, on the land of any person who is not a party to the proceedings, shall give to such person seasonable notice in writing of their intention, to enable him to appear before them and object thereto; and if he shall appeal from their determination, and shall give notice in writing of his appeal to the commissioners, or any of them, they shall suspend all further proceedings upon his land, until the appeal shall be determined, provided the appeal be entered at the court, which shall be held next after the expiration of seven days from the time of claiming the appeal.

Notice to persons, who are not parties.

SECT. 19. No appeal shall be allowed from any order or judgment of the court of common pleas, made under the provisions of this chapter; but any person, aggrieved by any opinion, direction or judgment of the court, in any matter of law, may allege exceptions thereto, which shall be reduced to writing, and allowed and signed by the presiding judge, and thereupon the case shall be removed into the supreme judicial court, as provided in the eighty second chapter.

No appeal from C. C. Pleas allowed. Bill of exceptions may be filed, and case removed into S. J. Court. 1795, 62, § 6.

CHAPTER 116.

OF PROCEEDINGS FOR THE SUPPORT AND REGULATION OF MILLS.

SECTION

ERECTION AND REGULATION OF MILLS.

1. Mills and dams therefor may be erected on streams not navigable.
2. Not allowed to the injury of an existing mill.
3. Height of dam, &c., how regulated.
4. Damages thereby, to be recovered on complaint.
5. Substance of the complaint.
6, 7. Notice thereof to the mill owner.
8. Pleas allowed to the respondent.
9. Further pleadings and trial.
10. Judgment for respondent.
11. " for complainant.
12. Appeal allowed to supreme court; and proceedings thereon.
13. Warrant for jury, how served—Jurors, how summoned and returned.
14. Proceedings on the trial.
15. Damages, how to be estimated.
16. Verdict for respondent.
17. " for complainant.
18. Jury to fix the height of the dam, &c.
19. To assess annual damages, and also a sum in gross.
20. Complainant may elect to take the latter.

SECTION
21. If not paid, respondent to have no benefit, until, &c.
22. Complainant may take the annual damages, instead, &c.
23. And shall have a lien therefor on the mill, &c.
24. Action therefor, against whom to be brought.
25. The premises may be sold on the execution.
26. Such sale, how far effectual.
27. Right of redemption thereon.
28. This chapter not to affect existing mills and dams, except, &c.
29. Court may grant new trials.
30. Action at the common law barred, except, &c.
31. Costs to the party prevailing.
32. Compensation to the officer, &c.
33. A new inquiry of damages may be had by either party—Gross damages to be assessed only once in ten years.
34. Who may maintain a new complaint.
35. When new complaint may be brought—Either party may make a tender.
36. Mill owners may tender a greater compensation, &c.
37. Land owner may offer to accept less, &c.
38. Such offer may be made by and to the tenants.
39. Effect of agreement, if signed and recorded.
40. Verdict against complainant not to bar him, &c.
41. Respondent may make a tender in court.
42. Judgment upon acceptance thereof—Acceptance may be for past or for future damages.
43. Complaint not to be abated by death of parties—Remedy for abatement of complaint or reversal of judgment.

REPAIRING AND REBUILDING MILLS.

44. Repair of mills, owned by several persons.
45. Meeting of proprietors, how called.
46, 47. Notice thereof, how served and returned.
48. Majority in interest may decide.
49. Each proprietor liable for his share of the expense.
50. Remedy therefor by lien on the rents or by action.
51. Guardian of proprietor may act for him.
52. Husband may act for his wife.
53. Apportionment between tenant and reversioner.
54. Case of a mortgagee in possession.
55. Case of a tenant in tail.
56, 57. Suits by one proprietor against others, how brought.
58. This chapter not to affect agreements to repair, &c.
59. Millers to keep scales, &c. and weigh grain if required, under penalty.
60. What toll allowed.

ERECTION AND REGULATION OF MILLS.

Mills and dams therefor may be erected on streams not navigable. 1795, 74, § 1.

SECTION 1. Any person may erect and maintain a water mill, and a dam to raise water for working it, upon and across any stream, that is not navigable, upon the terms and conditions, and subject to the regulations, hereinafter expressed.

Not allowed to the injury of an existing mill. 10 Pick. 357. 17 Mass. 289. 11 Mass. 533.

SECT. 2. No such dam shall be erected, to the injury of any mill lawfully existing, either above or below it, on the same stream, nor to the injury of any mill site on the same stream, on which a mill or mill dam shall have been lawfully erected and used, unless the right to maintain a mill, on such last mentioned site, shall have been lost or defeated, by abandonment or otherwise ; nor shall any mill or dam be placed on the land of any person, without such grant, conveyance or authority from the owner, as would be necessary by the common law, if no provision relating to mills had been made by statute.

Height of dam, &c., how regulated. 1795, 74, § 4.

SECT. 3. The height, to which the water may be raised, and the length of time, or period, for which it may be kept up in each year, shall be liable to be restricted and regulated by the verdict of a jury, as hereinafter provided.

Damages there-

SECT. 4. Any person, whose land is overflowed, or otherwise

injured by such dam, may obtain compensation therefor, upon his complaint before the court of common pleas for the county where the land or any part thereof lies, provided, that no compensation shall be awarded for any damage, sustained more than three years before the institution of the complaint.

by, to be recovered on complaint. 1794, 74, § 2. 1824, 153, § 1. 1825, 109, § 2.

SECT. 5. The complaint shall contain such a description of the land, alleged to be flowed or injured, and such a statement of the damage, that the record of the case shall show, with sufficient certainty, the matter that shall have been heard and determined therein.

Substance of the complaint. 11 Mass. 462. 9 Pick. 62.

SECT. 6. The complaint may be filed in the court in term time, or in the clerk's office in vacation, and in either case, notice thereof shall be given to the owner or occupant of the mill, by delivering to him, or by leaving at his dwelling house, an attested copy of the said complaint, or if he is not found within the state, and has no dwelling house therein, then by leaving such copy at the mill in question; or the complainant may, fourteen days at least before the sitting of the court, at which his complaint may be brought, cause the owner or occupant of such mill or dam to be served with an attested copy of the complaint, by delivering or leaving such copy, in like manner as when the complaint is filed as aforesaid.

Notice thereof to the mill owner. 1797, 63, § 1. 1824, 153, § 1.

SECT. 7. The notice shall be given fourteen days at least before the term at which the complaint is to be heard, and it shall be served by any officer, who is authorized to serve any other civil process between the same parties.

Same subject. 1797, 63, § 1. 1824, 153, § 2.

SECT. 8. The respondent may plead in bar of the complaint, that the complainant has no estate or interest in the land, alleged to be flowed or injured, or that the respondent has a right to maintain his dam, for an agreed price, or without any compensation, or any other matter, which may show that the complainant cannot maintain the suit; but he shall not plead in bar of the complaint, that the land therein described is not injured by such dam.

Pleas allowed to the respondent. 6 Mass. 398. 3 Mass. 184. 17 Mass. 76. 4 Greenl. 322. 1797, 63, § 2.

SECT. 9. If any plea is filed by the respondent, the replication and other pleadings, and the trial of the issue, whether of law or of fact, shall be conducted in like manner as in actions at the common law.

Further pleadings and trial. 1797, 63, § 2.

SECT. 10. If upon such a plea, the issue is decided in favor of the respondent, or if, in any stage of the proceedings, the complainant shall become nonsuit, or shall discontinue his suit, the respondent shall be entitled to his costs, to be taxed as in common civil actions.

Judgment for respondent. 1797, 63, § 4.

SECT. 11. If the issue is decided in favor of the complainant, or if the owner or occupant of the mill or dam shall, after due notice, neglect to appear, or shall be defaulted, or if there be no plea in bar, and no other legal objection to the proceeding, the court shall, without any further pleadings in the case, issue a warrant for a jury to hear and determine the matter of the complaint.

— for complainant. 1797, 63, § 3.

SECT. 12. Either party may appeal to the supreme judicial court, from the judgment of the court of common pleas, upon any such plea in bar, and the cause shall be there heard and determined, as it ought to have been in the court of common pleas; except, that if the judgment of the supreme judicial court, in such case, shall be in favor of the complainant, the case shall be remitted to the court of common pleas, who shall proceed therein in like manner as if such judgment had been rendered in that court.

Appeal allowed to supreme court; and proceedings thereon. 6 Mass. 398. 1797, 63, § 2.

Warrant for jury, how served. Jurors, how drawn, summoned and returned. 1814, 173. 1824, 153.

SECT. 13. The warrant shall be directed and served, and the jurors shall be drawn, summoned and returned, in the same manner, that is provided in the twenty fourth chapter, with respect to a jury, returned on the complaint of any person, aggrieved by the laying out of a highway, and the jurors shall be required to attend, under the same penalty that is provided in the said chapter.

Proceedings on the trial. 1814, 173. 1830, 112.

SECT. 14. All the proceedings, as to supplying a deficiency of jurors, and swearing and empannelling the jury, and in conducting the trial, either before the officer who serves the warrant, or before the person, who may be appointed by the court to preside at the trial, and also as to the signing and returning of the verdict, and all the other proceedings, on the part of the officer and all others concerned in the case, shall be substantially the same, as are provided in the said twenty fourth chapter, with respect to the case before mentioned.

Damages, how to be estimated. 1824, 153, § 3.

SECT. 15. The jury, in estimating the damage to the land of the complainant, shall take into consideration any damage, occasioned to his other land, by the dam, as well as the damage occasioned to the land overflowed, and they shall also allow, by way of set-off, the benefit, if any, occasioned by such dam to the complainant, in relation to his said lands.

Verdict for respondent.

SECT. 16. If the jury shall find that the complainant is not entitled to recover any damages, they shall return their verdict accordingly, and if it is allowed and recorded by the court, judgment shall be rendered thereon for the respondent.

—for complainant. 1795, 74, § 2. 1825, 109, § 2.

SECT. 17. If the jury find that the complainant is entitled to recover any damages, they shall assess the amount of such damages, sustained within three years next preceding the institution of the complaint, and down to the time of rendering the verdict, and if the verdict is allowed and recorded by the court, the complainant shall have judgment and execution.

Jury to fix the height of the dam, &c. 1797, 74, § 4. 1829, 122, § 1.

SECT. 18. If it shall be alleged in the complaint, that the dam is raised to an unreasonable height, or that it ought not to be kept up and closed during the whole year, the jury shall decide how much, if any, the dam shall be lowered, and also whether it shall be left open any part of the year, and if any, what part, and shall state such decision as a part of their verdict.

To assess annual damages, and also a sum in gross. 1795, 74, § 2. 1829, 122, § 2.

SECT. 19. The jury shall also ascertain and determine by their verdict, what sum, if any, to be paid annually to the complainant, would be a just and reasonable compensation for the damages that shall be thereafter occasioned by the dam, so long as it shall be used in conformity with the verdict, and also what sum in gross would be a just and reasonable compensation for all the damages to be thereafter occasioned by such use of the dam, and for the right of maintaining and using the same forever, in manner aforesaid.

Complainant may elect to take the latter. 1829, 122, § 2.

SECT. 20. The complainant in such case, at any time within three months after the verdict is allowed and recorded, may elect to take the sum in gross, so awarded by the jury, for the right to maintain and use the dam forever, instead of receiving the annual compensation therefor, and if he shall make such election, he shall, within the said three months, cause the same to be entered on the record of the case in the clerk's office.

SECT. 21. The owner or occupant of the mill or dam in such case shall, within three months after such election is entered on the record, pay to the complainant, or secure to his satisfaction, the sum so due for the perpetual right to maintain the dam, with interest from the time of the verdict; and after the expiration of said three months, such owner or occupant shall lose all benefit of the provisions contained in this chapter, until the payment of said damages and interest.

If not paid, respondent to have no benefit, until, &c. 1829, 122, § 2.

SECT. 22. If the complainant shall not, within the said three months, cause an entry of his election to be made on the record, as before provided, he and all persons claiming under him shall be entitled to demand and receive, from whoever shall be the owner or occupant of the mill, the annual compensation so established by the jury, so long as the dam shall be kept up and maintained, unless the sum due in that behalf shall be increased or diminished, upon a new complaint, as hereinafter provided.

Complainant may take the annual damages, instead, &c. 1795, 74, § 3.

SECT. 23. The person who shall be entitled to receive the said annual compensation, or gross damages, shall have a lien therefor from the time of the institution of the original complaint, on the mill and mill dam with their appurtenances, and the land under and adjoining the same and used therewith, provided, that such lien shall not extend to any sum due more than three years before the commencement of an action therefor.

And shall have a lien therefor on the mill, &c.

SECT. 24. The party, entitled to the said annual compensation or gross damages, may maintain an action of assumpsit or debt therefor, in the court of common pleas, against the person who shall own or occupy the mill when the action is brought, and shall therein recover the whole sum due and unpaid for the three years then last past, whoever may have owned or occupied the mill during that time, and the plaintiff shall be entitled to his full costs in such suit, although the sum recovered shall not amount to twenty dollars.

Action therefor, against whom to be brought.

SECT. 25. The execution issued on such judgment, if not otherwise satisfied, may, at any time within thirty days after the judgment is rendered, be levied on the premises so subject to the lien; and the officer may thereupon proceed to sell the same, or so much thereof, as shall be necessary to satisfy the execution, and all charges of levying it, and he shall proceed in making such sale, in like manner in all respects as is provided with regard to the sale on execution of a right to redeem real estate that is mortgaged.

The premises may be sold on the execution.

SECT. 26. Such sale shall be valid and effectual against all persons claiming the premises by any title that shall have accrued within the time covered by the lien.

Such sale, how far effectual.

SECT. 27. Any person, entitled to the premises sold as aforesaid, may redeem the same at any time within one year after the sale, upon paying to the purchaser, or the person holding under him, the sum paid therefor, with interest thereon, at the rate of twelve per cent. a year.

Right of redemption thereon.

SECT. 28. The provisions of this chapter shall not affect the right to keep up, maintain, and use any water mill and mill dam now lawfully existing, except as is herein expressly provided.

This chapter not to affect existing mills and dams, except, &c.

SECT. 29. Every verdict, rendered in any proceeding under this chapter, shall be under the control of the court to which it is returned, in like manner as in trials at the common law, and may be set

Court may grant new trials.

aside for any sufficient cause; and in such cases a new trial shall be had, upon a new warrant or otherwise, as the case may require.

Action at the common law barred, except, &c. 11 Mass. 364.

SECT. 30. No action shall be sustained at common law for the recovery of damages for the erecting, maintaining or using any mill or mill dam, except as is provided in this chapter.

Costs to the party prevailing 1795, 74, § 3.

SECT. 31. The party prevailing, in every suit under this chapter, shall be entitled to his full costs, unless where it is otherwise expressly provided.

Compensation to the officer, &c. 1795, 74, § 2. 1830, 112.

SECT. 32. The court shall award a reasonable compensation to the person who presides at the trial, and also to the officer who executes the warrant, which together with the pay of the jurors, and all other like charges, shall be advanced by the complainant, and shall be taxed and allowed in the bill of costs, if he shall prevail in the suit.

A new inquiry of damages may be had by either party. 17 Mass. 79. 9 Mass. 203.

SECT. 33. When either party shall be dissatisfied with the annual compensation established by a jury, either under the provisions of this chapter, or those of the laws heretofore in force, a new complaint may be brought, for the increase or diminution of the said annual compensation, or for ascertaining the gross amount of the damages, and all the proceedings, for ascertaining and determining said compensation or damages, shall be conducted substantially in the manner before provided, in the case of an original complaint; provided, that when any complainant has heretofore declined, or shall hereafter decline, to accept the amount of gross damages awarded him, no jury shall again determine the amount of gross damages, until the expiration of ten years thereafter.

Gross damages to be assessed only once in ten years.

Who may maintain a new complaint. 1795, 74, § 3.

SECT. 34. Such new complaint may be maintained, by and against either of the parties to the original suit, or by and against any person lawfully holding under either of them, respectively, as the case may require.

When new complaint may be brought. Either party may make a tender. 1799, 78, § 3.

SECT. 35. No such new complaint shall be brought, until the expiration of one month after the payment of the then last year shall have fallen due, and either party may, within the said month, make an offer or tender to the other, in the manner hereinafter provided.

Mill owners may tender a greater compensation, &c. 1799, 78, § 1.

SECT. 36. The owner of the mill or dam may, within the said month, offer in writing, to the owner of the land that is injured, any increase of the annual compensation to be thereafter paid for maintaining and using the dam; and if the owner of the land shall not agree to accept the same, but shall bring a new complaint, in order to obtain an increase of the compensation, he shall not be entitled to costs thereon, but shall pay costs to the adverse party, unless he shall obtain a verdict for a greater annual compensation than was so offered to him.

Land owner may offer to accept less, &c. 1799, 78, § 2.

SECT. 37. The owner of the land that is injured may also, within the said month, offer in writing, to the owner of the mill or dam, to accept any smaller sum, than that which is established as the annual compensation, to be thereafter paid for maintaining and using the dam; and if the owner of the mill or dam shall not agree to pay such reduced compensation, but shall bring a new complaint, in order to obtain a diminution thereof, he shall not be entitled to costs upon his complaint, but shall pay costs to the adverse party, unless the annual compensation shall be reduced, by the verdict, to a sum less than that which was so offered to him.

SECT. 38. Such offer may be made by or to the respective tenants or occupants of the land, and of the mill or dam in question, in like manner and with the like effect, as if made by or to the respective owners, except that no agreement founded thereon shall bind the said owners, unless it be made with their consent.

Such offer may be made by and to the tenants. 1799, 78, §§ 1 & 2.

SECT. 39. If the offer so made by either party shall be agreed to and accepted by the other, it shall establish the annual compensation to be thereafter paid, in like manner as if it had been established by a verdict and judgment upon a new complaint, provided, that a memorandum of such offer and acceptance, and of the agreement thereupon, be made and signed by the respective owners of the mill or dam and of the land, or by persons duly authorized by them, and filed and recorded in the clerk's office of the court, in which the former judgment was rendered, with a note of reference, on the record of the former judgment, to the book where the agreement is recorded.

Effect of agreement, if signed and recorded.

SECT. 40. If, upon any complaint by the owner of the land alleged to be injured, the jury shall decide that he is not entitled to any annual compensation, the judgment thereon shall be no bar to a new complaint for damages, alleged to have arisen after the former verdict, and for compensation for the damages, that may be thereafter sustained.

Verdict against complainant not to bar him, &c. 10 Mass. 72.

SECT. 41. In every case of an original complaint, brought by the owner of land alleged to be injured by a mill-dam, the respondent may bring into court and there tender any sum that he shall think proper, to be paid to the complainant for the damages incurred up to the time of such tender and also may offer to pay any certain annual compensation, for the damage that may be thereafter occasioned by the dam in question; and if the complainant shall not accept the same, with his costs up to that time, but shall proceed in the suit, to recover greater damages or compensation than is so offered, he shall be entitled to his costs up to the time of the tender, and the respondent shall be entitled to recover his costs afterwards, unless the complainant shall recover greater damages or greater annual compensation than was so offered.

Respondent may make a tender in court. 1825, 109, § 1.

SECT. 42. If the complainant, in the case mentioned in the preceding section, shall consent to accept the amount, so offered for the past damage and the future annual compensation, he shall have judgment accordingly, and also for his costs up to that time, and the judgment shall have the same effect, as if it had been rendered upon the verdict of a jury, empannelled according to the provisions of this chapter; or the complainant may accept either the sum tendered for past damages, or the offer for future annual compensation, and proceed to trial on the residue of the complaint, under the same liability for costs as before provided.

Judgment upon acceptance thereof. Acceptance may be for past or for future damages.

SECT. 43. No complaint for flowing shall be abated, by reason of the death of any party thereto, but the same may be prosecuted or defended by the surviving complainants or respondents, or the executors or administrators of the deceased; and if any such complaint shall be abated or otherwise defeated, for any matter of form, or if, after verdict for the complainant, the judgment shall be reversed for error, upon a certiorari or otherwise, the complainant, or any person claim-

Complaint not to be abated by death of parties. Remedy for abatement of complaint or reversal of judgment.

ing from, by or under him, may bring a new complaint, for the same cause, at any time within one year after the abatement or other determination of the original complaint, or after the reversal of the judgment therein, and may, upon the new complaint, recover such damages, as shall have been sustained during the three years before the institution of the first complaint, or at any time afterwards.

REPAIRING AND REBUILDING MILLS.

Repair of mills, owned by several persons. 4 Mass. 559. 11 Mass. 325. 1795, 74, § 6.

SECT. 44. When any mill, which is owned by several persons, as joint tenants or tenants in common, or the dam or appurtenances of such mill, shall need to be repaired or to be rebuilt, in whole or in part, and the proprietors shall not all agree to join in repairing or rebuilding the same, the greater part in interest of the proprietors may cause the work to be done at the expense of the whole, in proportion to their respective interests.

Meeting of proprietors, how called. 1795, 74, § 5.

SECT. 45. Any one or more of the proprietors, in such case, may call a meeting of the whole of them, to be held at the mill, to consult and agree upon the measures to be taken for repairing or rebuilding the same; which meeting shall be called by a written notice, signed by the persons who call it, and addressed to each of the other proprietors, expressing that the mill in question needs to be repaired or rebuilt, and that a meeting of the proprietors thereof will be held at the mill, on a certain day and hour, mentioned in the notice, to consult and agree upon the measures to be taken for that purpose, and requesting the attendance of the proprietor at such meeting.

Notice thereof, how served and returned.

SECT. 46. The notice shall be served by any officer, authorized to serve civil process between the same parties, and his certificate thereof, returned on a copy of the notice, specifying the several persons, if more than one, on whom he served it, and the time and manner of the service on each, shall be deemed sufficient evidence thereof.

Same subject. 1795, 74, § 5.

SECT. 47. The notice shall be served by delivering the original to the person to whom it is addressed, or by leaving it at his dwelling house, or at his last and usual place of abode, not more than thirty days, nor less than seven days, before the day appointed for the meeting.

Majority in interest may decide. 1795, 74, § 6.

SECT. 48. At the meeting so called and warned, or at any adjournment thereof, the greater part in interest, of the whole body of the proprietors of the mill, may take measures to cause the mill, or the dam or appurtenances thereof, to be repaired or rebuilt, as they shall judge most for the interest of all who are concerned therein.

Each proprietor liable for his share of the expense. 1795, 74, § 6.

SECT. 49. Every proprietor of the mill shall pay his just and equal part of the charge and expense of such repair or rebuilding, in proportion to his share or interest in the mill; which sum shall be paid upon demand, after the work is completed, to the proprietors by whom it shall have been advanced, with interest from the time of the advance.

Remedy therefor, by lien on the rents or by action. 1795, 74, § 6.

SECT. 50. The proprietors, who shall advance the money so expended, shall have a lien therefor on the rents and profits of the mill, and may retain so much thereof, as belongs to any proprietor, who is indebted to them for such advance, to be applied to the payment of his debt, or they may maintain a suit for the debt, or for as much thereof as shall not be paid out of the rents and profits.

SECT. 51. When any proprietor is under guardianship, as a minor, or otherwise, his guardian may act for him, in calling a meeting of the proprietors, and in attending such a meeting, and may there vote for the ward, and may do all such other acts in the premises, as the ward could do, if competent to act for himself; all which shall be binding on the ward and on his estate. Guardian of proprietor may act for him. 1795, 74, § 7.

SECT. 52. When any part of the mill is held by a married woman, her husband may in like manner represent her, and appear and act for her at such meeting, and his doings shall have the same effect, as if they had been done by her before their intermarriage. Husband may act for his wife. 1795, 74, § 7.

SECT. 53. When any part of the mill is held by one person, as tenant for life, or years, with remainder or reversion to another person, the sum due for the repairs and other expenses, on that part of the mill, shall be apportioned on the tenant for life or years, and on the remainder-man or reversioner, in proportion to the value of their respective interests in the premises; and the party, to whom the money is due from such remainder-man or reversioner, shall have a lien on the rents and profits belonging to him, after his estate shall come into possession, if not sooner paid, notwithstanding any limitation by lapse of time. Apportionment between tenant and reversioner. 1795, 74, § 7.

SECT. 54. Every mortgagee in possession shall be considered as a proprietor, for all the purposes of this chapter, but the mortgagor shall also be liable for all sums, so due on account of his share of the mill, so far as the same are not recovered from the mortgagee, provided the action therefor is brought against the mortgagor, before his right of redemption is foreclosed; and all sums, paid on this account by the mortgagee, shall be considered and allowed, between him and the mortgagor, as so much paid for repairs or improvements of the mortgaged premises. Case of a mortgagee in possession. 1795, 74, § 7.

SECT. 55. Every tenant in tail of any part of a mill shall, for all the purposes of this chapter, be considered as the proprietor thereof in fee simple. Case of a tenant in tail. 1795, 74, § 7.

SECT. 56. All sums, due from one proprietor to another, for moneys advanced by force of this chapter, may be recovered in an action of assumpsit; and when two or more proprietors are so indebted, the creditor or creditors may maintain a bill in equity, against any two or more of them, in which suit the court shall determine what amount is due from each of the debtors, severally, and shall award judgment and execution against each of them accordingly, and shall apportion the amount, so recovered, among the plaintiffs in the suit, if more than one, according to their respective rights. Suits by one proprietor against others, how brought.

SECT. 57. Such bill in equity may be brought in the court of common pleas or supreme judicial court, and the court shall proceed thereon, according to the course of proceedings in chancery, and with or without a trial by jury, as the case may require, to make all such orders, decrees and judgments, and to issue all such process, as may be necessary and proper to carry into effect the provisions of this chapter; and either party may appeal to the supreme judicial court, from the final judgment or decree of the court of common pleas, upon such bill in equity, in like manner, as in common civil actions. Same subject. 1795, 74, § 6.

SECT. 58. Nothing contained in this chapter shall make void, or This chapter

not to affect agreements to repair, &c.

in any way affect, any contract or agreement, by or between the proprietors of any mill, as to the repair or rebuilding thereof.

Millers to keep scales, &c., and weigh grain, if required, under penalty. 1795, 74, § 8.

SECT. 59. Every miller, occupying and using a grist mill, shall be provided with scales and weights, or a vibrating steelyard, to weigh corn, grain and meal, to and from the mill, if required; and if he shall neglect to keep himself so provided, or shall refuse so to weigh corn, grain or meal, when required, he shall, for every such neglect or refusal, forfeit and pay to any person, who shall sue therefor, a sum not exceeding five dollars, to be recovered in an action on the case.

What toll allowed. 1795, 74, § 9.

SECT. 60. The toll for grinding any sort of grain shall not exceed one sixteenth part thereof.

CHAPTER 117.

OF THE LIEN OF MECHANICS AND OTHERS, FOR THE COST OF REPAIRS AND IMPROVEMENTS ON REAL ESTATE.

SECTION
1. Lien allowed for labor and materials.
2. Contract must be in writing, and recorded.
3. Limitation of the lien.
4. The land may be sold on petition.
5. Suit, when deemed to be commenced.
6. Substance of the petition.
7, 8, 9. Notice to the owner, and to other creditors.
10. Claims may be proved and contested.
11. Facts may be tried by a jury.
12. Case of claims, not yet payable.
13. Case of a part performance of the contract.
14. Sale of the premises, in what cases ordered.
15. A part may be sold, if sufficient.
16. Notice of the sale.
17. Right of redemption.
18, 19. Distribution of the proceeds, when and how made.
20. Surplus how disposed of.
21, 22. Case of a prior attachment of the premises.
23. Case of a subsequent attachment.
24. Case of an intervening attachment.
25. Rights of the respective creditors and contractors among themselves.
26. Case of the debtor having a life estate, &c.
27. Lien may be enforced against heirs or assigns:
28. And by executors or administrators.
29. Appeal allowed to the supreme court.
30. Suit, commenced by one, may be prosecuted by another.
31. Case of suit commenced prematurely, and costs therein.
32. Costs, how paid.
33. This chapter not to bar an action at law.
34. Register to record contracts.
35. Creditors, how to discharge the lien.
36. Petition to be indorsed.

Lien allowed for labor and materials. 1819, 156, § 1.

SECTION 1. Every person who shall by contract with the owner of any piece of land, furnish labor or materials for erecting or repairing any building, or the appurtenances of any building, on such land, shall have a lien upon the whole piece of land, in the manner hereinafter provided, for the amount due to him for such labor or materials.

Contract must be in writing, and recorded. 1819, 156, § 1.

SECT. 2. Such lien shall not attach, unless the contract is made in writing, and signed by the owner of the land, or by some person duly authorized by him, and recorded in the registry of deeds for the county where the land lies.

SECT. 3. The lien shall be dissolved at the expiration of six months after the time, when the money due by the contract, or the last instalment thereof, shall become payable, unless a suit for enforcing the lien shall have been commenced within the said six months. Limitation of the lien. 1819, 156, § 1.

SECT. 4. When any sum due by such contract shall remain unpaid, for the space of sixty days after the same is payable, the creditor may, upon a petition to the court of common pleas for the county where the land lies, obtain a decree for the sale thereof, and for applying the proceeds to the discharge of his demand. The land may be sold on petition. 1819, 156, § 3.

SECT. 5. The petition may be filed in court, or in the clerk's office in vacation, and in either case, the filing of the petition shall be deemed the commencement of the suit. Suit, when deemed to be commenced.

SECT. 6. The petition shall contain a brief statement of the contract on which it is founded, and of the amount due thereon, with a description of the premises which are subject to the lien, and all other material facts and circumstances, and shall pray that the premises may be sold, and the proceeds of the sale be applied to the discharge of the demand. Substance of the petition.

SECT. 7. The court, in which the petition is entered, shall order notice to be given to the owner of the land, that he may appear and answer thereto, at a certain day in the same term, or at the next term of the court, by serving him with an attested copy of the petition, with the order of the court thereon, fourteen days at least before the time assigned for the hearing, and the court shall also order notice of the filing of the petition to be given to all the other creditors who have a lien of the same kind upon the same estate, by serving them with the last mentioned order, fourteen days at least before the time assigned for the hearing. Notice to the owner, and to the other creditors. 1819, 156, § 3.

SECT. 8. If it shall appear to the court that any of the parties so entitled to notice are absent, or that they cannot probably be found to be served with the notice, as before provided, the court may, instead of the personal notice before mentioned, or in addition thereto, order notice to all persons interested to be given, by publishing in some newspaper the substance of the petition, with the order of the court thereon, assigning the time and place for hearing the cause, or may order such other notice to be given, as shall, under the circumstances of the case, be considered most proper and effectual. Same subject. 1819, 156, § 3.

SECT. 9. If, at the time assigned for the hearing, it shall appear to the court that any of the persons interested have not had sufficient notice of the suit, the court may order further notice to them, in such manner as shall be considered most proper and effectual. Same subject.

SECT. 10. At the time assigned for the hearing of the cause, or within such further time as the court shall allow for that purpose, every creditor, having a lien of the kind before mentioned upon the same estate, may appear and prove his claim, and the owner shall be admitted to deny and disprove the same, and also each of the said creditors shall have a right to contest the claim of every other creditor, and the court shall hear and determine the several claims, in a summary manner, either with or without a jury, as the case may require. Claims may be proved and contested. 1819, 156, § 3.

SECT. 11. Every material question of fact, arising in the case, shall be submitted to a jury, if required by either party, or if it shall Facts may be tried by a jury. 1819, 156, § 7.

be thought proper by the court, and such trial shall be had upon a question stated, or an issue framed, under the direction of the court, or otherwise, as the court shall order.

Case of claims, not yet payable.

SECT. 12. The court shall examine all the claims that shall be presented, and shall ascertain and determine the amount due to each creditor who has a lien, of the kind before mentioned, upon the estate in question, and every such claim that is due absolutely and without any condition, although not then payable, shall be allowed, with a rebate of interest to the time when it would become payable.

Case of a part performance of the contract. 1819, 156, § 4.

SECT. 13. When the owner of the land shall have failed to perform his part of the contract, and by reason thereof the other party shall, without his own default, have been prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much thereof as he has performed, in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

Sale of the premises, in what cases ordered. 1819, 156, § 3.

SECT. 14. If the lien should be established in favor of any of the creditors whose claims are presented, whether the petitioning creditor or any other, the court shall order a sale of the premises to be made by any officer, who is authorized to serve any civil process between the same parties.

A part may be sold, if sufficient.

SECT. 15. If any part of the premises can be separated from the residue and sold, without damage to the whole, and if the value thereof should be sufficient to satisfy all the debts proved in the case, the court may order a sale of that part, if it shall appear to be most for the interest of all the parties concerned.

Notice of the sale. 1819, 156, § 51.

SECT. 16. The officer who makes the sale, shall give notice of the time and place appointed therefor, in the manner prescribed in relation to the sale on execution of a right of redeeming mortgaged lands, unless the court shall order other or different notice to be given.

Right of redemption. 1819, 156, § 3.

SECT. 17. All lands, sold under such order of the court, may be redeemed in like manner, and upon the same terms, as are provided in the case of a sale on execution of the right of redeeming mortgaged lands.

Distribution of the proceeds, when and how made. 1819, 156, § 5.

SECT. 18. If the claims against the estate are all ascertained, at the time of ordering the sale, the court may at the same time order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, to the amount of their respective debts, if there is sufficient therefor, and if there is not sufficient, then to divide and distribute the same among the creditors, in proportion to the amount due to each of them.

Same subject.

SECT. 19. If the claims are not all ascertained when the sale is ordered, or if for any other reason, the court should find it necessary or proper to postpone the order of distribution, they may direct the officer to bring the proceeds of the sale into court, there to be disposed of according to the decree of the court; and if by reason of the claims of attaching creditors, or for any other cause, the whole cannot be conveniently distributed at once, the court may make two or more successive orders of distribution, as the circumstances may require.

SECT. 20. If there be any surplus of the proceeds of the sale, after making all the payments before mentioned, it shall be forthwith paid over to the owner of the land, but such surplus, before it is so paid over, shall be liable to be attached or taken in execution, in like manner as if it proceeded from a sale made by the officer on an execution.

Surplus, how disposed of. 1819, 156, § 5.

SECT. 21. If the land, to which any such contract relates, shall be under attachment at the time of recording the contract, the attaching creditor shall be preferred, to the extent of the value of the land and buildings, as they may be when the contract shall be recorded, and the court shall ascertain, by a jury or otherwise, as the case may require, what proportion of the proceeds of the sale shall be held subject to the attachment, as derived from the value of the premises, when the contract was recorded.

Case of a prior attachment of the premises. 1819, 156, § 4.

SECT. 22. If the attaching creditor, in such a case, shall recover judgment in his suit, he shall be entitled to receive on his execution the said proportion of the proceeds, that are held subject to his attachment, or as much thereof as may be necessary to satisfy his execution, and the residue, if any, of the proceeds of the sale, shall be applied in the same manner as if there had been no such attachment.

Same subject. 1819, 156, § 4.

SECT. 23. If the land, to which the contract relates, shall be attached after the recording of the contract, the proceeds shall be applied, after discharging all prior liens and claims, to satisfy the execution of such attaching creditor, in like manner as is provided in the ninety seventh chapter, in the case of two or more successive attachments, or seizures in execution, of a right of redemption, or of a share in any incorporated company.

Case of a subsequent attachment.

SECT. 24. If an attachment is made after the recording of such a contract, and if after the attachment another like contract should be recorded, the creditor in the latter contract shall be entitled to be paid only out of the residue of the proceeds, if any, remaining after satisfying the attaching creditor, and also paying all that is due on the contracts that were recorded before the attachment.

Case of an intervening attachment.

SECT. 25. When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their respective attachments, but when several creditors, who are entitled to the lien provided for in this chapter, have all equal rights as between themselves, and the fund shall be insufficient to pay the whole, they shall share it equally, in proportion to their respective debts.

Rights of the respective creditors and contractors, among themselves.

SECT. 26. If the person, who procures the work to be done, has an estate for life only, or any other estate less than a fee simple, in the land on which the work is to be done, or if the land, at the time of recording the contract, is mortgaged, or under any other incumbrance, the person who procures the work to be done shall nevertheless be considered as the owner, for the purposes of this chapter, to the extent of his right and interest in the land, and the lien before provided for shall bind his whole estate and interest therein, in like manner as a mortgage would have done, and the creditor may cause the right of redemption, or whatever other right or estate the owner had in the land, to be sold and applied to the discharge of his debt, according to the provisions of this chapter.

Case of the debtor, having a life estate &c.

Lien may be enforced against heirs or assigns.

SECT. 27. If the person indebted in any such contract shall die, or shall convey away his estate, before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs, or whoever shall hold the estate, which he had in the premises, at the time of making the contract; or if a suit is commenced in his life time, it may be prosecuted against his heirs or assigns, in like manner as if the estate had been mortgaged to secure the debt.

And by executors or administrators.

SECT. 28. If the creditor in such contract shall die, before the commencement of a suit thereon, the suit may be commenced and prosecuted by his executors or administrators, or if commenced in his life time, it may be prosecuted by them, as it might have been by the deceased, if living.

Appeal allowed to the supreme court. 1819, 156, § 7.

SECT. 29. Any party interested in a suit brought under this chapter may appeal to the supreme judicial court, from the final decree or judgment of the court of common pleas, and the appeal shallobe conducted and prosecuted, in the same manner, substantially, as is prescribed in relation to common civil actions, and the cause shall be thereupon heard and determined in the supreme judicial court, according to the provisions of this chapter.

Suits commenced by one, may be prosecuted by another.

SECT. 30. If it appear, in any stage of the proceedings under this chapter, that the suit was commenced by the petitioning creditor before the expiration of the sixty days, or after the expiration of six months, in that behalf before limited, or if the petitioning creditor should become nonsuit, or should from any cause fail to establish his claim, the suit may nevertheless be prosecuted by any other creditor having such a lien, in the same manner as if it had been originally commenced by the latter creditor; provided, the circumstances of the case are such, that he might then, or at any time after the commencement of the original suit, have commenced a like suit on his own claim.

Case of suit, commenced prematurely, and costs therein.

SECT. 31. If the suit is commenced by the petitioning creditor, before the expiration of the sixty days, in that behalf limited, his claim may nevertheless be allowed, if he is otherwise entitled thereto, and if the suit is carried on by any other creditor, as provided in the preceding section, but he shall not in such case be entitled to any costs, and he may be required to pay the costs, that shall be incurred by the debtor, or any part thereof, as the court shall think reasonable.

Costs, how paid.

SECT. 32. The costs in all other respects shall be subject to the discretion of the court, and shall be paid out of the proceeds of the sale, or by any of the parties in the suit, as justice and equity may require.

This chapter not to bar an action at law.

SECT. 33. Nothing contained in this chapter shall be construed to prevent any creditor in such contract from maintaining an action thereon at the common law, in like manner as if he had no such lien for the security of his debt.

Register to record contracts. 1819, 156, § 2.

SECT. 34. The register of deeds shall receive and record all contracts, of the kind mentioned in this chapter, that shall be delivered to him for that purpose, and he shall be entitled to the same fees therefor, as for recording deeds or other papers of equal length.

Creditors, how to discharge the lien. 1819, 156, § 6.

SECT. 35. When any debt, secured by such lien, shall be fully paid, the creditor shall, at the expense of the debtor, enter on the

margin of the registry, where the contract is recorded, a discharge of his said lien, or shall execute a deed of release thereof, in like manner, as is provided in relation to the release of mortgages, after the payment thereof.

SECT. 36. Every petition, filed in pursuance of this chapter, shall be indorsed in the same manner as is required with respect to original writs, and all the regulations concerning the indorsement of original writs, contained in the ninetieth chapter, shall apply to the indorsement of such petitions.

Petition to be indorsed. 1833, 50, § 2.

CHAPTER 118.

OF RECOGNIZANCES FOR DEBTS; SEIZIN AND LIBELLING FORFEITED GOODS; AND THE RECOVERY OF PECUNIARY FORFEITURES.

SECTION

OF RECOGNIZANCES FOR DEBTS.

1. Debtor may bind himself by recognizance.
2. To be taken before the C. C. P. or clerk thereof—Form of the recognizance.
3. Provision as to interest.
4. Recognizance to be recorded.
5. Conusor must be known to the judge, &c.
6. Execution may be issued on the recognizance.
7. Proceedings for obtaining it.
8. Form of execution; and how issued.
9. Recognizance may be taken before a justice of the peace.
10. Justice's execution not to run against land.
11. Clerk may record such recognizance and issue execution thereon.
12. Executions, where they may run, and when returnable.
13. How taken out by executor or administrator.
14. Proceedings in case of death of conusor.
15. Limitation as to the issuing of execution.
16. If execution is unsatisfied, alias, &c. may issue.
17. Death of one of several conusors or conusees.
18. Audita querela, &c. as in case of a judgment.
19. Fees of the clerk and justice.

OF SEIZING AND LIBELLING FORFEITED GOODS.

20. Goods forfeited, to be seized.
21. Libel, when to be filed, and form thereof.
22. " before whom to be filed.
23. Proceedings in the C. C. P.—Notice to be published.
24. Proceedings, when there is no claimant;
25. And when a claimant appears.
26. Decree of forfeiture, or restitution.
27. Damages, for seizure without reasonable cause.
28. Provision as to costs.
29. Executions and other processes.
30. Either party may appeal to supreme court.
31. Proceedings on a libel before a justice.
32. Notice, trial and adjudication.
33. Either party may appeal to C. C. P.
34. Jurisdiction of police courts.
35. Depositions may be taken, &c.
36. Goods to be delivered to claimant on bond.
37, 38. Goods to be appraised.
39. Appraisement conclusive as to jurisdiction.
40. Goods may be sold if perishable,
41. Or for other sufficient cause.

RECOVERY OF PECUNIARY FORFEITURES.

42. Pecuniary forfeitures, how to be recovered.

ACTION OF ACCOUNT ABOLISHED.

43. Action of account abolished—Bill in equity to account, and proceedings therein.

OF RECOGNIZANCES FOR DEBTS.

Debtor may bind himself by recognizance. 1782, 21, § 1.

SECTION 1. Any person, who is by law capable of binding himself by a common bond, may enter into a recognizance, in the manner hereinafter mentioned, for the payment of any debt that he may owe, and may thereby subject his person, and his goods and estate, to be taken in execution for such debt.

To be taken before C. C. P. or clerk thereof.

SECT. 2. The recognizance may be taken before the court of common pleas in any county, in term time, or before the clerk of said court, in vacation, and shall be substantially as follows:

Form of the recognizance. 1782, 21, § 1.

Be it remembered, that on this day of ——— of personally appeared before the court of common pleas, now held at within and for the county of [or, before ——— the clerk of the court of common pleas for the county of] and acknowledged himself to be indebted to ——— of in the sum of to be paid to the said ——— on the day of [or, in years ——— or in months, from this day] with interest from this day; and if not then paid, to be levied upon his goods and chattels, lands and tenements, and for want thereof, upon his body. In witness whereof the said ——— hath hereto set his hand. ———

——— clerk of the court of common pleas for the county of

Provision as to interest.

SECT. 3. The clause, as to the payment of interest, may be altered or wholly omitted, according to the agreement of the parties, but interest shall always be allowed for the delay, if any, after the time of payment, unless the recognizance contains an express agreement to the contrary.

Recognizance to be recorded.

SECT. 4. The recognizance shall be attested by the clerk, whether taken in term time or vacation, and shall be recorded at length by him, among the records of the court, and the original shall then be delivered to the conusee.

Conusor must be known to the judge &c.

SECT. 5. No such recognizance shall be taken, unless the judge or the clerk who takes it shall know, or have satisfactory evidence, that the person, who offers to enter into the recognizance, is the individual whom he represents himself to be, and who is described as the conusor.

Execution may be issued on the recognizance. 1782, 21, § 2.

SECT. 6. If the debt shall not be paid, at the time appointed in the recognizance for the payment thereof, the conusee shall be entitled to an execution for the sum due thereon, to be sued out of the clerk's office in which the recognizance is recorded, and to be directed, served and returned, in like manner as an execution issued upon a judgment of the same court.

Proceedings [illegible]

SECT. 7. Before the issuing of such execution, the original recognizance shall be produced and delivered to the clerk, and shall be filed and preserved by him, in like manner as is done with bonds, or other evidences of debt, upon which judgment is rendered, and the clerk shall compute the amount due on the recognizance, deducting the payments, if any, that shall have been made and indorsed thereon, and shall issue execution for the sum then due.

[illegible] issued. 8 Mass. 79. 1782, 21, § 2.

SECT. 8. The execution shall be in the usual form of an execution on a judgment for debt, except that instead of reciting a judgment, it shall recite the recognizance, and state the amount then due thereon; and it may be issued by the clerk, without any special order of the court.

SECT. 9. A recognizance for debt may be taken before any justice of the peace in his county, in any case where it might be taken before the clerk of the court, and the form shall be the same, excepting the description of the officer before whom it is taken; and the justice shall record all recognizances by him taken, in a book kept for that purpose, and shall, in each case, deliver the original to the conusee, as before required of the clerk of the court.

Recognizance may be taken before a justice of the peace.

SECT. 10. The justice, before whom a recognizance is taken, shall have the same power to issue execution thereon, as is given in this chapter to the clerk of the court, and such execution shall have the same effect as an execution issued by the clerk, excepting that it shall not be issued against the lands, but only against the money, goods and chattels of the conusor, and against his body, like an execution issued upon a judgment recovered before a justice of the peace.

Justice's execution not to run against lands.

SECT. 11. When a recognizance is taken before a justice of the peace, if the conusee shall desire to have an execution thereon against the lands of the conusor, as well as against his money, goods and body, he may, at any time within ninety days after the recognizance was taken, deliver it to the clerk of the court for the county, who shall record the same, in like manner as if it had been taken before himself, and shall issue execution thereon, in like form, and the execution shall have the same force and effect, and shall be directed, served and returned, in like manner as if the recognizance had been taken before the clerk.

Clerk may record such recognizance and issue execution thereon.

SECT. 12. All executions, issued on recognizances by the clerk of the court, or a justice of the peace, may be executed and shall be obeyed, in every county to which they are directed, and shall be made returnable in sixty days from the date thereof.

Executions, where they may run, and when returnable.

SECT. 13. If the conusee shall die before the debt is fully paid, his executor or administrator may sue out execution, in the same manner as the conusee might have done, upon exhibiting to the clerk or justice his letters testamentary or of administration, and without suing out a scire facias for that purpose, and the form of the execution shall be altered accordingly.

— how taken out by an executor or administrator. 1782, 21, §§ 2, 3.

SECT. 14. If the conusor shall die before the debt is fully paid, no execution therefor shall be issued as of course, but the estate of the conusor in the hands of his executors or administrators, and his heirs or devisees, shall be liable for the debt, in like manner as if judgment therefor had been recovered against him in his life time; and the conusee, or his executors or administrators, may have a scire facias, or an action of debt, to recover the same, against the executors, administrators, heirs or devisees of the conusor, in like manner as they might have had upon such a judgment.

Proceedings in case of death of conusor.

SECT. 15. No original execution shall be issued as of course, upon such a recognizance, after the expiration of three years from the time therein set for payment of the debt, unless some payment on account thereof shall have been made and indorsed on the recognizance, and if there has been any such payment, no such execution shall issue after the expiration of three years from the time of the last payment so indorsed; but the conusee in such case, or his executors or administrators, may have a scire facias, or an action of debt, on the

Limitation as to the issuing of execution. 1782, 21, § 5.

4 Mass. 641. 13 Mass. 493.

recognizance, against the party liable thereon, in like manner and with the same effect, as they might have had upon a judgment recovered against the conusor.

If execution is unsatisfied, alias, &c., may issue. 1782, 21, § 2.

SECT. 16. If any execution, issued for the debt secured by such recognizance, shall be returned unsatisfied, the creditor shall be entitled to an alias, and other successive executions, in like manner as is or may be allowed with regard to executions on a judgment in civil actions.

Death of one of several conusors or conusees. 1782, 21, § 2.

SECT. 17. If there are several conusors, or several conusees, and one or more of them shall die, before the debt is fully satisfied, the right and interest of the surviving conusees, and the obligation of the surviving conusors, and all the proceedings for the recovery of the debt, shall be substantially the same, as in the case of the death of one or more joint creditors, or joint debtors, in a judgment at common law.

Audita querela, &c., as in case of a judgment. 1782, 21, § 4.

SECT. 18. If any person is injured by the wrongful suing out or executing of any execution, under the provisions of this chapter, he shall have his remedy, by a writ of audita querela, or otherwise, in like manner as if the execution had been issued upon a judgment; and in all cases, which are not otherwise specially provided for, the parties to such a recognizance, and their respective representatives, shall be entitled and liable to the like remedy, as is or may be provided for creditors and debtors by a judgment.

Fees of the clerk and justice.

SECT. 19. The fee of the clerk, for taking and recording a recognizance in term time or in vacation, and the fee of the justice of the peace, for the like service, shall be fifty cents, and the clerks' fee for recording a recognizance, taken before a justice, shall be twenty five cents; and for all other services, under the provisions of this chapter, the same fees shall be paid, as for like services in other cases.

OF SEIZING AND LIBELLING FORFEITED GOODS.

Goods forfeited, to be seized. 1793, 43, § 1.

SECT. 20. When any goods shall be forfeited for any offence, and no special provision is made for the mode of recovering the things forfeited, any person entitled to recover them, whether wholly for his own use or otherwise, may seize the same, and shall keep them safely, until they are disposed of, as is hereinafter provided.

Libel, when to be filed, and form thereof. 1793, 42, § 2.

SECT. 21. The person making the seizure shall, within fourteen days thereafter, file a libel in the clerk's office of the court of common pleas for the county where the offence was committed, or before any justice of the peace for the same county, as the case may require, stating briefly the cause of the seizure, without setting forth all the special matter, and praying for a decree of forfeiture, according to the provisions of the statute, on which the seizure is founded, referring to it in the following form; "according to the provisions of the law concerning the survey of boards and other lumber," or, "the inspection of beef and pork," (as the case may require,) and mentioning the number of the chapter of the statute referred to, or referring to the statute, in some other general terms.

— before whom to be filed. 1793, 43, §§ 2, 3.

SECT. 22. If the value of the goods seized shall exceed twenty dollars, the libel shall be filed in the clerk's office of the court of common pleas; otherwise, it shall be filed before a justice of the

peace, and the value, for this purpose, shall be ascertained by an appraisal, as hereinafter provided for.

Proceedings in C. C. Pleas. Notice to be published. 1793, 43, § 2.

SECT. 23. Upon the filing of such libel in the court of common pleas, the clerk shall make out an advertisement, setting forth briefly the substance of the libel, and giving notice, to all persons interested, to appear at the term of the said court, to be held next after the expiration of twenty one days from the time of filing the libel, and show cause, if any they have, why the goods should not be decreed forfeited; which notice the libellant shall cause to be published, twice at least, in some newspaper printed in the same county, if there be any, otherwise, in a newspaper printed in the nearest county, the first publication to be not less than fourteen days before the beginning of the term.

Proceedings, when there is no claimant. 1793, 43, § 2.

SECT. 24. The libel shall be entered like civil actions, and if after proclamation made, no claimant appears, the court shall proceed to hear and determine the cause, and shall decree a forfeiture of the goods, or a restoration, or such other disposition thereof, as law and justice shall require.

When a claimant appears. 1793, 43, § 2.

SECT. 25. If any claimant shall appear, he may allege and plead any matter that may be necessary or proper for his defence in the suit, and the further proceedings shall be conducted in the mode that is usual in the courts, that proceed according to the course of the civil law, except that all questions of fact shall be tried and determined by a jury.

Decree of forfeiture, or restitution. 1793, 43, § 2.

SECT. 26. If upon such a trial, the libellant shall maintain his suit, the court shall decree a forfeiture and sale of the goods, and a distribution of the proceeds, or such other disposition thereof, as law and justice shall require, and if the libellant shall discontinue or relinquish his suit, or in any way fail to maintain it, the court shall decree a restitution of the goods to the claimant.

Damages for seizure, without reasonable cause. 1793, 43, § 2.

SECT. 27. If the jury shall find that the seizure was groundless and without probable cause, they shall assess reasonable damages for the claimant, and the court shall render judgment for such damages, with costs of the suit.

Provision as to costs. 1793, 43, § 2.

SECT. 28. In all other cases, the court shall award costs to the party prevailing, or may order the costs, together with the charges of keeping and selling the goods, or any part of such costs and charges, to be paid out of the proceeds of the goods.

Executions and other processes.

SECT. 29. The court may issue an execution, in the common form, for all costs and damages awarded to either party, and they may also issue such warrants and other processes, as may be necessary or proper to carry into effect any other parts of their decree or judgment.

Either party may appeal to supreme court. 1793, 43, § 2.

SECT. 30. Either party, aggrieved at the decree of the court of common pleas, may appeal therefrom to the supreme judicial court, and such appeal shall be claimed and prosecuted like appeals in civil actions, and the cause shall be heard and determined in the supreme judicial court, according to the provisions of this chapter.

Proceedings on a libel before a justice. 1793, 43, § 3.

SECT. 31. If the value of the goods seized does not exceed twenty dollars, the libel shall be filed before a justice of the peace for the county where the offence was committed, and the justice shall make out an advertisement or notice, like that before required to

be made by the clerk of the court of common pleas, and mentioning the time and place appointed for hearing the cause.

Notice, trial and adjudication. 1793, 43, § 3.

SECT. 32. The libellant shall cause the notice to be posted up, in some public place in the county, not less than seven days before the time appointed for hearing the cause, and any claimant may then appear and answer to the suit; and it shall be heard and determined by the justice, without the intervention of a jury, but in all other respects, in the manner before prescribed, for a trial in the court of common pleas.

Either party may appeal to C. C. Pleas. 1793, 43, § 3.

SECT. 33. Either party, aggrieved at the decree of the justice of the peace, may appeal therefrom to the court of common pleas, and the appeal shall be conducted in all respects like appeals in civil actions, and the cause shall be heard and determined in the court of common pleas, according to the provisions of this chapter.

Jurisdiction of police courts.

SECT. 34. If the forfeiture is incurred in any town or place within the jurisdiction of a police court, such court shall be considered, for all the purposes of this chapter, as if held by a justice of the peace; and if the suit is cognizable by a justice, the libel shall be filed in such police court, and the suit shall be there heard and determined, and shall be finally disposed of, in all respects, as if it had been commenced before a justice of the peace.

Depositions may be taken, &c. 1793, 43, § 3.

SECT. 35. In all trials upon any such libel, depositions may be taken and used in like manner as in trials of actions at the common law.

Goods to be delivered to claimant, on bond. 1793, 43, § 1.

SECT. 36. At any time, after the seizure of goods alleged to be forfeited, the owner, or any person entitled or authorized to claim the same, may have them delivered to him, upon giving bond with sufficient surety to the person who made the seizure, in double the value of the goods, with condition to restore them, or to pay the appraised value thereof, if they should be decreed forfeited, and to abide by and perform the final order, decree, or judgment of the court relating thereto.

Goods to be appraised. 1793, 43, § 1.

SECT. 37. The value of the goods in such a case shall be appraised and determined by three disinterested men, to be agreed on by the parties, or appointed by any justice of the peace, to whom the claimant shall apply for that purpose, and to be sworn to the faithful performance of the duty, or if the appraisement is made after the libel is filed, the appraisers shall be appointed by the court or justice, before whom the suit is pending.

Same subject. 1793, 43, § 1.

SECT. 38. The person making the seizure, as soon as may be thereafter, unless an application for an appraisement shall in the meantime be made by a claimant, shall apply to a justice of the peace, who shall appoint three disinterested men, to make an inventory and appraisement of the goods seized; and the said appraisers shall be sworn to the faithful performance of the duty, and shall return their inventory and appraisement to the court or justice, before whom the suit is brought.

Appraisement, conclusive as to jurisdiction. 1793, 43, § 1.

SECT. 39. The appraisement, thus made on the application of the person who made the seizure, shall be conclusive as to the jurisdiction of the court before which the suit is to be brought, unless, before the filing of the libel, a different appraisement shall be made, upon the application of a claimant, in the manner before provided; in

which case, such last mentioned appraisement shall be conclusive as to the jurisdiction of the court.

SECT. 40. When any goods so seized are perishable, and liable to depreciate in value, by keeping, and that fact shall be certified by the appraisers appointed on the application of the person making the seizure, any justice of the peace may, by an order indorsed on the inventory, authorize a sale by auction of such perishable goods, which sale shall be made at such time, and with such notice, as shall be directed in the order.

Goods may be sold, if perishable.

SECT. 41. The preceding section shall not control or affect the power of the court, in which the suit is pending, to order a sale of the goods, for any sufficient cause, at any time during the pendency of the suit.

Or for other sufficient cause.

RECOVERY OF PECUNIARY FORFEITURES.

SECT. 42. When any pecuniary forfeiture or fine is, or hereafter shall be, imposed by law, without any express provision for the mode of recovering the same, or when such fine or forfeiture is made recoverable by bill, plaint or information, it may nevertheless be sued for and recovered, in an action of debt, or an action of trespass on the case, in any court proper to try the same.

Pecuniary forfeitures, how to be recovered. 1793, 43, § 4.

ACTION OF ACCOUNT ABOLISHED.

SECT. 43. The action of account is hereby abolished; and when the nature of an account is such, that it cannot be conveniently and properly adjusted and settled in an action of assumpsit, it may be done upon a bill in equity, to be brought in the supreme judicial court, and the said court shall hear and determine the cause, according to the course of proceedings in chancery, and may award an execution, in the common form, and such other process, as may be necessary or proper to carry into effect their final decree or judgment in the case.

Action of account abolished. 12 Mass. 152. Bill in equity to account, and proceedings therein.

TITLE V.

Of the limitation of actions.

CHAPTER 119. Of the limitation of real actions and rights of entry.
CHAPTER 120. Of the limitation of personal actions.

CHAPTER 119.

OF THE LIMITATION OF REAL ACTIONS AND RIGHTS OF ENTRY.

SECTION
1. No action or entry after twenty years, except, &c.
2. Case of right first accruing to an ancestor, &c.

SECTION
3. Time, when the limitation begins to run.
4. Limitation, after disseizin of a sole corporation.
5. Exceptions for certain disabilities.
6. Death of persons under disabilities.
7. No allowance for any second disability.
8. Entry on land, when effectual.
9, 10. Estates tail, barred like estates in fee.
11. These limitations, when to take effect.
12. Suits by the Commonwealth, limited.
13. Descent or discontinuance, not to bar any right.
14. Notice to prevent an easement, to be deemed a disturbance thereof.
15. On reversal or arrest of judgment, &c. a new action may be brought.

No action or entry after twenty years, except, &c. 7 Pick. 153. 1786, 13.

SECTION 1. No person shall commence an action for the recovery of any lands, nor shall make an entry thereupon, unless within twenty years after the right to make such entry or bring such action first accrued, or within twenty years after he, or those from, by, or under whom, he claims, shall have been seized or possessed of the premises, except as is hereinafter provided.

Case of right first accruing to an ancestor, &c.

SECT. 2. If such right or title first accrued to an ancestor or predecessor of the person, who brings the action or makes the entry, or to any other person from, by, or under whom he claims, the said twenty years shall be computed from the time when the right or title so first accrued to such ancestor, predecessor, or other person.

Time, when the limitation begins to run.

SECT. 3. In the construction of this chapter, the right to make an entry, or bring an action to recover land, shall be deemed to have first accrued at the times respectively hereinafter mentioned, that is to say:

First, When any person shall be disseized, his right of entry or of action shall be deemed to have accrued at the time of such disseizin:

Secondly, When he claims as heir or devisee of one who died seized, his right shall be deemed to have accrued at the time of such death, unless there is a tenancy by the curtesy, or other estate, intervening after the death of such ancestor or devisor, in which case, his right shall be deemed to accrue when such intermediate estate shall expire, or when it would have expired by its own limitation:

9 Mass. 508. 15 Mass. 471.

Thirdly, When there is such an intermediate estate, and in all other cases, when the party claims by force of any remainder or reversion, his right, so far as it is affected by the limitation herein prescribed, shall be deemed to accrue when the intermediate or precedent estate would have expired by its own limitation, notwithstanding any forfeiture thereof, for which he might have entered at an earlier time:

Fourthly, The preceding clause shall not prevent any person from entering, when entitled to do so by reason of any forfeiture, or breach of condition, but if he claims under such a title, his right shall be deemed to have accrued when the forfeiture was incurred, or the condition was broken:

Fifthly, In all cases not otherwise specially provided for, the right shall be deemed to have accrued, when the claimant, or the person under whom he claims, first became entitled to the possession of the premises under the title upon which the entry or the action is founded.

Limitation, after disseizin of a sole corporation. 1828, 137, § 1.

SECT. 4. If any minister, or other sole corporation, shall be disseized, any of his successors may enter upon the premises, or may bring an action for the recovery thereof, at any time within five years

after the death, resignation, or removal, of the person so disseized, notwithstanding the twenty years after such disseizin shall have expired.

SECT. 5. If, at the time when such right of entry or of action upon or for any lands shall first accrue as aforesaid, the person, entitled to such entry or action, shall be within the age of twenty one years, or a married woman, insane, imprisoned, or absent from the United States, such person, or any one claiming from, by, or under him, may make the entry or bring the action, at any time within ten years after such disability shall be removed, notwithstanding the twenty years before limited in that behalf shall have expired.

Exceptions for certain disabilities. 1786, 13, § 4.

SECT. 6. If the person, first entitled to make such entry or bring such action, shall die during the continuance of any of the disabilities mentioned in the preceding section, and no determination or judgment shall have been had of or upon the title, right or action, which accrued to him, the entry may be made, or the action brought by his heirs, or any other person claiming from, by, or under him, at any time within ten years after his death, notwithstanding the said twenty years shall have expired.

Death of persons under disabilities.

SECT. 7. If, at the time when such right of entry or of action shall first accrue, the person entitled thereto shall be under any of the disabilities before mentioned, and shall die without having recovered the premises, no further time for making such entry or bringing such action, beyond what is herein before prescribed, shall be allowed by reason of the disability of any other person.

No allowance for any second disability. 6 Mass. 328. 6 East, 80.

SECT. 8. No person shall be deemed to have been in possession of any lands, within the meaning of this chapter, merely by reason of having made an entry thereon, unless he shall have continued in open and peaceable possession of the premises, for the space of one year next after such entry, or unless an action shall be commenced upon such entry and seizin, within one year after he shall be ousted or dispossessed of the premises.

Entry on land, when effectual.

SECT. 9. When the right of entry or of action of a tenant in tail, or of a person entitled to a remainder in tail, is barred by force of this chapter, the estate tail, and all remainders and reversions expectant thereon, shall be also barred, as fully as they might have been by a conveyance made by the tenant in tail, in the manner provided in the fifty ninth chapter.

Estates tail, barred like estates in fee.

SECT. 10. When any person, entitled to recover land as a tenant in tail, or a remainder-man in tail, shall die before the expiration of the period herein before limited for making an entry or bringing an action therefor, no person claiming any estate, which the tenant in tail or remainder-man might have barred, shall make an entry or bring an action to recover such land, but within the period during which the tenant in tail or remainder-man, if he had so long lived, might have made such entry or brought such action.

Same subject.

SECT. 11. The limitations herein before prescribed, as to the time within which an action may be brought to recover any land, shall take effect from and after the thirty first day of December, in the year of our Lord eighteen hundred and thirty nine; and if any person, who shall then be entitled to bring any real action, which is to be abolished after that day, shall then be within the age of twenty one

These limitations, when to take effect.

years, a married woman, insane, imprisoned, or without the limits of the United States, the action may be brought, at any time within five years after the disability shall cease, or after the death of the person so disabled; provided, that no such action shall be maintained, after it would have been barred by the statutes of limitation, in force at and immediately before the time when this chapter shall become a law.

Suits by the Commonwealth, limited. 4 Mass. 528.

SECT. 12. No suit for the recovery of any lands shall be commenced by or in behalf of the Commonwealth, unless within twenty years after the right or title of the Commonwealth thereto first accrued, or within twenty years after the Commonwealth, or those from or through whom they claim, shall have been seized or possessed of the premises.

Descent or discontinuance not to bar any right.

SECT. 13. No descent or discontinuance, which may hereafter occur, shall take away or defeat any right of entry, or of action, for the recovery of real estate.

Notice to prevent an easement, to be deemed a disturbance thereof.

SECT. 14. When a notice shall be given, to prevent the acquisition of a right or privilege of way, air or light, as provided in the sixtieth chapter, such notice shall be considered so far a disturbance of the right in question, as to enable the party, claiming such right, to bring an action on the case, as for a nuisance or disturbance, for the purpose of trying the right; and if the plaintiff in such action shall prevail, he shall be entitled to full costs, although he should recover only nominal damages.

On reversal, or arrest of judgment, &c. a new action may be brought.

SECT. 15. If any action, of which the commencement is limited by this chapter, shall be abated by the death of any party thereto, or if, after verdict for the demandant or plaintiff, the judgment shall be arrested, or if judgment in any such action be given for the demandant or plaintiff, and the judgment shall be reversed for error therein, the demandant or plaintiff, or any person claiming from, by, or under him, may bring a new action for the same cause, at any time within one year after the determination of the original action, or after the reversal of the judgment therein.

CHAPTER 120.

OF THE LIMITATION OF PERSONAL ACTIONS.

SECTION
1. Certain actions to be brought within six years.
2. Others to be brought within two years.
3. Certain actions against sheriffs, within four years.
4. Exception as to certain notes, &c.
5. And as to suits on accounts current.
6. Exceptions for certain disabilities.
7. General limitation of twenty years.
8. Suits by aliens.
9. Case of defendants out of the state.
10. Case of the death of either party.
11. Remedy, in case of reversal, arrest of judgment, &c.
12. Case of fraudulent concealment by deft
13. New promise, &c. to be in writing.
14. Promise by one of several debtors.
15, 16. Proceedings in action against such debtors.
17, 18. Effect of part payment.
19. Limitation of demands filed in set-off
20. Suits by the Commonwealth limited.

SECTION
21. Limitation of suits for penalties, by private persons.
22. Of such suits by the Commonwealth.
23. Case of suits limited by other statutes.
24. Presumption of payment of a judgment.
25. Provisions as to written promise, &c. when to take effect.

SECTION 1. The following actions shall be commenced within six years next after the cause of action shall accrue, and not afterwards: Certain actions to be brought within six years. 1786, 52, § 1.

First, all actions of debt, founded upon any contract, or liability not under seal, except such as are brought upon the judgment or decree of some court of record of the United States, or of this, or some other of the United States: 2 Mason, 311. 1 Mason, 243.

Secondly, all actions upon judgments rendered in any court, not being a court of record:

Thirdly, all actions for arrears of rent:

Fourthly, all actions of assumpsit, or upon the case, founded on any contract or liability, express or implied: 2 Gallis. 477.

Fifthly, all actions for waste and for trespass upon land: 7 Pick. 153.

Sixthly, all actions of replevin, and all other actions for taking, detaining or injuring goods or chattels:

Seventhly, all other actions on the case, except actions for slanderous words, and for libels.

SECT. 2. All actions for assault and battery, and for false imprisonment, and all actions for slanderous words and for libels, shall be commenced within two years next after the cause of action shall accrue, and not afterwards. Others to be brought within two years. 1786, 52, § 1.

SECT. 3. All actions against sheriffs, for the misconduct or negligence of their deputies, shall be commenced within four years next after the cause of action shall accrue, and not afterwards. Certain actions against sheriffs, within four years. 1796, 71. 9 Greenl. 74.

SECT. 4. None of the foregoing provisions shall apply to any action brought upon a promissory note, which is signed in the presence of an attesting witness, provided the action be brought by the original payee, or by his executor or administrator, nor to an action brought upon any bills, notes, or other evidences of debt, issued by any bank. Exception as to certain notes, &c. 16 Mass. 290. 314. 4 Pick. 382. 8 Pick. 246. 1786, 52, § 5.

SECT. 5. In all actions of debt or assumpsit, brought to recover the balance, due upon a mutual and open account current, the cause of action shall be deemed to have accrued, at the time of the last item proved in such account. — as to suits on accounts current. 2 Mass. 217. 3 Pick. 96. 8 Pick. 187. 6 Pick. 362. 4 Greenl. 337. 6 Greenl. 308.

SECT. 6. If any person, entitled to bring any of the actions, before mentioned in this chapter, shall, at the time when the cause of action accrues, be within the age of twenty one years, or a married woman, insane, imprisoned, or absent from the United States, such person may bring the said actions, within the times in this chapter respectively limited, after the disability shall be removed, or within six years after the disability mentioned in the preceding section. Exceptions for certain disabilities. 14 Mass. 203. 17 Mass. 180. 10 Mass. 29. 1786, 52, § 4.

SECT. 7. All personal actions on any contract, not limited by the foregoing sections, or by any other law of this Commonwealth, shall be brought within twenty years after the accruing of the cause of action. General limitation of twenty years.

SECT. 8. When any person shall be disabled to prosecute an action in the courts of this Commonwealth, by reason of his being Suits by aliens.

3 Cranch, 454.

an alien, subject or citizen of any country at war with the United States, the time of the continuance of such war shall not be deemed any part of the respective periods, herein limited for the commencement of any of the actions before mentioned.

Case of defts. out of the state. 3 Mass. 271. 7 Mass. 515. 1 Pick. 263. 17 Mass. 55. 1786, 52, § 4.

SECT. 9. If, at the time when any cause of action, mentioned in this chapter, shall accrue against any person, he shall be out of the state, the action may be commenced, within the time herein limited therefor, after such person shall come into the state; and if after any cause of action shall have accrued, the person against whom it has accrued shall be absent from and reside out of the state, the time of his absence shall not be taken as any part of the time limited for the commencement of the action.

Case of the death of either party. 1793, 75, § 3.

SECT. 10. If any person, entitled to bring any of the actions, before mentioned in this chapter, or liable to any such action, shall die before the expiration of the time herein limited therefor, or within thirty days after the expiration of the said time, and if the cause of action does by law survive, the action may be commenced by or against the executor or administrator of the deceased person, as the case may be, at any time within two years after the grant of letters testamentary or of administration, and not afterwards, if barred by the provisions of this chapter.

Remedy in case of reversal, arrest of judgment, &c. 2 Pick. 605. 1793, 75, § 2.

SECT. 11. If, in any action, duly commenced within the time in this chapter limited and allowed therefor, the writ shall fail of a sufficient service or return, by any unavoidable accident, or by any default or neglect of the officer to whom it is committed, or if the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if after a verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on a writ of error, the plaintiff may commence a new action for the same cause, at any time within one year after the abatement or other determination of the original suit, or after the reversal of the judgment therein; and if the cause of action does by law survive, his executor or administrator may, in case of his death, commence such new action within the said one year.

Case of fraudulently concealment by deft. 3 Mass. 201. 1 Pick. 435. 3 Pick. 74. 20 Johns. R. 33.

SECT. 12. If any person, who is liable to any of the actions mentioned in this chapter, shall fraudulently conceal the cause of such action from the knowledge of the person entitled thereto, the action may be commenced, at any time within six years after the person, who is entitled to bring the same, shall discover that he has such cause of action, and not afterwards.

New promise &c., to be in writing. 1834, 182, § 1.

SECT. 13. In actions of debt or upon the case, founded on any contract, no acknowledgment or promise shall be evidence of a new or continuing contract, whereby to take any case out of the operation of the provisions of this chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be made or contained by or in some writing, signed by the party chargeable thereby.

Promise by one, of several debtors. 2 Pick. 581. 4 Pick. 382. 3 Pick. 291. 7 Greenl. 26. 1834, 182, § 1.

SECT. 14. If there are two or more joint contractors, or joint executors or administrators of any contractor, no such joint contractor, executor or administrator, shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any acknowledgment or promise, made or signed by any other or others of them.

SECT. 15. In actions commenced against two or more joint contractors, or joint executors or administrators of any contractor, if it shall appear on the trial, or otherwise, that the plaintiff is barred by the provisions of this chapter, as to one or more of the defendants, but is entitled to recover against any other or others of them, by virtue of a new acknowledgment or promise, or otherwise, judgment shall be given for the plaintiff, as to any of the defendants, against whom he is entitled to recover, and for the other defendant or defendants against the plaintiff.

Proceedings in an action against such debtors. 1834, 182, § 1.

SECT. 16. If, in any action on contract, the defendant shall plead in abatement, that any other person ought to have been jointly sued, and issue be joined on that plea, and if it shall appear on the trial, that the action was, by reason of the provisions of this chapter, barred against the person so named in the plea, the said issue shall be found for the plaintiff.

Same subject. 1834, 182, § 2.

SECT. 17. Nothing contained in the four preceding sections shall alter, take away, or lessen the effect of a payment of any principal or interest, made by any person; but no indorsement or memorandum of any such payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party, to whom such payment shall be made, or purport to be made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the provisions of this chapter.

Effect of part payment. 1834, 182, § 3

SECT. 18. If there are two or more joint contractors, or joint executors or administrators of any contractor, no one of them shall lose the benefit of the provisions of this chapter, so as to be chargeable by reason only of any payment, made by any other or others of them.

Same subject.

SECT. 19. All the provisions of this chapter shall apply to the case of any debt on contract, alleged by way of set-off on the part of a defendant; and the time of limitation of such debt shall be computed in like manner as if an action had been commenced therefor, at the time when the plaintiff's action was commenced.

Limitation of demands filed in set-off. 1793, 75, § 4. 1834, 182, § 4.

SECT. 20. The limitations, herein before prescribed for the commencement of actions, shall apply to the same actions, when brought in the name of the Commonwealth, or in the name of any officer, or otherwise, for the benefit of the Commonwealth, in the same manner as to actions brought by citizens.

Suits by the Commonwealth limited.

SECT. 21. All actions and suits, for any penalty or forfeiture on any penal statute, brought by any person, to whom the penalty or forfeiture is given in whole or in part, shall be commenced within one year next after the offence committed, and not afterwards.

Limitation of suits for penalties, by private persons. 1788, 12, § 1.

SECT. 22. If the penalty or forfeiture is given in whole or in part to the Commonwealth, a suit therefor may be commenced by or in behalf of the Commonwealth, at any time within two years after the offence committed, and not afterwards.

— of such suits by the Commonwealth. 1788, § 12, 1.

SECT. 23. The two preceding sections shall not apply to any suit which is or shall be limited, by any statute, to be brought within a shorter time than is prescribed in these two sections; but such suit shall be brought within the time that may be limited by such statute.

Of suits, limited by other statutes. 1788, 12, § 1.

SECT. 24. Every judgment and decree, in any court of record of the United States, or of this or any other state, shall be presumed to be paid and satisfied, at the expiration of twenty years after the judgment or decree was rendered.

Presumption of payment of a judgment.

Provisions as to written promise, &c. when to take effect. 1834, 182, § 6.

SECT. 25. None of the provisions of this chapter, respecting the acknowledgment of a debt, or a new promise to pay it, shall apply to any such acknowledgment or promise, made before the first day of October in the year one thousand eight hundred and thirty four; but every such last mentioned acknowledgment or promise, although not made in writing, shall have the same effect, as if no provision relating thereto had been herein contained.

TITLE VI.

Of costs, and the fees of officers.

CHAPTER 121. Of costs in civil actions, and the taxation thereof.
CHAPTER 122. Of the fees of certain officers.

CHAPTER 121.

OF COSTS IN CIVIL ACTIONS, AND THE TAXATION THEREOF.

SECTION
1. Party prevailing, entitled to costs.
2. Costs on appeal from a justice of the peace.
3. " on appeal from C. C. Pleas.
4. " on appeal by defendant.
5. " on appeal by plaintiff.
6, 7. Plaintiff recovering less than $ 100, and appealing.
8, 9. Defendant appealing from a like judgment.
10. Costs on appeal for reasonable cause.
11. Case of a demand reduced by set-off.
12. First and second judgments, how compared.
13. Full costs, in real actions, replevin, &c.
14. Costs, when defendant brings sufficient money into court.
15. " in several actions, which might have been joined.
16. " of trial on different counts.
17. Proceedings stayed, &c. till costs of former suit are paid.
18. Double costs, how taxed.
19. Costs on petition for certiorari, &c.
20. Costs in suits in equity, &c.
21. Power of referees, under a rule, &c. as to costs.
22. Costs in civil suits by the Commonwealth.
23. When such suits are brought for the use of a private person.
24. Costs against the Commonwealth, how paid.
25. For the Commonwealth, how taxed.
26. Costs, on amendment, continuance, &c.
27. " by whom taxed; notice of taxation.
28. Appeal from taxation by the clerk.
29, 30. Appeal, how conducted.
31. Costs of such appeal.
32. Allowance to parties recovering costs.
33. No allowance for travel to take out writ, &c.
34. Costs when defendant is defaulted.
35. " for a corporation aggregate.
36. No costs for more than eighty miles travel, unless, &c.

Party prevailing entitled to costs. 1784, 28, § 9.

SECTION 1. In all civil actions, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law.

SECT. 2. In all civil actions, tried before a justice of the peace, or before any police court, or other court exercising the jurisdiction of a justice of the peace, if the plaintiff shall appeal from a judgment in his favor, and shall not recover, in the court of common pleas, a greater sum for debt or damages, than he recovered by the first judgment, he shall not be entitled, for his costs of the whole suit, to more than one quarter part of the sum finally recovered for debt or damages.

Costs on appeal from a justice of the peace. 1825, 92.

SECT. 3. In all personal actions, brought originally in the court of common pleas, except actions of replevin and of trespass on real estate, and actions on the case for disturbance of any easement, and all others in which the title to real estate may be concerned, if the plaintiff shall finally recover any sum, not exceeding twenty dollars, for debt or damages, whether in the court of common pleas or in the supreme judicial court, he shall be entitled for his costs to no more than one quarter part of the debt or damages so recovered, except as is provided in the following section.

—on appeal from C. C. Pleas. 1807, 123, § 2.

SECT. 4. In any such action, as is mentioned in the preceding section, except the said actions of replevin and of trespass on real estate, actions on the case for disturbance of an easement, and others in which the title to real estate may be concerned, if the plaintiff shall recover, in the court of common pleas, a sum not exceeding twenty dollars, and the defendant shall appeal, and if the sum so recovered shall not be reduced in the supreme judicial court, the plaintiff shall be entitled to double costs, incurred after the appeal; but for all the costs incurred before the appeal, he shall be entitled, as before provided, to only one quarter part of the sum finally recovered for debt or damages.

—on appeal by defendant. 4 Mass. 619. 1822, 105, § 1.

SECT. 5. If the plaintiff appeals from such a judgment, as is mentioned in the preceding section, and shall not recover, in the supreme judicial court, more than he recovered in the court of common pleas, the defendant shall be entitled to his costs, incurred after the appeal.

On appeal by plaintiff.

SECT. 6. In all personal actions, brought originally in the court of common pleas, except replevin and those in which the title to real estate may be concerned, if the plaintiff recovers in that court any sum exceeding twenty dollars, and not exceeding one hundred dollars, for debt or damages, and if he appeals, and does not recover in the supreme judicial court more than he recovered in the court of common pleas, he shall not be entitled to any costs, incurred after the appeal, but the defendant shall be entitled to costs after the appeal, and shall have a separate judgment therefor; which judgment may be executed in the usual manner, or may be set off against the judgment recovered by the plaintiff.

Plaintiff recovering less than $100, and appealing. 1820, 79, § 4.

SECT. 7. If the plaintiff appeals from such a judgment, as is mentioned in the preceding section, and recovers in the supreme judicial court more than he recovered in the court of common pleas, he shall be entitled to his full costs in both courts.

Same subject.

SECT. 8. If the defendant appeals from such a judgment, as is mentioned in the two preceding sections, and if the sum, so recovered by the plaintiff, is not reduced in the supreme judicial court, the plaintiff shall be entitled to double costs, incurred after the appeal.

Defendant appealing from a like judgment. 1822, 105, § 1.

Same subject.

SECT. 9. If, upon an appeal by the defendant, in such a case as is last above mentioned, the sum recovered by the plaintiff, in the court of common pleas, be reduced in the supreme judicial court, the defendant shall be entitled to his costs, incurred after the appeal.

Of costs on appeal for reasonable cause. 1 Pick. 236. 9 Pick. 70. 1820, 79, § 4.

SECT. 10. If, upon a trial in the supreme judicial court, of an appeal made by either party, it shall appear to the court, before which the trial is had, that there was reasonable cause for the appeal, the court may in their discretion exempt the appellant from the payment of the costs of the appeal, and they may award to him his costs of the appeal, in whole or in part, as justice and equity shall require, any thing contained in this chapter to the contrary notwithstanding.

Case of a demand reduced by set-off. 8 Mass. 535.

SECT. 11. If the plaintiff's claim, as established on the trial, shall exceed one hundred dollars, and shall be reduced by set-offs to one hundred dollars or less, or if it shall be overbalanced by such set-offs, it shall nevertheless be considered, for all the purposes of this chapter, as having exceeded one hundred dollars, and the party, who finally prevails and recovers judgment in the suit, shall be entitled accordingly to his full costs of the whole suit.

First and second judgments, how compared.

SECT. 12. In comparing the sums recovered by the two judgments, for the purposes specified in this chapter, the sum, if any, allowed for interest accrued on the plaintiff's demand, after the first verdict or judgment, shall not be included, and he shall not be considered as having recovered more on the appeal than on the first trial, merely on account of the addition of interest, accrued between the two trials. The same rule shall apply to all demands of the defendant, which are proved by way of set-off.

Full costs, in real actions, replevin, &c. 10 Pick. 473. 16 Mass. 448. 7 Mass. 476. 4 Pick. 169.

SECT. 13. In all real actions, and in all actions of replevin and of trespass on real estate, actions on the case for disturbance of any easement, and all others, in which the title to real estate may be concerned, the party finally prevailing, whether in the court of common pleas, or on the appeal to the supreme judicial court, shall recover his full costs, without regard to the amount of damages, if any, recovered in the action.

Costs, when deft. brings sufficient money into court. 12 Pick. 345.

SECT. 14. When a defendant shall bring money into court, and offer the same in satisfaction of the damages demanded by the plaintiff, the plaintiff shall, in all cases, be entitled to the costs which had previously accrued, though he may not recover a larger sum than is so brought into court.

Costs in several actions, which might have been joined. 5 Mass. 318. 6 Mass. 18. 10 Mass. 175. 1784, 28, § 12.

SECT. 15. When a plaintiff shall, at the same court, bring several actions against the same defendant, upon demands which might have been joined in one, he shall recover costs in one action only, unless it shall appear to the court that the actions affect different rights or interests, or that for other sufficient reasons they ought not to have been joined.

Costs of trial on different counts.

SECT. 16. When there are two or more counts in any case, on several and distinct causes of action, and a verdict shall be rendered for the plaintiff on one or more of them, and for the defendant on any other or others, each party shall recover his costs, paid for the travel and attendance of witnesses, and for depositions and other evidence, produced, examined or used on the trial of the counts, upon which the verdict is in his favor, and shall recover nothing for the like charges, incurred on the trial of the other counts.

SECT. 17. When, after a judgment for costs upon a nonsuit or discontinuance, a second suit for the same cause shall be brought, by the original plaintiff or by his executor or administrator, before the costs of the former suit shall have been paid, the court, in which the second suit is pending, may order all further proceedings therein to be stayed, until such costs shall be paid, and may further order that the suit be dismissed, unless the costs are paid within such time as shall be expressed in the order.

Proceedings stayed, &c. till costs of former suit paid. 1829, 128, § 3.

SECT. 18. In all cases, in which any party is entitled to recover double costs, the sums paid as fees to witnesses, and for the costs of taking depositions and procuring evidence, and for copies, and all court dues, shall be taxed and recovered singly, and the remainder only of the taxable costs shall be doubled; and the same rule shall apply when treble costs are recovered.

Double costs, how taxed. 1822, 105, § 1.

SECT. 19. In all cases, where application shall be made, at the suit or in behalf of any private person, for a writ of certiorari, mandamus, quo warranto, or other like process, the court may in their discretion allow costs to any person, who shall appear and object thereto, and may award judgment and execution therefor, against the person by whom, or in whose behalf, the application is made.

Costs on petition for certiorari, &c. 1829, 128, § 1.

SECT. 20. In all suits in equity, and in all civil suits and proceedings, in which no provision is expressly made by law, the subject of costs shall be wholly in the discretion of the court, but no greater sum shall be taxed in any such bill of costs, than is allowed for similar charges in suits at common law.

Costs in suits in equity, &c. 1826, 109, § 5.

SECT. 21. Nothing contained in this chapter shall take away or control the power of arbitrators or referees, appointed by a rule of court or otherwise, from making such award concerning costs, as justice and equity shall require.

Power of referees, under a rule, &c. as to costs. 1786, 52, § 3.

SECT. 22. In all civil suits and proceedings, duly instituted and brought by or in the name of the Commonwealth, and not brought on the relation, or in behalf, or for the use, of any private person, the Commonwealth shall be liable for costs, in like manner, and to the same extent, as any citizen would be, if the suit or proceeding had been instituted by him.

Costs in civil suits by the Commonwealth.

SECT. 23. When any suit or proceeding is instituted in the name of the Commonwealth, on the relation, or in behalf, or for the use of any private person, such person shall be liable for the costs, in like manner and to the same extent, as if the suit or proceeding had been instituted in his own name, and judgment may be rendered, and execution issued therefor, against him.

When such suits are brought for the use of a private person.

SECT. 24. When any judgment for costs shall be rendered against the Commonwealth, the treasurer of the county where the court is held shall pay the same, upon the production of an attested copy of the judgment, and the sum so paid shall be allowed to him in his account with the treasurer of the Commonwealth.

Costs against the Commonwealth, how paid.

SECT. 25. When costs shall be taxed for the Commonwealth, as a party in any civil suit or proceeding, no fees shall be taxed or allowed for the travel of the attorney general, or of any other attorney for the Commonwealth.

— for the Commonwealth, how taxed 1813, 182, § 2.

SECT. 26. Nothing contained in this chapter shall take away or control the power of any court, to require costs to be paid by either

Costs on amendment, continuance, &c.

party, as the condition of an amendment, continuance, or other order passed at his motion, or to withhold and refuse costs, on the like occasions.

Costs by whom taxed: notice of taxation. 1829, 52, § 1.

SECT. 27. All bills of costs, in suits before a justice of the peace, shall be taxed by the justice, and in suits before the court of common pleas and the supreme judicial court, shall be taxed by the respective clerks of those courts; and no costs shall be taxed without notice to the adverse party to be present, provided he shall have given seasonable notice in writing to the justice or clerk, of his desire to be present at the taxation, or shall have caused such notice to be entered on the clerk's docket; and notice, given by or to the attorney in the suit, shall be equivalent to notice by or to the party himself.

Appeal from taxation by the clerk. 1829, 52, § 1.

SECT. 28. Either party may appeal, from the taxation of costs by the clerk, to the court in which the suit is pending, or to any one of the justices thereof, and the appeal shall be conducted in the manner hereinafter provided.

Appeal, how conducted. 1829, 52, § 1

SECT. 29. The appeal shall be heard and determined, at the next term or session, unless the party, who recovers costs, shall elect to have it determined before one of the justices, in vacation, and shall give seasonable notice thereof to the adverse party, in which case, it shall be determined before one of the justices; and in either case, the judgment shall be considered as rendered on the day when the costs are finally taxed and allowed, except as is provided in the following section.

Same subject.

SECT. 30. If the appeal is made by the party who is to pay the costs, the other party may, notwithstanding the appeal, take out his execution and cause it to be satisfied, provided he first give bond to the adverse party, with sufficient surety or sureties, to be approved by the clerk, in a sum equal to the whole amount of the costs, with condition to repay such part of the costs, if any, as shall be disallowed on the appeal, and to perform such other order, as the court or judge shall make thereon.

Costs of such appeal. 1829, 52, § 2.

SECT. 31. The court or judge, before whom any such appeal is heard, may allow to either party, as justice may require, the costs incurred by the appeal, and the same may be added to, or deducted from, the costs awarded in the principal suit, or a separate execution may be issued therefor, as the case may require.

Allowance to parties recovering costs. 1795, 41, § 1.

SECT. 32. All parties, recovering costs in civil causes, shall be allowed as follows:

For an attorney's fee in the supreme judicial court, in all cases, in which an issue in law or fact is joined, two dollars and fifty cents; and in all other cases, one dollar and twenty five cents:

For an attorney's fee in the court of common pleas, when an issue in law or fact is joined, one dollar and fifty cents; and in all other cases one dollar:

For the declaration in each writ, in any justice's court, or other court whatever, fifty cents:

For attendance and travel, in either of the courts before mentioned, or before a justice of the peace, police court, or any other court of record, thirty three cents for each day's attendance, and thirty three cents for every ten miles' travel.

No allowance for travel to

SECT 33 No allowance shall be made for travel to or from the

clerk's office, to take out any writ or process, nor for carrying the same to an officer. take out writ, &c.

SECT. 34. No plaintiff shall be allowed for more than three days' attendance, when the defendant shall be defaulted, without having appeared in the cause; and if he shall be defaulted, after an appearance, no allowance shall be made for the plaintiff's attendance, after the default. Costs, when deft. is defaulted. 1795, 41, § 1.

SECT. 35. When any corporation aggregate is entitled to costs, an allowance shall be made for travel, as in other cases, and the travel shall be computed from the place where the corporation is situated, if it is in its nature local, otherwise from the place in which its business is chiefly or commonly transacted. Costs for a corporation aggregate.

SECT. 36. No party shall be allowed for travel, for more than eighty miles out and home, unless he, or some agent or attorney for him, shall actually travel more than forty miles, for the special purpose of attending the court in such cause; in which case, allowance may be made, in the discretion of the court, according to the distance that is actually travelled. No costs for more than eighty miles' travel, unless, &c. 1795, 41, § 1.

CHAPTER 122.

OF THE FEES OF CERTAIN OFFICERS.

SECTION
1. Fees of justices of the peace.
2. " clerks of county commissioners, and of clerks of supreme court, and C. C. Pleas.
3. Clerks' fees to be accounted for.
4. Fees of crier of the courts.
5. Sheriff's fees.
6. Jailer's fees.
7. Coroner's fees.
8. Constable's fees.
9. Fees to be indorsed on writs.
10. " of jurors, witnesses, and others.
11. " for marriages.
12. " of town clerk.
13. Fees in the office of the secretary of state.
14. " of secretary to be accounted for.
15. " of the register of deeds.
16. " of notaries public.
17. List of fees to be hung up in public offices.
18. Officer to give a bill of fees received, when required, under penalty.
19. Penalty for extortion.
20. Fees in municipal court, and in police courts.
21. " in cases not specified.
22. The word "page" defined.

The fees of the several officers hereafter mentioned, for the services specified, with respect to each of them, shall be as follows, to wit:

SECTION 1. FEES OF JUSTICES OF THE PEACE.

For every blank writ of attachment and summons thereon, or original summons, seventeen cents: Fees of justices of the peace. 1795, 41, § 1.

For every subpœna, for one or more witnesses, ten cents:

For the entry of an action, or filing a complaint in civil causes,

including filing of papers, examining, allowing and taxing the bill of costs, and entering up the judgment and recording the same, sixty one cents :

For the copy of a record, or other paper, if less than one page, ten cents ; if more than one page, at the rate of twelve cents a page :

For a writ of execution, twenty five cents :

Taking a recognizance to prosecute an appeal, including principal and surety, twenty cents :

Taking a deposition in any case required by law, fifty cents ; for writing the deposition and caption, at the rate of twelve cents a page; and for the notice to the adverse party, twenty cents ; and the justice shall certify on the deposition his own fees, and those of the deponent :

For administering an oath, in all cases, in which it is required by law, except on any trial on examination before himself, whether it is administered to one or to more persons, at the same time, twenty cents :

Taking the acknowledgment of a deed, whether by one or more grantors, if done at the same time, seventeen cents :

Granting a warrant of appraisement of the estates of deceased persons, and of strays, and forfeited goods, and in all other cases, twenty cents :

Receiving a complaint and issuing a warrant in criminal cases, fifty cents :

Entering a complaint in criminal prosecutions, rendering judgment and recording the same, examining, allowing and taxing the costs and filing the papers, seventy five cents :

For the trial of an issue, fifty cents :

For a mittimus for the commitment of any person on a criminal accusation, twenty five cents :

For travel, in the performance of any official duty, at the rate of fifty cents, for every ten miles, in going and returning :

And, in all cases, where the attendance of two or more justices is required, each of them shall be entitled to the fees, prescribed for all services rendered by him personally.

Of clerks of county commissioners.

SECT. 2. FEES OF THE CLERKS OF THE JUDICIAL COURTS.

For their services as clerks of the county commissioners.

For the warrant for a county tax, twenty cents :

For a warrant to lay out or alter a road, twenty cents.

For recording reports concerning highways, and all other proceedings, required to be recorded, and also for copies of records and other papers, at the rate of twelve cents a page :

For all other services, the same fees as are allowed in like cases, in the supreme judicial court, or court of common pleas.

Of clerks of supreme court, and court of common pleas. 1795, 41.

For their services as clerks of the supreme judicial court, or of the court of common pleas.

For the entry of an action or complaint, in any civil suit or proceeding, or the entry of a petition for the sale or partition of real estate, sixty cents :

Entry of an indictment, presentment, complaint or information, in-

cluding the recording of the judgment, taxing the costs, and filing the papers, sixty five cents:

Entry of an appearance, ten cents:

Entering a rule of reference to arbitrators, fifteen cents:

For every continuance of a cause, twelve cents:

For opening and filing a deposition, ten cents:

Taking a recognizance of any kind, twenty cents:

For every nonsuit, or dismission of an action, confession of judgment, default, or joinder in demurrer, fifteen cents:

For entering and recording a verdict, or report of referees, twenty cents:

Entering and recording a judgment, in all civil cases, forty cents:

Entering acknowledgment of satisfaction of a judgment, twelve cents:

Entering an appeal, either in a civil or criminal case, including the recognizance, if any is taken, twenty cents:

For every writ of execution, whether in real or personal suits or proceedings, twenty five cents:

Every warrant in any criminal suit or proceeding, twenty cents:

Every blank writ of attachment and summons thereon, and every original summons, fifteen cents:

Every writ of review, scire facias, certiorari, habeas corpus, or other special writ, forty cents:

Every subpœna, for one or more witnesses, ten cents:

Every venire facias for jurors, six cents:

Every writ not before mentioned, forty cents:

For examining and casting the grand jurors' accounts, and order thereon, thirty cents:

Examining any other account, eight cents:

For the certificate of the proof of a deed in court, twenty cents:

For copies of all papers, containing less than one page, ten cents; and if containing more than one page, at the rate of twelve cents a page:

For recording proceedings in suits in equity, such compensation as the court shall deem reasonable, having regard to the fees established by law, for services of a similar nature.

SECT. 3. The said clerks shall account for all the said fees, received for their services, with the county treasurer of their respective counties, in the manner prescribed in the eighty eighth chapter. **Clerk's fees to be accounted for. 1834, 129.**

SECT. 4. CRIER'S FEES IN THE JUDICIAL COURTS. **Fees of crier of the courts. 1795, 41, § 1.**

The crier shall be allowed two dollars a day, to be paid out of the county treasury, but if he is a deputy sheriff, he shall not receive pay for his attendance in that capacity also.

SECT. 5. SHERIFF'S FEES. **Sheriff's fees. 1795, 41, § 1.**

For the service of an original summons, or a scire facias, either by reading the same, or by leaving a copy, thirty cents; and if served on more than one defendant, thirty cents for each defendant:

For the service of a capias, or of an attachment with summons, thirty cents for each defendant on whom it is served, and if the officer, by the direction of the plaintiff or his attorney, shall make a spe-

cial service of such writ, either by attaching property, or arresting the body, he shall be entitled to fifty cents for each defendant on whom the writ is so served :

For a copy of any precept, when required by law, or when furnished to any party at his request, at the rate of twelve cents a page :

For taking bail, and furnishing and writing the bail bond, twenty cents, to be paid by the defendant, and taxed in his bill of costs, if he shall prevail :

For serving a warrant, thirty cents for each person on whom it is served :

Summoning witnesses, either in civil or criminal cases, ten cents for each witness, and in criminal cases, the court may, under special circumstances, allow such further sum as they shall judge reasonable :

Dispersing venires for jurors, treasurers' warrants, and proclamations of all kinds, eight cents each, without any allowance for travel :

Serving executions in personal actions, and collecting damages or costs on any execution, warrant of distress or other like process, for any sum not exceeding one hundred dollars, four cents for every dollar ; all above one hundred dollars, and not exceeding two hundred dollars, two cents for every dollar ; and for all above two hundred dollars, one cent for every dollar :

4 Mass. 411.

Serving a writ of seizin or possession in real actions, one dollar and ten cents, and if served on more than one piece of land, seventy five cents for each piece after the first :

Serving an execution upon a judgment for partition, or for assignment of dower, one dollar a day :

Travel for the service of all original writs, executions, warrants, subpœnas, and other like processes, four cents a mile, to be computed from the place of service to the court, or place of return ; only one travel to be allowed for the service of any one precept, and if the same precept be served on more than one person, the travel shall be computed from the most remote place of service, with such further travel as may have been necessary in serving it :

If the distance from the place of service to the place of return shall exceed fifty miles, only one cent a mile shall be allowed for all travel exceeding that distance :

Whilst attending any court of record, or at any meeting of the county commissioners, three dollars a day, to be paid out of the county treasury ; and in every county, where there is more than one shire town, the fees shall be four dollars a day, except at the court or meeting, held in the town nearest the residence of the sheriff, or in which he resides.

To every deputy sheriff, who shall attend said courts or meetings by their order, two dollars a day, to be paid in the manner aforesaid.

And no sheriff, deputy sheriff, coroner or constable, shall be entitled to any fees for attendance as a witness in any criminal case, whilst he is paid for attending as an officer of the same court, or on the same examination or trial.

To the sheriff, for returning the votes for governor, lieutenant governor, counsellors and senators, to the secretary's office, twelve cents a mile, to be computed from the place of his abode to the sec-

retary's office, and to be paid out of the treasury of the Commonwealth, and only one travel shall be allowed for the whole.

SECT. 6. JAILER'S FEES.

Jailer's fees. 1795, 41, § 1.

For furnishing food for each prisoner, such sum, weekly, as the county commissioners for the respective counties, or the mayor and aldermen of the city of Boston shall, from time to time, judge reasonable.

SECT. 7. CORONER'S FEES.

Coroner's fees. 1795, 41, § 1.

For all services performed by them, the same fees as are allowed to sheriffs and deputy sheriffs, for the like services:

For granting a warrant and taking an inquisition on a dead body, three dollars; if more than one at the same time, twenty cents for each one after the first, to be paid out of the county treasury.

SECT. 8. CONSTABLE'S FEES.

Constable's fees. 1795, 41, § 1.

For all services performed by them, the same fees as are allowed to sheriffs for the like services, unless when other provision is expressly made therefor:

For attending any court of record, by order of the court, and for any services performed there, the same fees as are allowed to deputy sheriffs, in like cases:

For serving a venire, twenty five cents, and for travel to the place of return, at the rate of four cents a mile, to be paid out of the county treasury.

For summoning the jurors upon a coroner's inquest, and attendance thereon, at the rate of ninety cents a day, to be paid out of the county treasury.

SECT. 9. All travelling fees and fees for the service of writs or precepts, of which the sheriff or other officer is required to make a return, shall be indorsed on the writ, or they shall not be allowed.

Fees to be indorsed on writs, &c. 1795, 41, § 1.

SECT. 10. FEES OF JURORS, WITNESSES, APPRAISERS, COMMISSIONERS AND OTHERS.

Fees of jurors, witnesses and others. 1795, 41, § 1.

To each person attending as a grand juror or traverse juror, in any court, one dollar and seventy five cents a day for his attendance, and eight cents a mile for his travel out and home; and to each person attending as a juror, before a sheriff, or coroner, or on any other occasion prescribed by law, one dollar and twenty five cents a day for his attendance, and six cents a mile for his travel out and home:

To each person, attending as a witness, in any civil or criminal cause, in the supreme judicial court, court of common pleas, or municipal court of the city of Boston, one dollar a day, and for his attendance before a justice of the peace, or before referees or arbitrators, or on any other occasion, fifty cents a day, and in all cases four cents a mile for his travel out and home, and the witness shall certify in writing the amount of his travel and attendance:

To all appraisers of the estate of deceased persons, appraisers of real estate taken in execution, persons appointed under any legal process for assigning dower, or for making partition of real estates, sheriffs' aid in criminal cases, and all other private persons, performing

any like service required by law, or in the execution of any legal process, when no express provision is made for the compensation therefor, one dollar a day each for their services, and four cents a mile for travel out and home

Fees for marriages. 1795, 41, § 1.

SECT. 11. FEES FOR MARRIAGES.

To the town clerk, for publishing the banns of matrimony, recording the same, giving a certificate thereof, and recording the marriage upon receiving the minister's or justice's certificate thereof, fifty cents, to be paid on delivering the certificate of publishing the banns:

To every minister or justice of the peace, who shall lawfully solemnize a marriage, and certify the same, one dollar and twenty five cents.

Fees of town clerk. 1795, 41, § 1.

SECT. 12. TOWN CLERK'S FEES.

For recording births and deaths, eight cents each:

For a certificate of a birth or death, ten cents:

For copies of town records, and other documents, furnished to any person at his request, if containing less than one page, ten cents, and if containing more, at the rate of twelve cents a page.

Fees in the office of the secretary of state. 1795, 41, § 1.

SECT. 13. FEES IN THE OFFICE OF THE SECRETARY OF STATE.

For a copy of any resolve or order of the general court, or of the governor and council, of a private or local nature, furnished to any private person, fifty cents:

For copies of all other papers so furnished, at the rate of twelve cents a page:

Fees of secretary to be accounted for. 1818, 97, § 2.

SECT. 14. The secretary shall keep an account of all fees received by him, and shall exhibit a quarterly return thereof, under oath, to the governor and council; and the amount so received shall be deducted from his salary, and [a] warrant shall be issued for the balance.

Fees of the register of deeds. 1795, 41, § 1.

SECT. 15. FEES OF THE REGISTER OF DEEDS.

For entering and recording a deed, or other paper, and certifying the same on the original, seventeen cents, and if it contains more than one page, at the rate of fourteen cents, for every page, after the first; the said fees to be paid, when the instrument is left to be recorded:

For all copies, at the rate of fourteen cents a page:

For entering in the margin a discharge of a mortgage, twelve cents.

Fees of notaries public.

SECT. 16. FEES OF NOTARIES PUBLIC.

For every protest for the non-payment or non-acceptance of a bill of exchange, order, draft or check, one dollar and fifty cents:

For every protest for the non-payment of a promissory note, one dollar and fifty cents.

For recording the same, seventy five cents:

For noting the non-payment or non-acceptance of a bill of exchange, order, draft or check, seventy five cents; and

For noting the non-payment of a promissory note, seventy five cents:

For recording the same, fifty cents.

For each notice of the non-acceptance or non-payment of any such bill, order, draft, check, or note, given to any party liable for the payment thereof, fifty cents; provided, that the whole cost of protest, including all necessary notices and the record thereof, shall in no case exceed three dollars.

List of fees to be hung up in public offices. 1795, 41, § 4.

SECT. 17. Each one of the officers before mentioned, who keeps a public office, shall always keep hung up in some conspicuous and convenient place in his office, a printed or written list of the fees prescribed in this chapter, so far as they relate to him.

Officer to give a bill of fees received, if required, under penalty. 1795, 41, § 5.

SECT. 18. Every officer, upon receiving any fees for any official duty or service, shall, if required by the person paying the same, make out in writing a particular account of such fees, specifying for what they respectively accrued; and if he refuses or neglects so to do, he shall forfeit, to the party paying the fees, three times the amount so paid, to be recovered in an action on the case.

Penalty for extortion. 1 Pick. 171. 7 Pick. 279. 15 Mass. 525. 1 Mass. 227. 17 Mass. 410. 1795, 41, § 6.

SECT. 19. If any officer shall wilfully and corruptly demand and receive, for any official duty or service, any greater fee than is allowed by law, he shall forfeit thirty dollars for every such offence, which sum may be recovered for the use of the Commonwealth, on indictment in any court proper to try the same, or it may be recovered in an action of debt, for the use of any person, who shall sue therefor; but no such indictment or action shall be commenced, unless within one year after the committing of the offence.

Fees in municipal court, and in police courts. 1799, 81, § 4.

SECT. 20. All fees and costs, for services and proceedings in the municipal court of the city of Boston, shall be the same, as are prescribed, in like cases, in the court of common pleas; and all such fees and costs, in any police court, or other court exercising the jurisdiction of a justice of the peace, shall be the same as are prescribed in like cases before justices of the peace.

Fees, in cases not specified.

SECT. 21. In all cases, not expressly provided for by law, the fees of all public officers, for any official duty or service, shall be at the same rate as those prescribed in this chapter for the like services.

The word "page" defined. 1795, 41, § 1.

SECT. 22. The word "page," when used as the measure of computation, shall mean two hundred and twenty four words.

PART IV.

OF CRIMES AND PUNISHMENTS, AND PROCEEDINGS IN CRIMINAL CASES.

TITLE I.

Of crimes and the punishment thereof.

CHAPTER 123. Of the rights of persons, who are accused of crimes and offences.
CHAPTER 124. Of offences against the sovereignty of the Commonwealth.
CHAPTER 125. Of offences against the lives and persons of individuals.
CHAPTER 126. Of offences against private property.
CHAPTER 127. Of forgery and counterfeiting.
CHAPTER 128. Of offences against public justice.
CHAPTER 129. Of offences against the public peace.
CHAPTER 130. Of offences against chastity, morality and decency.
CHAPTER 131. Of offences against the public health.
CHAPTER 132. Of offences against public policy.
CHAPTER 133. General provisions concerning crimes and punishments.

CHAPTER 123.

OF THE RIGHTS OF PERSONS, WHO ARE ACCUSED OF CRIMES AND OFFENCES.

SECTION
1. What offences to be prosecuted only by indictment.
2. Party accused may have counsel, defend himself, produce evidence, &c.
3. Persons indicted, how convicted.
4. Former acquittal, when a bar to a subsequent prosecution.
5. Former acquittal, when no defence.
6. No person to be punished, until legally convicted.

What offences to be prosecuted only by indictment.

SECTION 1. No person shall be held to answer, in any court, for an alleged crime or offence, unless upon indictment by a grand jury, except in the following cases:

First, when a prosecution by information is expressly authorized by statute;

Secondly, in proceedings before a police court or justice of the peace; and

Thirdly, in proceedings before courts martial.

Party accused may have counsel, defend himself, produce evidence, &c.

SECT. 2. On the trial of every indictment, the party accused shall be allowed to be heard by counsel, and he may defend himself, and he shall have a right to produce witnesses and proofs in his fa-

vor, and to meet the witnesses, who are produced against him face to face.

SECT. 3. No person indicted for an offence shall be convicted thereof, unless by confession of his guilt in open court, or by admitting the truth of the charge against him, by his plea or demurrer, or by the verdict of a jury, accepted and recorded by the court. Persons indicted, how convicted.

SECT. 4. No person shall be held to answer on a second indictment, for any offence, of which he has been acquitted by the jury, upon the facts and merits, on a former trial; but such acquittal may be pleaded by him, in bar of any subsequent prosecution for the same offence, notwithstanding any defect in the form or in the substance of the indictment on which he was acquitted. Former acquittal, when a bar to a subsequen prosecution.

SECT. 5. If any person, who is indicted for an offence, shall on his trial be acquitted, upon the ground of a variance between the indictment and the proof, or upon any exception to the form or to the substance of the indictment, he may be arraigned again on a new indictment, and may be tried and convicted for the same offence, notwithstanding such former acquittal. — when no defence. 12 Pick. 496.

SECT. 6. No person, who is charged with any offence against the law, shall be punished for such offence, unless he shall have been duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person. No person to be punished, until legally convicted.

CHAPTER 124.

OF OFFENCES AGAINST THE SOVEREIGNTY OF THE COMMONWEALTH.

SECTION
1. Treason defined.
2. Punishment of treason.
3. Misprision of treason.
4. Two witnesses required to convict of treason.

SECTION 1. Treason against this Commonwealth shall consist only in levying war against the same, or in adhering to the enemies thereof, giving them aid and comfort. Treason defined.

SECT. 2. Every person, who shall commit the crime of treason against this Commonwealth, shall suffer the punishment of death for the same. Punishment of treason.

SECT. 3. If any person, who shall have knowledge of the commission of the crime of treason against this Commonwealth, shall conceal the same, and shall not, as soon as may be, disclose and make known such treason to the governor thereof, or to one of the justices of the supreme judicial court, or of the court of common pleas, he shall be adjudged guilty of the offence of misprision of treason, and shall be punished by fine not exceeding one thousand dollars, or by imprisonment in the state prison not more than five years, or in the county jail not more than two years. Misprision of treason.

Two witnesses required to convict of treason.

SECT. 4. No person shall be convicted of the crime of treason against this Commonwealth, but by the testimony of two lawful witnesses to the same overt act of treason, whereof he shall stand indicted, unless he shall in open court confess the same.

CHAPTER 125.

OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

SECTION

1. Murder.
2. Body of a murderer may be dissected; how disposed of.
3. Murder in a duel out of the state; where it may be prosecuted.
4. Accessory, in such a duel.
5. Former conviction or acquittal, out of the state, may be pleaded in bar.
6. Engaging in a duel; challenging, &c.
7. Accepting or carrying a challenge, and abetting a duel.
8. Posting another.
9. Manslaughter.
10. Maiming and disfiguring, or aiding therein.
11. Assault with intent to murder or to maim, &c.
12. Attempt to murder by poisoning, &c.
13. Robbery, being armed, &c.
14. Assault, with intent to rob or murder, being armed.
15. Robbery, not being armed.
16. Assault with intent to rob or steal, not being armed.
17. Attempts to extort money, &c. by threats.
18. Rape, or abuse of female child.
19. Assault with intent to commit a rape.
20. Kidnapping or selling for a slave, &c.
21. Kidnapping, &c. where to be prosecuted.
22. Poisoning food, medicine, wells, &c.
23. Assaults not before mentioned, how punished.

Murder.

SECTION 1. Every person, who shall commit the crime of murder, shall suffer the punishment of death for the same.

Body of a murderer may be dissected.

SECT. 2. In every case of a conviction of the crime of murder, the court may, in their discretion, order the body of the convict, after his execution, to be dissected, and the sheriff, in such case, shall deliver the dead body of such convict, to a professor of anatomy and surgery, in some college or public seminary, if requested; otherwise, it shall be delivered to any surgeon, who may be attending to receive it, and who will engage for the dissection thereof.

How disposed of

Murder in a duel out of the state.

SECT. 3. Every person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, fight a duel without the jurisdiction of the state, and in so doing shall inflict a mortal wound upon any person, whereof the person so injured shall afterwards die, within this state, shall be deemed guilty of murder within this state, and may be indicted, tried and convicted in the county where such death shall happen.

Where it may be prosecuted.

Accessory, in such a duel.

SECT. 4. Every person, being an inhabitant or resident of this state, who shall, by previous appointment or engagement made within the same, be the second of either party, in such duel as is mentioned in the preceding section, and shall be present as a second, when such mortal wound is inflicted, whereof death shall ensue within this

state, shall be deemed to be an accessory before the fact to the crime of murder in this state, and may be indicted, tried and convicted in the county where the death shall happen.

SECT. 5. Any person, indicted under either of the two preceding sections, may plead a former conviction or acquittal of the same offence, in any other state or country, and such plea, if admitted or established, shall be a bar to all further or other proceedings against such person, for the same offence, within this state.

Former conviction or acquittal, out of the state, may be pleaded in bar.

SECT. 6. Every person, who shall engage in a duel, with any deadly weapon, although no homicide ensue, or shall challenge another to fight such duel, or shall send or deliver any written or verbal message, purporting or intended to be such challenge, although no duel ensue, shall be punished by imprisonment in the state prison, not more than twenty years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years and shall also be incapable of holding, or of being elected or appointed to, any place of honor, profit or trust, under the constitution or laws of this Commonwealth, for the term of twenty years after such conviction.

Engaging in a duel; challenging, &c. 1804, 123, § 6. 1818, 124, § 3.

SECT. 7. Every person, who shall accept any such challenge, or who shall knowingly carry or deliver any such challenge or message, whether a duel shall ensue or not, and every person, who shall be present at the fighting of a duel, with deadly weapons, as an aid or second, or surgeon, or who shall advise, encourage or promote such duel, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars, and shall also be incapacitated, as mentioned in the preceding section, for the term of five years after such conviction.

Accepting or carrying a challenge; and abetting a duel. 1804 123, § 7.

SECT. 8. If any person shall post another, or, in writing or print, shall use any reproachful or contemptuous language, to or concerning another, for not fighting a duel, or for not sending or accepting a challenge, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding one hundred dollars.

Posting another, &c.

SECT. 9. Every person, who shall commit the crime of manslaughter, shall be punished by imprisonment in the state prison, not more than twenty years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

Manslaughter. 1804, 123, § 3. 1818, 124, § 2.

SECT. 10. If any person, with malicious intent to maim or to disfigure, shall cut out or maim the tongue, put out or destroy an eye, cut or tear off an ear, cut or slit or mutilate the nose or lip, or cut off or disable a limb or member, of any other person, every such offender, and every person privy to such intent, who shall be present aiding in the commission of such offence, shall be punished by imprisonment in the state prison, not more than twenty years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

Maiming or disfiguring, or aiding therein. 1804, 123 § 4.

SECT. 11. If any person shall assault another, with intent to murder or to maim or disfigure his person, in any of the ways mentioned in the preceding section, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison, not more

Assault with intent to murder or to maim, &c. 1804, 123, § 5.

than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

Attempt to murder by poisoning, &c. 1822, 62.

SECT. 12. If any person shall attempt to commit the crime of murder, by poisoning, drowning or strangling another person, or by any means not constituting the crime of assault, with intent to murder, every such offender shall be punished by imprisonment in the state prison, not more than twenty years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

Robbery, being armed, &c. 17 Mass. 359. 1818, 124, § 1.

SECT. 13. If any person shall assault another, and shall feloniously rob, steal and take from his person any money or other property, which may be the subject of larceny, such robber being armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed, or if, being so armed, he shall wound or strike the person robbed, he shall suffer the punishment of death for the same.

Assault with intent to rob or to murder, being armed. 1818, 124, § 3.

SECT. 14. If any person, being armed with a dangerous weapon, shall assault another, with intent to rob or to murder, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison, not more than twenty years.

Robbery, not being armed. 7 Mass. 242. 1804, 143, § 7.

SECT. 15. If any person shall, by force and violence, or by assault and putting in fear, feloniously rob, steal and take from the person of another any money or other property, which may be the subject of larceny, (such robber not being armed with a dangerous weapon,) he shall be punished by imprisonment in the state prison, for life, or for any term of years.

Assault with intent to rob or to steal, not being armed. 1804, 143, § 9.

SECT. 16. If any person, not being armed with a dangerous weapon, shall assault another with force and violence, and with intent to rob or to steal, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison, not more than ten years.

Attempts to extort money, &c., by threats.

SECT. 17. If any person shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of any crime or offence, or shall by any written or printed communication maliciously threaten any injury to the person or property of another, with intent thereby to extort money, or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, he shall be punished by imprisonment in the state prison, or in the county jail, not more than two years, or by fine not exceeding five hundred dollars.

Rape, or abuse of female child. 1805, 97, § 1.

SECT. 18. If any person shall ravish and carnally know any female, of the age of ten years or more, by force and against her will, or shall unlawfully and carnally know and abuse any female child, under the age of ten years, he shall suffer the punishment of death for the same.

Assault, with intent to commit a rape. 1805, 97, § 3. 1815, 86.

SECT. 19. If any person shall assault any female, with intent to commit the crime of rape, he shall be deemed a felonious assaulter, and shall be punished by imprisonment in the state prison for any term of years, or for life, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

Kidnapping or selling for a slave, &c. 1784, 72, § 10. 1787, 48 § 1.

SECT. 20. Every person who, without lawful authority, shall forcibly or secretly confine or imprison any other person, within this state, against his will, or shall forcibly carry or send such person out

of this state, or shall forcibly seize and confine, or shall inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this state, against his will, or to cause such person to be sent out of this state against his will, or to be sold as a slave, or in any way held to service against his will; and every person, who shall sell, or in any manner transfer for any term the service or labor of any negro, mulatto, or other person of color, who shall have been unlawfully seized, taken, inveigled or kidnapped from this state, to any other state, place, or country, shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than two years.

Kidnapping, &c., where to be prosecuted.

SECT. 21. Every offence, mentioned in the preceding section, may be tried either in the county in which the same may have been committed, or in any county, in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried or brought; and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defence, unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress or by threats.

Poisoning food, medicines, springs, wells, &c.

SECT. 22. If any person shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or shall wilfully poison any spring, well or reservoir of water, with such intent, he shall be punished by imprisonment in the state prison, for life or for any term of years.

Assaults not before mentioned, how punished.

SECT. 23. If any person shall assault another with intent to commit any burglary, robbery, rape, manslaughter, mayhem or any felony, the punishment of which assault is not herein before prescribed, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

CHAPTER 126.

OF OFFENCES AGAINST PRIVATE PROPERTY.

SECTION
1. Burning a dwelling house in the night time. Defendant may prove that no person was lawfully therein.
2. " " in the day time.
3. " a meeting house, &c. in the night time.
4. " " in the day time.
5. " other buildings in the day or night time.
6. Burning wood, timber, fences, &c.
7. Married woman liable for burning property of her husband.
8. Burning buildings, &c. insured.
9. Burglary, being armed, or making an assault.
10. " not being armed, nor making an assault.
11. Breaking a ship, &c. in the night, with intent, &c.

SECTION
12. Entering a dwelling house, &c. in the night, with intent, &c. and putting in fear.
13. Entering a dwelling house, &c. without putting in fear.
14. Stealing in the day time, in a dwelling house, &c.
15. Stealing at a fire.
16. " from a person.
17. Simple larceny.
18. Jurisdiction of justices of the peace, in larceny; case of a second conviction of larceny.
19. Case of a second conviction of larceny, and of three distinct larcenies at the same term.
20. Buying, receiving or concealing, stolen property.
21. Effect of restitution of stolen property, bought, received, &c.
22. Case of a second conviction for receiving, &c. and of three convictions at the same term.
23. Concurrent jurisdiction of police courts and justices over receivers, &c. of stolen property. Effect of restitution.
24. Receiver of stolen goods may be tried, before the thief is convicted.
25. Officer making arrest to secure, &c. the goods stolen.
26. Prosecutor to conviction, and officer, may be compensated.

SECTION
27. Embezzlement by officers, &c. of banks.
28. " by persons in the state treasury.
29. " by agents, clerks, servants, &c.
30. " by carriers and others.
31. Falsely personating another, &c.
32. Obtaining property by false pretences or tokens.
33. Gross frauds, how punished.
34. Selling land attached, without giving notice.
35. Wilfully destroying vessels.
36. Fitting out vessels with intent to destroy them, &c.
37. Making false invoices, &c. of the cargo.
38. Making or procuring false protest, &c.
39. Malicious killing, maiming, or poisoning of cattle.
40. Malicious injuries to dams, reservoirs, canals, &c.
41. " " to bridges, turnpike-gates, &c.
42. " destroying of fruit and ornamental trees, &c. injuring houses, &c.
43. " destroying of mile stones, guide boards, &c.
44. Trespasses by cutting timber, wood, grain, &c.
45. Trespasses in gardens, orchards, &c.
46. Concurrent jurisdiction of justices and of police courts, in certain cases.

Burning a dwelling house in the night. Deft. may prove that no person was lawfully therein. 16 Mass. 105. 1804, 131, § 1. 1830, 72, § 1.

SECTION 1. Every person, who shall wilfully and maliciously burn, in the night time, the dwelling house of another, or shall, in the night time, wilfully and maliciously set fire to any other building, owned by himself or another, by the burning whereof, such dwelling house shall be burnt in the night time, shall suffer the punishment of death; but, if the defendant shall prove on the trial, and the jury shall find, that at the time of committing the offence, there was no person lawfully in the dwelling house so burnt, the punishment, instead of death, shall be imprisonment in the state prison for life.

Burning a dwelling house in the day time, &c. 1804, 131, § 2.

SECT. 2. Every person, who shall wilfully and maliciously burn, in the day time, the dwelling house of another, or any building adjoining such dwelling house, or shall wilfully and maliciously set fire to any building, owned by himself or another, by the burning whereof, such dwelling house shall be burnt, in the day time, or shall, in the day time, wilfully and maliciously set fire to any building, owned by himself or another, by the burning whereof such dwelling house shall be burned in the night time, shall be punished by imprisonment in the state prison for life.

Burning in the night a meeting-house, court house, town house, college,

SECT. 3. Every person, who shall wilfully and maliciously burn, in the night time, any meeting house, church, court house, town house, college, academy, jail or other building erected for public use;

or any banking house, warehouse, store, manufactory or mill of another, (being, with the property therein contained, of the value of one thousand dollars,) or any barn, stable, shop or office of another, within the curtilage of any dwelling house, or any other building, by the burning whereof, any building mentioned in this section shall be burnt, in the night time, shall be punished by imprisonment in the state prison for life.

academy, jail, bank, warehouse, store, manufactory, mill, &c. of the value of $1000. Barn, stable, shop, office, &c. within the curtilage, &c. 1804, 131, § 2.

SECT. 4. Every person, who shall wilfully and maliciously burn, in the day time, any building mentioned in the preceding section, the punishment for which, if burnt in the night time, would be imprisonment in the state prison for life, shall be punished by imprisonment in the state prison not more than ten years.

Burning in the day time any building mentioned in the preceding section. 1804, 131, § 3

SECT. 5. Every person, who shall wilfully and maliciously burn, either in the night time or in the day time, any banking house warehouse, store, manufactory, mill, barn, stable, shop, office, outhouse, or other building whatsoever, of another, other than is mentioned in the third section, or any bridge, lock, dam or flume, or any ship or vessel, of another, lying within the body of any county, shall be punished by imprisonment in the state prison, not more than ten years.

Burning in the day or night certain buildings of less value than $1000 or not within the curtilage. Or any bridge, lock, flume, or any ship, &c. 1804, 131, § 3.

SECT. 6. Every person, who shall wilfully and maliciously burn or otherwise destroy, or injure, any pile or parcel of wood, boards, timber or other lumber, or any fence, bars or gate, or any stack of grain, hay, or other vegetable product, or any vegetable product, severed from the soil and not stacked, or any standing trees, grain, grass, or other standing product of the soil, or the soil itself of another, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars and imprisonment in the county jail, not more than one year.

Burning wood, lumber, fences, stacks of corn, hay, &c. Or standing grain, grass, trees, soil, &c. 1804, 131, § 4.

SECT. 7. The preceding sections shall severally extend to a married woman, who may commit either of the offences therein described, though the property burnt or set fire to may belong partly or wholly to her husband.

Married woman, liable for burning property of her husband.

SECT. 8. Every person, who shall wilfully burn any building, or any goods, wares, merchandize, or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property burnt or not, shall be punished by imprisonment in the state prison, not more than twenty years.

Burning property insured, to injure the insurers.

SECT. 9. Every person, who shall break and enter any dwelling house, in the night time, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, or, after having entered with such intent, shall break any such dwelling house, in the night time, any person being then lawfully therein, and the offender being armed with a dangerous weapon, at the time of such breaking or entry, or so arming himself in such house, or making an actual assault on any person being lawfully therein, shall suffer the punishment of death.

Burglary, being armed, or making an assault. 1805, 101, § 1.

SECT. 10. Every person, who shall break and enter any dwelling house, in the night time, with such intent, as is mentioned in the preceding section; or who, having entered with such intent, shall break such dwelling house in the night time, the offender not being armed, nor arming himself in such house with a dangerous weapon, nor mak-

Burglary, not being armed, nor making an assault. 1805, 101, § 2. 1830, 72, § 2.

ing an assault upon any person then being lawfully therein, shall be punished by imprisonment in the state prison, not more than twenty years.

Breaking in the night an office, shop, &c. not adjoining a house, or a ship, with intent, &c. 1804, 143, § 4.

SECT. 11. Every person, who shall break and enter, in the night time, any office, shop or warehouse, not adjoining to, or occupied with, a dwelling house, or any ship or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, shall be punished by imprisonment in the state prison, not more than twenty years.

Entering a house, &c. in the night, without breaking, or breaking and entering in the day time, and putting in fear. 1804, 143, § 5.

SECT. 12. Every person, who shall enter, in the night time, without breaking, or shall break and enter, in the day time, any dwelling house, or any outhouse thereto adjoining, and occupied therewith, or any office, shop or warehouse, or any ship or vessel, within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, the owner, or any other person lawfully therein, being put in fear, shall be punished by imprisonment in the state prison, not more than ten years.

Entering, &c. as in the preceding section, without putting in fear. 1805, 101, § 4.

SECT. 13. Every person, who shall enter any dwelling house in the night time, without breaking, or shall break and enter, in the day time, any dwelling house, or any outhouse thereto adjoining, and occupied therewith, or any office, shop or warehouse, or any ship or vessel within the body of any county, with intent to commit the crime of murder, rape, robbery, larceny, or any other felony, (no person lawfully therein being put in fear) shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than two years.

Stealing in the day time in a dwelling house, &c. or breaking in the night a public building, and stealing. 1804, 143, § 6. 1830, 72, § 3.

SECT. 14. Every person who shall steal, in the day time, in any dwelling house, office, bank, shop, or warehouse, ship or vessel, or shall break and enter, in the night time, any meeting house, church, court house, town house, college, academy or other building erected for public use, and steal therein, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding three hundred dollars, and imprisonment in the county jail, not more than two years.

Stealing at a fire.

SECT. 15. Every person, who shall commit the offence of larceny, by stealing in any building that is on fire, or by stealing any property removed in consequence of alarm caused by fire, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than two years.

Stealing from a person. 1804, 143, § 8.

SECT. 16. Every person who shall commit the offence of larceny, by stealing from the person of another, shall be punished by imprisonment in the state prison, not more than five years, or in the county jail, not more than two years.

Simple larceny, exceeding the value of $100.

SECT. 17. Every person who shall commit the offence of larceny, by stealing of the property of another any money, goods or chattels, or any bank note, bond, promissory note, bill of exchange, or other bill, order or certificate, or any book of accounts, for or concerning money or goods due, or to become due, or to be delivered, or any deed or writing, containing a conveyance of land, or any other valuable contract in force, or any receipt, release or defeasance,

or any writ, process or public record, if the property stolen shall exceed the value of one hundred dollars, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding six hundred dollars, and imprisonment in the county jail, not more than two years; and if the property stolen shall not exceed the value of one hundred dollars, he shall be punished by imprisonment in the state prison or the county jail, not more than one year, or by fine not exceeding three hundred dollars.

Simple larceny, not exceeding $100. 1804, 143, § 1.

SECT. 18. Every justice of the peace shall have jurisdiction, concurrent with the court of common pleas, and the police court of the city of Boston shall have jurisdiction, concurrent with the municipal court, of all the larcenies mentioned in the preceding section, when the money or other property stolen shall not be alleged to exceed the value of fifteen dollars, and of all other larcenies whatever, when the property stolen shall not be alleged to exceed the value of five dollars; in all which cases, the punishment for a first offence shall be by a fine not exceeding fifteen dollars, or by imprisonment in the county jail, not more than six months; and upon a second conviction of the like offence, committed after the former conviction, before a police court or a justice of the peace, the punishment shall be by a fine not exceeding twenty dollars, or by imprisonment in the county jail, not more than one year, saving to every person so convicted the right to a trial by jury, upon his appeal, as in other like cases.

Jurisdiction of justices of the peace, in larceny.

Case of a second conviction of larceny. 1804, 143, § 2. 1835, 54.

SECT. 19. Every person who shall have been convicted, upon indictment, either of the crime of larceny, or of being accessory to the crime of larceny before the fact, and shall afterwards commit the crime of larceny, or be accessory thereto before the fact, and be convicted thereof upon indictment, and every person, who shall be convicted, at the same term of the court, either as principal or as accessory before the fact, in three distinct larcenies, shall be deemed a common and notorious thief, and shall be punished by imprisonment in the state prison, not more than twenty years, or in the county jail, not more than three years.

Case of a second conviction of larceny, and of three distinct larcenies at the same term. 1804, 143, § 3.

SECT. 20. Every person who shall buy, receive, or aid in the concealment of any stolen money, goods or property, knowing the same to have been stolen, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than two years.

Buying, receiving or concealing stolen goods 1804, 143, § 10.

SECT. 21. Upon a first conviction of the offence mentioned in the preceding section, and when the act of stealing the property was a simple larceny, if the party, convicted of buying, receiving or aiding in the concealing of such stolen property, shall make satisfaction to the party injured, to the full value of the property stolen, and not restored, he shall not be imprisoned in the state prison.

Effect of restitution of stolen property bought, received, &c. 1804, 143, § 13.

SECT. 22. Every person convicted of buying, receiving, or aiding in the concealment of any stolen money, goods or property, knowing the same to have been stolen, having been before convicted of the like offence, and every person convicted, at the same term of the court, of three or more distinct acts of buying, receiving or concealing as aforesaid, shall be deemed a common receiver of stolen goods, and shall be punished by imprisonment in the state prison, not more than ten years.

Case of a second conviction for receiving, &c. and of three convictions at the same term. 1804, 143, § 12.

Concurrent jurisdiction of police courts and justices, over receivers, &c. of stolen property.

SECT. 23. Every police court, and every justice of the peace, shall have jurisdiction, concurrent with the other courts, as before provided, of all offences of buying, receiving or aiding in the concealment of stolen goods or other property, in all cases in which they would have had jurisdiction of a larceny of the same goods or other property, and the punishment of the offence of buying, receiving, or aiding in the concealment of such goods or other property, shall be the same, upon a first, and also upon a second conviction, as in the cases of a first and second conviction, respectively, of a larceny of the same goods or other property, with the same right of appeal on conviction; provided, that if the party convicted of buying, receiving, or aiding in the concealment thereof, shall make satisfaction to the person injured, to the full value of the property stolen and not restored, the punishment of the offence may be mitigated, as justice may require.

Effect of restitution.

Receiver of stolen goods may be tried before the thief is convicted. 1804, 143, § 11.

SECT. 24. In any prosecution for the offence of buying, receiving, or aiding in the concealment of stolen money or other property, known to have been stolen, it shall not be necessary to aver, nor on the trial thereof to prove, that the person who stole such property has been convicted.

Officer, making arrest, to secure &c. the goods stolen. 1804, 143, § 15.

SECT. 25. The officer, who shall arrest any person, charged as principal or accessory, in any robbery or larceny, shall secure the property alleged to be stolen, and shall be answerable for the same, and he shall annex a schedule thereof to his return; and upon conviction of the offender, the stolen property shall be restored to the owner.

Prosecutor to conviction, and officer may be compensated. 1804, 143, § 14.

SECT. 26. Upon any conviction of burglary, robbery, or larceny, the court may order a meet recompense to the prosecutor, and also to the officer, who has secured and kept the stolen property, not exceeding their actual expenses, with a reasonable allowance for their time and trouble, to be paid by the county treasurer, and charged by him to the Commonwealth.

Embezzlement by officers, &c. of banks. 1824, 51, § 1.

SECT. 27. If any cashier or other officer, agent, or servant of any incorporated bank shall embezzle, or fraudulently convert to his own use, or shall fraudulently take or secrete, with intent to convert to his own use, any bullion, money, note, bill, obligation or security, or any other effects or property, belonging to and in possession of such bank, or belonging to any person, and deposited therein, he shall be deemed, by so doing, to have committed the crime of larceny in such bank, and shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars and imprisonment in the county jail, not more than two years.

— by persons in the state treasury. 1791, 59, § 5.

SECT. 28. If any clerk or other person, employed in the treasury of this Commonwealth, shall commit any fraud or embezzlement therein, he shall be punished by fine not exceeding two thousand dollars, or by imprisonment in the state prison for life, or for such term of years as the court shall order.

— by agents, clerks, servants, &c. 1834, 186, § 1.

SECT. 29. If any officer, agent, clerk or servant of any incorporated company, or if any clerk, agent, or servant of any private person, or of any copartnership, except apprentices and other persons under the age of sixteen years, shall embezzle, or fraudulently convert to his own use, or shall take, or secrete, with intent to em-

bezzle and convert to his own use, without consent of his employer or master, any money or property of another, which shall have come to his possession, or shall be under his care, by virtue of such employment, he shall be deemed, by so doing, to have committed the crime of simple larceny.

— by carriers and others. 1834, 186, § 3.

SECT. 30. If any carrier or other person, to whom any money, goods, or other property, which may be the subject of larceny, shall have been delivered, to be carried for hire, or if any other person, who shall be intrusted with such property, shall embezzle, or fraudulently convert to his own use, or shall secrete, with intent to embezzle or fraudulently convert to his own use, any such money, goods, or property, either in the mass, as the same were delivered, or otherwise, and before delivery of such money, goods or property, at the place at which, or to the person to whom, they were to be delivered, he shall be deemed, by so doing, to have committed the crime of simple larceny.

Falsely personating another, &c.

SECT. 31. Every person, who shall falsely personate or represent another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed, by so doing, to have committed the crime of simple larceny.

Obtaining property by false pretences or tokens. 1 Mass. 137. 4 Pick. 177. 6 Mass. 72. 1815, 136, § 1.

SECT. 32. If any person shall designedly, by any false pretence, or by any privy or false token, and with intent to defraud, obtain from any other person, any money, or any goods, wares, merchandize, or other property, or shall obtain, with such intent, the signature of any person to any written instrument, the false making whereof would be punishable as forgery, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding five hundred dollars and imprisonment in the county jail, not more than two years.

Gross frauds, how punished. 1785, 21, § 4. 1815, 136, § 2.

SECT. 33. Every person, who shall be convicted of any gross fraud or cheat at common law, shall be punished by imprisonment in the state prison, not more than ten years, or in the county jail, not more than two years, or by fine not exceeding four hundred dollars.

Selling land, attached without giving notice.

SECT. 34. If any person, knowing that his land is attached on mesne process, shall, with intent to defraud, sell and convey it, without giving notice of the attachment to the person to whom he shall sell and convey it, he shall be punished by imprisonment in the state prison, not more than three years, or in the county jail, not more than one year.

Wilfully destroying vessels. 1802, 136, § 1. 1824, 137, § 1.

SECT. 35. If any person shall wilfully cast away, burn, sink, or otherwise destroy any ship or vessel, within the body of any county, with intent to injure or defraud any owner of such vessel, or the owner of any property laden on board the same, or any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison for life, or for any term of years.

Fitting out vessels with intent to destroy them &c. 1802, 136, § 2. 1824, 137, § 2.

SECT. 36. If any person shall lade, equip, or fit out, or assist in lading, equipping, or fitting out, any ship or vessel, with intent that the same shall be wilfully cast away, burnt, sunk, or otherwise destroyed, to injure or defraud any owner or insurer of such vessel, or of any property laden on board the same, he shall be punished by

imprisonment in the state prison, not more than twenty years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail, not more than three years.

Making false invoices, &c. of the cargo. 1802, 136, § 3.

SECT. 37. If the owner of any ship or vessel, or of any property laden, or pretended to be laden on board the same, or if any other person, concerned in the lading or fitting out of any such ship or vessel, shall make out or exhibit, or cause to be made out or exhibited, any false or fraudulent invoice, bill of lading, bill of parcels, or other false estimates of any goods or property laden, or pretended to be laden on board such vessel, with intent to injure or defraud any insurer of such vessel or property, or of any part thereof, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail, not more than two years.

Making or procuring false protest, &c. 1802, 136, § 4.

SECT. 38. If any master, other officer or mariner of any ship or vessel, shall make, or cause to be made, or shall swear to, any false affidavit or protest, or if any owner or other person, concerned in such vessel or in the goods or property laden on board the same, shall procure any such false affidavit or protest to be made, or shall exhibit the same, with intent to injure, deceive, or defraud any insurer of such ship or vessel, or of the goods or property laden on board the same, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail, not more than two years.

Malicious killing, maiming or poisoning cattle. 1 Mass. 59. 1804, 131, § 4.

SECT. 39. Every person, who shall wilfully and maliciously kill, maim, or disfigure any horses, cattle or other beasts of another person, or shall wilfully and maliciously administer poison to any such beasts, or expose any poisonous substance, with intent that the same should be taken or swallowed by them, or shall wilfully and maliciously destroy or injure the personal property of another person, in any manner or by any means, not particularly described or mentioned in this chapter, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars and imprisonment in the county jail, not more than one year.

Malicious injury to dams, reservoirs, canals, &c. 1829, 98.

SECT. 40. Every person, who shall wilfully and maliciously break down, injure, remove or destroy any dam, reservoir, canal or trench, or any gate, flume, flash boards, or other appurtenances thereof, or any of the wheels, mill gear, or machinery of any water mill, or shall wilfully or wantonly, without color of right, draw off the water contained in any mill pond, reservoir, canal or trench, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than two years.

To bridges, turnpike gates, &c.

SECT. 41. Every person, who shall wilfully and maliciously break down, injure, remove or destroy any public or toll bridge, or rail road, or any turnpike gate, or any lock, culvert or embankment of any canal, or shall wilfully and maliciously make any aperture or breach in any such embankment, with intent to destroy or injure the same, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than two years.

SECT. 42. Every person, who shall wilfully and maliciously, or wantonly and without cause, cut down or destroy, or by girdling, lopping or otherwise, shall injure any fruit tree, or any other tree, not his own, standing or growing for shade, ornament, or other useful purpose, or shall maliciously or wantonly break the glass, or any part of it, in any building not his own, or shall maliciously break down, injure, mar or deface any fence belonging to or enclosing lands not his own, or shall maliciously throw down or open any gate, bars or fence, and leave the same down or open, or shall maliciously and injuriously sever from the freehold of another any produce thereof, or any thing attached thereto, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding one hundred dollars.

Malicious destroying of fruit and ornamental trees, &c.: injuring houses, or fences; opening gates, &c., and severing property from the freehold. 3 Greenl. 177. 1785, 28, § 1. 1829, 63.

SECT. 43. Every person, who shall wilfully and maliciously break down, injure, remove or destroy any monument erected for the purpose of designating the boundaries of any town, or of any tract or lot of land, or any tree marked for that purpose, or shall so break down, injure, remove or destroy any mile stone, mile board or guide board, erected upon any highway or other public way, turnpike or rail road, or shall wilfully or maliciously deface or alter the inscription on any such stone or board, or shall wilfully or maliciously mar or deface any building, or any sign board, or shall extinguish any lamp, or break, destroy or remove any lamp, or any lamp post, or any railing or posts, erected on any bridge, side walk, street, highway, court or passage, shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding fifty dollars.

Maliciously destroying, &c. monuments, milestones, guideboards; extinguishing lamps, &c. 1785, 28, § 2. 1823, 113, § 1.

SECT. 44. Every person, who shall wilfully commit any trespass, by cutting down or destroying any timber or wood, standing or growing on the land of another, or by carrying away any kind of timber or wood, cut down or lying on such land, or by digging up or carrying away any stone, ore, gravel, clay, sand, turf or mould from such land, or any roots, fruit or plant there being, or by cutting down or carrying away any sedge, grass, hay or any kind of corn, standing, growing, or being on such land, or by carrying away from any wharf or landing place any goods whatever, in which he has no interest or property, without the license of the owner thereof, shall be punished by imprisonment in the county jail, not more than sixty days, or by fine not exceeding fifty dollars.

Trespasses by cutting timber, wood, grain, &c. 1785, 28, § 1. 1818, 3, § 2.

SECT. 45. Every person, who shall wilfully commit any trespass, by entering upon the garden, orchard, or other improved land of another, without permission of the owner thereof, and with intent to cut, take, carry away, destroy or injure the trees, grain, grass, hay, fruit or vegetables there growing or being, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding twenty dollars; and if any of the offences mentioned in this, or in the preceding section, shall be committed on the Lord's day, or in disguise, or secretly in the night time, between sun setting and sun rising, the imprisonment shall not be less than five days, nor the fine less than five dollars.

Trespasses in gardens, orchards, &c. 1818, 3, §§ 1. 4.

SECT. 46. Every justice of the peace shall have jurisdiction, concurrent with the court of common pleas in his county, and the police court of the city of Boston shall have jurisdiction, concurrent with the municipal court, of all the offences mentioned in the four prece-

Concurrent jurisdiction of justices and of police courts, in certain cases. 1785, 28, § 1. 1818, 3, § 1.

ding sections, when the value of the trees, fruit, grain or other property injured, destroyed, taken or carried away, or the injury occasioned by the trespass, shall not be alleged to exceed the sum of fifteen dollars; and in any such case, the punishment shall be by imprisonment in the county jail, not more than thirty days, or a fine not exceeding fifteen dollars, saving to the party, convicted before such justice or police court, the right to a trial by jury on his appeal, as in other like cases.

CHAPTER 127.

OF FORGERY AND COUNTERFEITING.

SECTION
1. Forgery of records, contracts, &c.
2. Uttering forged records or contracts.
3. Forging notes of state treasurer, &c.
4. Forging bank bills or notes.
5. Having in possession ten or more counterfeit bills, with intent, &c.
6. Passing counterfeit bills or forged notes.
7. Case of a second conviction for passing forged notes, &c. and of three convictions at the same term.
8. Having counterfeit bills with intent, &c.
9. Making or having tools, &c. for counterfeiting, with intent, &c.
10. Testimony of president, &c. of banks, dispensed with, in certain cases.
11. Sworn certificates of certain officers, made evidence.
12. Fraudulently connecting parts of several instruments.
13. Affixing fictitious signatures.
14. Intent to defraud; statement and proof.
15. Counterfeiting current coin, or having ten counterfeit pieces, with intent, &c.
16. Having less than ten pieces, with intent, &c.—Uttering counterfeit coin.
17. Case of a second conviction, and of three convictions at the same term.
18. Making, mending or having tools for coining, with intent, &c.
19. Reward for detecting counterfeiters. Reward may be divided between two or more prosecutors.

Forgery of records, contracts, &c.
15 Mass. 526.
17 Mass. 46.
10 Mass. 181.
2 Mass. 397.
1804, 120. § 1.

SECTION 1. Every person who shall falsely make, alter, forge or counterfeit any public record, or any certificate, return, or attestation of any clerk of a court, public register, notary public, justice of the peace, town clerk, or any other public officer, in relation to any matter wherein such certificate, return or attestation may be received as legal proof, or any charter, deed, will, testament, bond or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange, promissory note, or any order, acquittance or discharge for money or other property, or any acceptance of a bill of exchange, or indorsement or assignment of a bill of exchange or promissory note for the payment of money, or any accountable receipt, for money, goods or other property, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison, not more than ten years, or in the county jail, not more than two years.

Uttering forged records or contracts.
1804, 120, § 1.

SECT. 2. Every person who shall utter and publish as true, any false, forged or altered record, deed, instrument, or other writing mentioned in the preceding section, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud, as afore-

said, shall be punished by imprisonment in the state prison, not more than ten years, or in the county jail, not more than two years.

SECT. 3. Every person who shall falsely make, alter, forge or counterfeit any note, certificate or other bill of credit, issued by the treasurer of this Commonwealth, or by any commissioner or other officer, authorized to issue the same, for any debt of this Commonwealth, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison for life, or for any term of years.

Forging notes of state treasurer, &c. 1804, 120, § 2.

SECT. 4. Every person who shall falsely make, alter, forge or counterfeit any bank bill, or promissory note, payable to the bearer thereof, or to the order of any person, issued by any incorporated banking company in this state, or payable therein, at the office of any banking company incorporated by any law of the United States, with intent to injure or defraud any person, shall be punished by imprisonment in the state prison for life, or for any term of years.

Forging bank bills or notes. 1804, 120, § 2.

SECT. 5. If any person shall have in his possession, at the same time, ten or more similar false, altered, forged or counterfeit notes, bills of credit, bank bills or notes, payable to the bearer thereof, or to the order of any person, such as are mentioned in any of the preceding sections, knowing the same to be false, altered, forged or counterfeit, with intent to utter or pass the same as true, and thereby to injure or defraud as aforesaid, he shall be punished by imprisonment in the state prison for life, or for any term of years.

Having in possession ten or more counterfeit bills, with intent, &c. 8 Mass. 59. 4 Pick. 233. 2 Mass. 138. 1804, 120, § 2.

SECT. 6. Every person who shall utter or pass, or tender in payment as true, any such false, altered, forged or counterfeit note, certificate or bill of credit, for any debt of this Commonwealth, or any bank bill, or promissory note, payable to the bearer thereof or to the order of any person, issued as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud as aforesaid, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Passing counterfeit bills or forged notes. 11 Mass. 136. 1804, 120, § 3.

SECT. 7. If any person, who has been convicted of the offence mentioned in the preceding section, shall be again convicted of the like offence, committed after the former conviction, or if any person shall, at the same term of the court, be convicted upon three distinct charges of the said offence, he shall be deemed a common utterer of counterfeit bills, and shall be punished by imprisonment in the state prison, not more than ten years.

Case of a second conviction for passing forged notes, &c. and of three convictions at the same term. 1804, 120, § 3.

SECT. 8. Every person, who shall bring into this state, or shall have in his possession, any false, forged or counterfeit bill or note, in the similitude of the bills or notes payable to the bearer thereof, or to the order of any person, issued by or for any bank or banking company established in this state, with intent to utter or pass the same, or to render the same current as true, knowing the same to be false, forged or counterfeit, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Having counterfeit bills with intent, &c. 1804, 120, § 4.

SECT. 9. Every person who shall engrave, make or mend, or begin to engrave, make or mend, any plate, block, press, or other

Making or having tools, &c. for counterfeit-

ing, with intent, &c. 2 Mass. 128. 1804, 120, § 5.

tool, instrument or implement, or shall make or provide any paper or other material, adapted and designed for the forging or making any false and counterfeit note, certificate or other bill of credit, in the similitude of the notes, certificates, or bills of credit, issued by lawful authority, for any debt of this Commonwealth, or any false and counterfeit note or bill, in the similitude of the notes or bills issued by any bank or banking company established in this state, or within the United States, and every person, who shall have in his possession any such plate or block, engraved in any part, or any press or other tool, instrument or implement, or any paper or other material, adapted and designed as aforesaid, with intent to use the same, or to cause or permit the same to be used, in forging or making any such false and counterfeit certificates, bills or notes, shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than two years.

Testimony of president, &c of banks, dispensed with, in certain cases. 2 Pick. 47. 1818, 110. 1833, 222, § 3.

SECT. 10. In all prosecutions for forging or counterfeiting any notes or bills of the banks before mentioned, or for uttering, publishing, or tendering in payment as true, any forged or counterfeit bank bills or notes, or for being possessed thereof, with intent to utter and pass the same as true, the testimony of the president and cashier of such banks may be dispensed with, if their place of residence shall be out of this state, or more than forty miles from the place of trial; and the testimony of any person acquainted with the signature of the president or cashier of such banks, or who has knowledge of the difference in the appearance of the true and the counterfeit bills or notes thereof, may be admitted to prove that any such bills or notes are counterfeit.

Sworn certificates of certain officers made evidence. 1791, 61. Declaration of Rights, Art. 12.

SECT. 11. In all prosecutions for forging or counterfeiting any note, certificate, bill of credit, or other security, issued on behalf of the United States, or on behalf of any state or territory, or for uttering, publishing, or tendering in payment as true, any such forged or counterfeit note, certificate, bill of credit or security, or for being possessed thereof, with intent to utter and pass the same as true, the certificate under oath of the secretary of the treasury, or of the treasurer of the United States, or of the secretary or treasurer of any state or territory, on whose behalf such notes, certificate, bill of credit or security, purports to have been issued, shall be admitted as evidence, for the purpose of proving the same to be forged or counterfeit.

Fraudulently connecting parts of several instruments. 10 Mass. 34.

SECT. 12. If any person shall fraudulently connect together different parts of several bank notes, or other genuine instruments, in such a manner as to produce one additional note or instrument, with intent to pass all of them as genuine, the same shall be deemed a forgery, in like manner as if each of them had been falsely made or forged.

Affixing fictitious signatures. 2 Mass. 77.

SECT. 13. If any fictitious or pretended signature, purporting to be the signature of an officer or agent of any corporation, shall be fraudulently affixed to any instrument or writing, purporting to be a note, draft, or other evidence of debt, issued by such corporation, with intent to pass the same as true, it shall be deemed a forgery, though no such person may ever have been an officer or agent of such corporation, nor ever have existed.

SECT. 14. In any case, where an intent to defraud is required to constitute the offence of forgery or any other offence, that may be prosecuted, it shall be sufficient to allege, in the indictment, an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States, or any state, county, city, town or parish, or any body corporate, or any public officer, in his official capacity, or any copartnership or members thereof, or any particular person.

Intent to defraud; statement and proof.

SECT. 15. Every person, who shall counterfeit any gold or silver coin, current by law or usage, within this state, and every person, who shall have in his possession, at the same time, ten or more pieces of false money, or coin counterfeited in the similitude of any gold or silver coin, current as aforesaid, knowing the same to be false and counterfeit, and with intent to utter or pass the same as true, shall be punished by imprisonment in the state prison for life, or for any term of years.

Counterfeiting current coin, or having ten counterfeit pieces, with intent, &c. 8 Mass. 59. 1804, 120, § 6.

SECT. 16. Every person, who shall have in his possession any number of pieces, less than ten, of the counterfeit coin mentioned in the preceding section, knowing the same to be counterfeit, with intent to utter or pass the same as true, and any person, who shall utter, pass, or tender in payment as true, any such counterfeit coin, knowing the same to be false and counterfeit, shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars and imprisonment in the county jail, not more than two years.

Having less than ten pieces, with intent, &c.

Uttering counterfeit coin. 1804, 120, § 7.

SECT. 17. If any person, who has been convicted of either of the offences mentioned in the preceding section, shall be again convicted of either of the same offences, committed after the former convictions, or if any person shall, at the same term of the court, be convicted upon three distinct charges of the said offences, he shall be deemed a common utterer of counterfeit coin, and shall be punished by imprisonment in the state prison, not more than twenty years.

Case of a second conviction, and of three convictions at the same term. 1804, 120, § 7.

SECT. 18. Every person, who shall cast, stamp, engrave, make or mend, or shall knowingly have in his possession, any mould, pattern, die, puncheon, engine, press or other tool or instrument, adapted and designed for coining, or making any counterfeit coin, in the similitude of any gold or silver coin, current by law or usage in this state, with intent to use or employ the same, or to cause or permit the same to be used or employed in coining or making any such false and counterfeit coin as aforesaid, shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars and imprisonment in the county jail, not more than two years.

Making, mending or having tools for coining, with intent, &c. 1804, 120, § 8.

SECT. 19. There shall be allowed and paid to the person who shall inform and prosecute, in the cases hereafter mentioned, the following rewards, that is to say; the sum of sixty dollars for each person convicted and sentenced for the offence of forgery, or making any false and counterfeit certificate, bill or note, in the similitude of any certificate, bill or note, issued as aforesaid, for any debt of this Commonwealth, or by or for any bank or banking company, by law established in this state, or for the offence of counterfeiting any gold

Reward for detecting counterfeiters.

or silver coin, current by law or usage, as aforesaid; and the sum of forty dollars for each person so convicted and sentenced for the offence of possessing, with intent to utter as true, or of knowingly uttering as true, any such false and counterfeit certificate, bill or note, or any such counterfeit coin as aforesaid; which rewards shall be paid out of the public treasury, by the warrant of the governor, with advice of the council, to be granted upon the certificate of the judge or court, before whom such conviction shall be had; and when there shall be two or more informers and prosecutors, for the same offence, the said reward shall be divided between them equally, or in such porportions as the said judge or court shall determine.

Reward may be divided between two or more prosecutors. 1804, 120, § 9. 1814, 95.

CHAPTER 128.

OF OFFENCES AGAINST PUBLIC JUSTICE.

SECTION
1. Perjury.
2. What shall be deemed perjury.
3. Subornation of perjury.
4. Inciting to commit perjury.
5. Disqualification on conviction.
6. Proceedings, when perjury is suspected, by a court.
7. Papers, &c. may be secured.
8. Giving or offering bribes to officers.
9. Accepting bribes by officers.
10. Corrupting jurors, arbitrators &c.
11. Accepting bribes by jurors, arbitrators, &c.
12. Attempts to aid escapes from prison; and rescuing prisoners.
13. Aiding in an escape from an officer.
14. Suffering voluntary escape from prison.
15. Suffering negligent escape; refusing to receive a prisoner.
16. Refusing to arrest, and suffering escape.
17. Refusing to aid officers.
18. Refusing to aid justices of the peace.
19. Falsely assuming to be a justice of the peace or an officer.
20. Disguising, to resist the execution of the law.
21. Concealing and compounding offences.
22. Officers, taking rewards for omitting their duty.
23. Extortion, by taking unlawful fees.
24. Unauthorized oaths—Proviso.
25. Offence, how set forth in the indictment.
26. Who may be witnesses.

Perjury. 12 Mass. 274. 1812, 144, § 1.

SECTION 1. Every person who, being lawfully required to depose the truth in any proceeding in a course of justice, shall commit perjury, shall be punished, if such perjury was committed on the trial of an indictment for a capital crime, by imprisonment in the state prison for life, or any term of years, and if committed in any other case, by imprisonment in the state prison, not more than twenty years.

What shall be deemed perjury. 1829, 56.

SECT. 2. If any person, of whom an oath shall be required by law, shall wilfully swear falsely, in regard to any matter or thing, respecting which such oath is required, such person shall be deemed guilty of perjury.

Subornation of perjury. 1812, 144, § 2.

SECT. 3. Every person, who shall be guilty of subornation of perjury, by procuring another person to commit the crime of perjury, as aforesaid, shall be punished in the same manner as for the crime of perjury.

Inciting to commit perjury.

SECT. 4. If any person shall endeavor to incite or procure any

other person to commit the crime of perjury, though no perjury be commited, he shall be punished by imprisonment in the state prison, not more than five years, or in the county jail, not more than one year. 1812, 144, § 3.

SECT. 5. The oath of any person convicted of perjury, subornation of perjury, or an endeavor to incite or procure any other person to commit such perjury, shall not be received in any proceeding in a course of justice, except in an affidavit in his own cause, or as a poor debtor, unless the judgment, given against such person, shall be reversed, or unless he shall be pardoned. Disqualification on conviction. 1812, 144, § 4.

SECT. 6. Whenever it shall appear to any court of record, that any witness or party, who has been legally sworn and examined, or has made an affidavit, in any proceeding in a course of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the court may immediately commit such witness or party, by an order or process for that purpose, or may take a recognizance, with sureties, for his appearing to answer to an indictment for perjury; and thereupon the witnesses to establish such perjury may, if present, be bound over to the proper court, and notice of the proceedings shall forthwith be given to the district attorney. Proceedings, when perjury is suspected by a court.

SECT. 7. If, in any proceeding in a court of justice, in which perjury shall be reasonably presumed, as aforesaid, any papers, books, or documents shall have been produced, which shall be deemed necessary to be used on any prosecution for such perjury, the court may by order detain the same from the person producing them, so long as may be necessary, in order to their being used in such prosecution. Papers, &c. may be secured.

SECT. 8. Every person, who shall corruptly give, offer or promise to any executive, legislative or judicial officer, after his election or appointment, and either before or after he shall have been qualified, or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding, which may be then pending, or may by law come or be brought before him, in his official capacity, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding three thousand dollars, and imprisonment in the county jail, not more than one year. Giving or offering bribes to officers. Prov. Law, 1758.

SECT. 9. Every executive, legislative or judicial officer, who shall corruptly accept any gift or gratuity, or any promise to make any gift, or to do any act beneficial to such officer, under an agreement, or with an understanding, that his vote, opinion or judgment shall be given in any particular manner, or upon a particular side of any question, cause or proceeding, which is or may be, by law, brought before him in his official capacity, or that, in such capacity, he shall make any particular nomination or appointment, shall forfeit his office, be forever disqualified to hold any public office, trust or appointment, under the constitution or laws of this Commonwealth, and shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail, not more than two years. Accepting bribes by officers.

SECT. 10. Every person, who shall corrupt, or attempt to corrupt, any master in chancery, auditor, juror, arbitrator, umpire or Corrupting jurors, arbitrators, &c.

referee, by giving, offering or promising any gift or gratuity whatever, with intent to bias the opinion, or influence the decision, of such master in chancery, auditor, juror, arbitrator, umpire or referee, in relation to any cause or matter, which may be pending in the court, or before an inquest, or for the decision of which, such arbitrator, umpire or referee shall have been chosen or appointed, shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Accepting bribes by jurors, arbitrators, &c.

SECT. 11. If any person, summoned as a juror, or chosen or appointed as an arbitrator, umpire, or referee, or if any master in chancery, or auditor, shall corruptly take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever, from a party to any suit, cause, or proceeding, for the trial or decision of which, such juror shall have been summoned, or for the hearing or determination of which, such master in chancery, auditor, arbitrator, umpire or referee shall have been chosen or appointed, he shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than one year.

Attempts to aid escapes from prison; and rescuing prisoners. 1784, 41, § 2

SECT. 12. Every person, who shall convey into any jail, house of correction, house of reformation, or other like place of confinement, any disguise, or any instrument, tool, weapon, or other thing, adapted or useful to aid any prisoner in making his escape, with intent to facilitate the escape of any prisoner, there lawfully committed or detained, or shall, by any means whatever, aid or assist any such prisoner, in his endeavor to escape therefrom, whether such escape be effected or attempted, or not, and every person, who shall forcibly rescue any prisoner, held in custody upon any conviction or charge of an offence, shall be punished by imprisonment in the state prison, not more than seven years; or if the person, whose escape or rescue was effected or intended, was charged with an offence not capital, nor punishable by imprisonment in the state prison, then the punishment for the offence, mentioned in this section, shall be by imprisonment in the county jail, not more than two years, or by fine not exceeding five hundred dollars.

Aiding in an escape from an officer.

SECT. 13. Every person, who shall aid or assist any prisoner in escaping, or in attempting to escape, from any officer or person, who shall have the lawful custody of such prisoner, shall be punished by imprisonment in the county jail, not more than two years, or by fine not exceeding five hundred dollars.

Suffering voluntary escape from prison. 1784, 41, § 3.

SECT. 14. If any jailer, or other officer, shall voluntarily suffer any prisoner in his custody upon conviction, or upon any criminal charge, to escape, he shall suffer the like punishment and penalties as the prisoner, so suffered to escape, was sentenced to, or would be liable to suffer, upon conviction for the crime or offence wherewith he stood charged.

Suffering negligent escape; and refusing to receive a prisoner. 1784, 41, § 3.

SECT. 15. If any jailer or other officer shall, through negligence, suffer any prisoner in his custody upon conviction or upon any criminal charge, to escape, or shall wilfully refuse to receive into his custody any prisoner lawfully committed thereto, on any criminal charge or conviction, or on any lawful process whatever, he shall be punished

by imprisonment in the county jail, not more than two years, or by fine not exceeding five hundred dollars.

Refusing to arrest, and suffering escape.

SECT. 16. If any officer, authorized to serve process, shall wilfully and corruptly refuse to execute any lawful process to him directed, and requiring him to apprehend or confine any person convicted or charged with an offence, or shall wilfully and corruptly omit or delay to execute such process, whereby such person shall escape and go at large, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars.

Refusing to aid officers. 1795, 68, § 1.

SECT. 17. If any person, being required in the name of the Commonwealth, by any sheriff, deputy sheriff, coroner, or constable, shall neglect or refuse to assist them, in the execution of their office, in any criminal case, or in the preservation of the peace, or the apprehending or securing of any person, for a breach of the peace, or in any case of escape or rescue of persons, arrested upon civil process, he shall be punished by imprisonment in the county jail, for a term not exceeding one month, or by fine not exceeding fifty dollars.

Refusing to aid justices of the peace. 1795, 68, § 3.

SECT. 18. If any justice of the peace, upon view of any breach of the peace, or any other offence proper for his cognizance, shall require any person to apprehend and bring before him the offender, every person so required, who shall refuse or neglect to obey such justice, shall be punished in the same manner, that is provided in the preceding section, for refusing assistance to a sheriff; and no person, to whom such justice shall be known, or shall declare himself to be a justice of the peace, shall be permitted to plead any excuse, on pretence of ignorance of his office.

Falsely assuming to be a justice of the peace or an officer. 1795, 68, § 2.

SECT. 19. If any person shall falsely assume or pretend to be a justice of the peace, sheriff, deputy sheriff, coroner, or constable, and shall take upon himself to act as such, or to require any person to aid or assist him in any matter, pertaining to the duty of a justice of the peace, sheriff, deputy sheriff, coroner, or constable, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding four hundred dollars.

Disguising, to resist the execution of the law. 1809, 123, § 2.

SECT. 20. Every person, who shall in any manner disguise himself, with intent to obstruct the due execution of the law, or with intent to intimidate, hinder, or interrupt any officer or any other person, in the legal performance of his duty, or the exercise of his rights, under the constitution or laws of this Commonwealth, whether such intent shall be effected or not, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding five hundred dollars, and may also be bound to good behavior, for the term of one year, after the expiration of such imprisonment.

Concealing and compounding offences. 16 Mass. 91.

SECT. 21. If any person, having knowledge of the commission of any offence punishable with death, or by imprisonment in the state prison, shall take any money, or any gratuity or reward, or any engagement therefor, upon an agreement or understanding, express or implied, to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, he shall, where such offence, of which he had knowledge, was punishable with death or imprisonment in the state prison for life, be punished by imprisonment in the state prison, not more than five years, or in a county jail,

not more than one year; and where the offence, of which he so had knowledge, was punishable in any other manner, he shall be punished by imprisonment in the county jail, not more than two years, or by fine not exceeding five hundred dollars.

Officers, taking rewards for omitting their duty.

SECT. 22. If any sheriff, constable, or other officer authorized to serve legal process, shall receive from a defendant, or from any other person, any money or other valuable thing, as a consideration, reward or inducement, for omitting or delaying to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property, under an execution, or for omitting or delaying to perform any duty, pertaining to his office, he shall be punished by fine not exceeding three hundred dollars, or by imprisonment in the county jail, not more than three months.

Extortion, by taking unlawful fees.
1 Mass. 227.
2 Mass. 523.
16 Mass. 93.
1795, 41, § 6.

SECT. 23. If any person shall wilfully and corruptly demand and receive from another, for performing any service or any official duty, for which the fee or compensation is established by law, any greater fee or compensation, than is allowed and provided for the same, he shall be deemed to have committed the offence of extortion, and shall be punished by a fine not exceeding thirty dollars; but no prosecution for such offence shall be sustained, unless it shall be commenced within one year next after the offence was committed.

Unauthorized oaths.
1834, 69, § 1.

SECT. 24. If any person shall administer, or assume to administer to another, any oath, or any obligation in the nature of an oath, which is not required or authorized by law, or if any person shall voluntarily suffer any such oath or obligation to be administered to him, or shall voluntarily take the same, he shall be punished by fine not exceeding two hundred dollars, nor less than five dollars; provided, that nothing contained in this section shall be construed to extend to any oath or affidavit for the purpose of establishing any claim, petition or application of an individual or corporation, which shall be administered, without intentional secrecy, by any person authorized to administer oaths, or to any oath, affidavit or deposition, for the verification of commercial papers, or any papers or documents relating to property, or which may be required by any public agent, officer, or tribunal of the United States, or of any state, or any other country, nor in any way to abridge the authority of any magistrate.

Proviso.

Offence, how set forth in indictment.
1834, 69, § 2.

SECT. 25. It shall not be necessary, in an indictment for either of the offences which are mentioned in the preceding section, to set forth the form or tenor of the oath or obligation, supposed to be administered or taken, but such indictment shall be deemed sufficient in law, if it shall allege that such oath or obligation was administered or taken by the person indicted, contrary to the form of the statute, and setting forth the substance thereof, with the place and occasion of administering or taking the same.

Who may be witnesses.
1834, 69, § 1.

SECT. 26. In any prosecution for administering or taking an oath or obligation, which is not required or authorized by law, the person, by whom such oath or obligation shall be administered, and the person by whom the same shall be taken, shall each of them be a competent witness against the other, if they are not otherwise incompetent to testify; and no person, who shall so testify, shall ever afterwards be prosecuted for any previous offence of the same kind, committed by himself.

CHAPTER 129.

OF OFFENCES AGAINST THE PUBLIC PEACE.

SECTION
1. Unlawful assemblies, how suppressed.
2. Refusing assistance, when required. Refusing to disperse, when commanded.
3. Neglect of mayor or other officer to suppress, &c.
4. Officers may quell unlawful assemblies, by force, &c.
5. Armed force, if called out, to obey orders of governor, judge, &c.
6. Officers, &c., to be held guiltless, though death be inflicted. Rioters, &c., to be severally responsible.
7. Riotously destroying dwelling house, &c.

SECTION 1. If any persons, to the number of twelve or more, being armed with clubs or other dangerous weapons, or if any persons, to the number of thirty or more, whether armed or not, shall be unlawfully, riotously, or tumultuously assembled in any city or town, it shall be the duty of the mayor and of each of the aldermen of such city, and of each of the selectmen of such town, and of every justice of the peace, living in any such city or town, and also of the sheriff of the county and his deputies, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the Commonwealth to command all the persons, so assembled, immediately and peaceably to disperse; and if the persons, so assembled, shall not thereupon immediately and peaceably disperse, it shall be the duty of each of the said magistrates and officers to command the assistance of all persons there present, in seizing, arresting and securing in custody, the persons so unlawfully assembled, so that they may be proceeded with for their offence, according to law.

Unlawful assemblies, how suppressed. 10 Mass. 518. 1835, 140, § 1.

SECT. 2. If any person present, being commanded by any of the magistrates or officers, mentioned in the preceding section, to aid or assist, in seizing and securing such rioters, or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, shall refuse or neglect to obey such command, or, when required by any such magistrate or officer to depart from the place of such riotous or unlawful assembly, shall refuse or neglect so to do, he shall be deemed to be one of the rioters, or persons unlawfully assembled, and shall be liable to be prosecuted and punished accordingly.

Refusing assistance, when required.

Refusing to disperse, when commanded. 1786, 38, § 2. 1835, 140, § 1.

SECT. 3. If any mayor, alderman, selectman, justice of the peace, sheriff or deputy sheriff, having notice of any such riotous or tumultuous and unlawful assembly, as is mentioned in this chapter, in the city or town in which he lives, shall neglect or refuse immediately to proceed to the place of such assembly, or as near thereto as he can with safety, or shall omit or neglect to exercise the authority, with which he is invested by this chapter, for suppressing such riotous or unlawful assembly, and for arresting and securing the offenders, he shall be deemed guilty of a misdemeanor, and punished by a fine not exceeding three hundred dollars.

Neglect of mayor or other officer to suppress, &c. 1835, 140, § 2.

SECT. 4. If any persons, who shall be so riotously or unlawfully assembled, and who have been commanded to disperse, as be-

Officers may quell unlawful

assemblies, by force, &c. 1835, 140, § 3.

fore provided, shall refuse or neglect to disperse, without unnecessary delay, any two of the magistrates or officers, before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, as may be necessary, and shall proceed, in such manner as in their judgment shall be expedient, forthwith to disperse and suppress such unlawful, riotous or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Armed force, if called out, to obey orders of governor, judge, &c.

SECT. 5. Whenever an armed force shall be called out, in the manner provided by the twelfth chapter, for the purpose of suppressing any tumult or riot, or to disperse any body of men, acting together by force, and with intent to commit any felony, or to offer violence to persons or property, or with intent, by force or violence, to resist or oppose the execution of the laws of this Commonwealth, such armed force, when they shall arrive at the place of such unlawful, riotous or tumultuous assembly, shall obey such orders for suppressing the riot or tumult, and for dispersing and arresting all the persons, who are committing any of the said offences, as they may have received from the governor, or from any judge of a court of record, or the sheriff of the county, and also such further orders, as they shall there receive from any two of the magistrates or officers, mentioned in the first section.

Officers, &c., to be held guiltless, though death be inflicted.

SECT. 6. If, by reason of any of the efforts made by any two or more of the said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, though the number remaining may be less than twelve, any such person, or any other persons then present as spectators or otherwise, shall be killed or wounded, the said magistrates and officers, and all persons acting by their order, or under their direction, shall be held guiltless and fully justified in law; and if any of the said magistrates or officers, or any person acting by their order, or under their direction, shall be killed or wounded, all the persons so unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the said magistrates or officers, shall be held answerable therefor.

Rioters, &c., to be severally responsible. 1835, 140, § 3.

Riotously destroying dwelling house, &c. 1786, 38, § 3.

SECT. 7. If any of the persons, so unlawfully assembled, shall demolish, pull down or destroy, or shall begin to demolish, pull down or destroy any dwelling house, or any other building, or any ship or vessel, he shall be punished by imprisonment in the state prison, not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than two years, and shall also be answerable to any person injured, to the full amount of the damage, in an action of trespass.

CHAPTER 130.

OF OFFENCES AGAINST CHASTITY, MORALITY, AND DECENCY.

SECTION
1. Adultery.
2. Polygamy.
3. Excepted cases.
4. Lewd and lascivious cohabitation, and open and gross lewdness.
5. Fornication.
6. Concealment by the mother, of the death of a bastard child.
7. Offence in preceding section may be inserted in indictment for murder of bastard child.
8. Keeping a house of ill fame.
9. Lease of a house so kept, void at the option of lessor.
10. Importing, selling, receiving, &c. obscene books or prints, &c.
11. Police courts, &c. may issue search warrant for obscene books, &c. and cause the same to be destroyed.
12. Half of fine, in what cases to be paid to prosecutor. His competency.
13. Incest.
14. Crime against nature.
15. Blasphemy.
16. Profane cursing and swearing.
17. Disturbing religious worship.
18. Drunkenness.
19. Violation of sepulture.
20. Injuring or defacing tombs, memorials of the dead, &c.
21. Making roads, canals, &c. through burial grounds.
22. Cruelty to animals.

SECTION 1. Every person, who shall commit the crime of adultery, shall be punished by imprisonment in the state prison, not more than three years, or in the county jail, not more than two years, or by fine not exceeding five hundred dollars, and when the crime is committed between a married woman and a man who is unmarried, the man shall be deemed guilty of adultery, and be liable to the same punishment. Adultery. 1784, 40, § 1.

SECT. 2. If any person, who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife, in this state, he or she shall, except in the cases mentioned in the following section, be deemed guilty of the crime of polygamy, and shall be punished by imprisonment in the state prison, not more than five years, or in the county jail, not more than three years, or by fine not exceeding five hundred dollars. Polygamy. 1 Pick. 136. 8 Pick. 433. 1784, 40, § 2.

SECT. 3. The provision of the preceding section shall not extend to any person, whose husband or wife shall have been continually remaining beyond sea, or shall have voluntarily withdrawn from the other, and remained absent for the space of seven years together, the party marrying again not knowing the other to be living within that time, nor to any person, who has been legally divorced from the bonds of matrimony, and was not the guilty cause of such divorce. Excepted cases. 1784, 40, § 2.

SECT. 4. If any man and woman, not being married to each other, shall lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness, and lascivious behavior, every such person shall be punished by imprisonment in the state prison, not more than three years, or in the county jail, not more than two years, or by fine not exceeding three hundred dollars. Lewd and lascivious cohabitation, and open and gross lewdness. 1 Mass. 8. 10 Mass. 153. 1784, 40, § 3.

SECT. 5. If any man shall commit fornication with any single Fornication. 1785, 66, § 1.

woman, each of them shall be punished by imprisonment in the county jail, not more than two months, or by fine not exceeding thirty dollars.

Concealment by the mother, of the death of a bastard child. 1784, 42, § 2. 1812, 134.

SECT. 6. If any woman shall conceal the death of any issue of her body, which, if born alive, would be a bastard, so that it may not be known whether such issue was born alive or not, or whether it was not murdered, she shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail, not more than one year.

Offence in preceding section may be inserted in indictment for murder of bastard child. 1784, 42, § 3.

SECT. 7. Any woman, who shall be indicted for the murder of her infant bastard child, may also be charged, in the same indictment, with the offence described in the preceding section; and if, on the trial, the jury shall acquit her of the charge of murder, and find her guilty of the other offence, judgment and sentence may be awarded against her for the same.

Keeping a house of ill fame. 1793, 59, § 8.

SECT. 8. Every person, who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, shall be punished by imprisonment in the county jail, not more than two years, or by fine not exceeding three hundred dollars.

Lease of a house so kept, void at option of lessor. 3 Pick. 26.

SECT. 9. Whenever the lessee of any dwelling house shall be convicted of the offence mentioned in the preceding section, the lease, or contract for letting such house, shall, at the option of the lessor, become void, and such lessor shall thereupon have the like remedy to recover the possession, as against a tenant for holding over after the expiration of his term.

Importing, selling, receiving, &c. obscene books or prints, &c. 17 Mass. 336.

SECT. 10. If any person shall import, print, publish, sell, or distribute any book, or any pamphlet, ballad, printed paper, or other thing, containing obscene language, or obscene prints, pictures, figures, or descriptions, manifestly tending to the corruption of the morals of youth, or shall introduce into any family, school, or place of education, or shall buy, procure, receive or have in his possession, any such book, pamphlet, ballad, printed paper or other thing, either for the purpose of sale, exhibition, loan, or circulation, or with intent to introduce the same into any family, school, or place of education, he shall be punished by imprisonment in the state prison, not more than five years, or imprisonment in the county jail, not more than two years, and a fine not exceeding one thousand dollars.

Police court, &c. may issue search warrant for obscene books, &c. and cause the same to be destroyed.

SECT. 11. Any police court or justice of the peace may issue a search warrant, for the purpose of searching for any such obscene books, pamphlets, ballads, printed papers or other things, mentioned in the preceding section, in the manner provided in the one hundred and forty second chapter; and all such things, which shall be found by any officer, in executing a search warrant, or which shall be produced or brought into court, shall be safely kept, so long as shall be necessary, for the purpose of being used as evidence in any case, and as soon as may be afterwards, shall be destroyed by order of the court, before whom the same shall be brought.

Half of fine, in what cases to be paid to prosecutor. His competency.

SECT. 12. When any person is convicted, under any of the provisions contained in either of the two preceding sections, and sentenced to pay a fine, there shall be paid to the person, who shall inform and prosecute such offender to conviction, one half of the amount of the fine, which shall be actually paid by such convict; and the per-

son, who shall inform and prosecute, shall, notwithstanding, be competent to testify as a witness in the prosecution.

SECT. 13. All persons, being within the degrees of consanguinity, within which marriages are prohibited, or declared by law to be incestuous and void, who shall intermarry with each other, or who shall commit adultery or fornication with each other, shall be punished by imprisonment in the state prison, not more than twenty years, or in the county jail, not more than three years. Incest.

SECT. 14. Every person, who shall commit the abominable and detestable crime against nature, either with mankind, or with any beast, shall be punished by imprisonment in the state prison, not more than twenty years. Crime against nature. 1804, 133, § 1.

SECT. 15. If any person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing or contumeliously reproaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God, contained in the holy scriptures, or exposing them to contempt and ridicule, he shall be punished by imprisonment in the state prison, not more than two years, or in the county jail, not more than one year, or by fine not exceeding three hundred dollars, and may also be bound to good behavior. Blasphemy. 1782, 8.

SECT. 16. If any person, who has arrived at the age of discretion, shall profanely curse or swear, he shall, on conviction thereof, before any justice of the peace, be punished by fine, not exceeding five dollars, nor less than one dollar, saving to any person so convicted, the right to a trial by a jury, upon his appeal, as in other like cases; but no such prosecution shall be sustained, unless it shall be commenced within twenty days after the commission of such offence. Profane cursing and swearing. 1798, 33, §§ 1 & 3.

SECT. 17. Every person, who, on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people, met for the worship of God, within the place of such meeting, or out of it, shall be punished by imprisonment in the county jail, not more than thirty days, or by fine not exceeding fifty dollars. Disturbing religious worship. 2 Mass. 163. 1791, 58, § 8.

SECT. 18. Any person, who shall be guilty of the crime of drunkenness, by the voluntary use of any intoxicating liquor, shall, for the first offence, be punished by a fine not exceeding five dollars, and for any like offence, committed after the first conviction, shall be punished by a fine not exceeding ten dollars, or by confinement in the house of correction, for a term not exceeding three months; but no prosecution for such offence shall be sustained, unless it shall be commenced within six months after the commission thereof; and justices of the peace shall have concurrent jurisdiction, with the court of common pleas and municipal court of the city of Boston, of such offence. Drunkenness.

SECT. 19. If any person, not being authorized by the board of health, overseers of the poor, directors of any work house, or selectmen of any town, or by the directors of the house of industry, overseers of the poor, or mayor and aldermen of the city of Boston, shall wilfully dig up, disinter, remove or convey away any human body, or the remains thereof, or shall knowingly aid in such disinterment, removal or conveying away, every such offender, and every person accessory thereto, either before or after the fact, shall be punished by Violation of sepulture. 10 Pick. 37. 1830, 57, §§ 1 & 2.

imprisonment in the state prison, not more than one year, or in the county jail, not more than two years, or by fine not exceeding two thousand dollars.

Injuring or defacing tombs, memorials of the dead, &c. 1834, 187, § 2.

SECT. 20. If any person shall wilfully destroy, mutilate, deface, injure or remove any tomb, monument, gravestone, or other structure or thing, placed or designed for a memorial of the dead, or any fence, railing, curb, or other thing, intended for the protection, or for the ornament, of any tomb, monument, gravestone, or other structure before mentioned, or of any enclosure for the burial of the dead, or shall wilfully destroy, mutilate, remove, cut, break or injure any tree, shrub or plant, placed or being within any such enclosure; the person so offending shall be punished by fine not exceeding five hundred dollars, nor less than ten dollars, or by imprisonment in the county jail, not more than one year.

Making roads, canals, &c. through burial grounds. 1834, 187, § 1.

SECT. 21. If any person shall open or make any highway or town way, or shall construct any rail road, turnpike or canal, or any other thing in the nature of a public easement, over, through, in, or upon, such part of any enclosure, being the property of a town, parish, religious society, or of private proprietors, as may be used or appropriated for the burial of the dead, unless an authority for that purpose shall be specially granted by law, or unless the consent of such town, parish, or religious society, or proprietors, respectively, shall be first obtained, he shall be punished by fine not exceeding two thousand dollars, or imprisonment in the county jail, not more than one year.

Cruelty to animals.

SECT. 22. Every person, who shall cruelly beat or torture any horse, ox, or other animal, whether belonging to himself or to another, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding one hundred dollars.

CHAPTER 131.

OF OFFENCES AGAINST THE PUBLIC HEALTH.

SECTION
1. Selling corrupt or unwholesome provisions, without notice.
2. Adulterating food or liquors.
3. " drugs or medicines.

Selling corrupt or unwholesome provisions, without notice. 1784, 50.

SECTION 1. If any person shall knowingly sell any kind of diseased, corrupted, or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by imprisonment in the county jail, not more than six months, or by fine not exceeding two hundred dollars.

Adulterating food or liquors.

SECT. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt liquor or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding three hundred dollars, and the articles so adulterated shall be forfeited and destroyed.

SECT. 3. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine, in such a manner as to render the same injurious to health, he shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding four hundred dollars, and such adulterated drugs and medicines shall be forfeited and destroyed.

Adulterating drugs or medicines.

CHAPTER 132.

OF OFFENCES AGAINST PUBLIC POLICY.

SECTION
1. Setting up or promoting illegal lotteries, &c.
2. Selling lottery tickets, or aiding therein.
3. Case of a second conviction.
4. Advertising lottery tickets for sale. Exhibiting a representation of a lottery, &c.
5. Making or selling tickets in a fictitious lottery.
6. Defendant to prove genuineness, &c. of tickets sold by him.
7. Reward for prosecutor.
8. All prizes forfeited to the Commonwealth.

SECTION 1. Every person, who shall set up or promote any lottery, not authorized by law, for money, or shall dispose of any property of value, real or personal, by way of lottery, and every person who shall aid, either by printing or writing, or shall in any way be concerned in the setting up, managing or drawing of any such lottery, or who shall, in any house, shop or building owned or occupied by him, or under his control, knowingly permit the setting up, managing or drawing of any such lottery, or the sale of any lottery ticket, or share of a ticket, or any other writing, certificate, bill, token or other device, purporting or intended to entitle the holder, bearer, or any other person, to any prize, or to any share of or interest in any prize, to be drawn in a lottery, or who shall knowingly suffer money or other property to be raffled for in such house, shop or building, or to be won there by throwing or using dice, or by any other game of chance, shall, for every such offence, be punished by a fine not exceeding two thousand dollars.

Setting up or promoting illegal lotteries, &c. 8 Pick. 78. 1833, 148, § 1.

SECT. 2. Every person, who shall sell, either for himself or for any other person, or shall offer for sale, or shall have in his possession, with intent to sell or to offer for sale, or to exchange or negotiate, or shall in any wise aid or assist in the selling, negotiating or disposing of a ticket in any such lottery, or a share of a ticket, or any such writing, certificate, bill, token or other device, as is mentioned in the preceding section, shall be punished for every such offence, by a fine not exceeding two thousand dollars.

Selling lottery tickets, or aiding therein. 1833, 148, § 1.

SECT. 3. If any person shall, after being convicted of any offence, mentioned in either of the two preceding sections, commit the like offence, or any other of the offences therein mentioned, he shall, in addition to the fine before provided therefor, be further punished by imprisonment in the house of correction, for a term not more than one year.

Case of a second conviction. 1833, 148, § 1.

Advertising lottery tickets for sale.
5 Pick. 41, 42.
Exhibiting a representation of a lottery, &c.
1833, 148, § 2.

SECT. 4. Every person, who shall advertise any lottery ticket, or any share in any such ticket, for sale, either by himself or by another person, or who shall set up or exhibit, or shall devise or make, for the purpose of being set up or exhibited, any sign, symbol, or any emblematic or other representation of a lottery, or of the drawing thereof, in any way indicating where a lottery ticket or a share thereof, or any such writing, certificate, bill, token, or other device before mentioned, may be purchased or obtained, or shall in any way invite or entice, or attempt to invite or entice, any other person to purchase or receive the same, shall be punished for every such offence, act or attempt, by a fine not exceeding one hundred dollars.

Making or selling tickets in a fictitious lottery.
1833, 148, § 3.

SECT. 5. Every person, who shall make or sell, or shall have in his possession, with intent to sell, or to exchange or negotiate, or who shall, by printing, writing or otherwise, assist in making or selling, or in attempting to sell, exchange or negotiate, any false or fictitious lottery ticket, or any share thereof, or any writing, certificate, bill, token or other device before mentioned, or any ticket or share thereof, in any fictitious or pretended lottery, knowing the same to be false or fictitious, or who shall receive any money or other thing of value, for any such ticket, or share of a ticket, or for any such writing, certificate, bill, token, or other device, purporting that the owner, bearer or holder thereof shall be entitled to receive any prize, or any share of a prize, or any other thing of value, that may be drawn in any lottery, knowing the same to be false or fictitious, shall, for every such offence, be punished by imprisonment in the state prison, not more than three years.

Defendant to prove genuineness, &c. of the tickets sold by him.
1833, 148, § 3.

SECT. 6. Upon the trial of an indictment for either of the offences mentioned in the preceding section, any ticket or share of a ticket, or any other writing or thing before mentioned, which the defendant shall have sold or offered for sale, or for which he shall have received any valuable consideration, shall be deemed to be false, spurious or fictitious, unless such defendant shall prove the same to be true and genuine, and to have been duly issued by the authority of some legislature within the United States, and that such lottery was existing and undrawn, and that such ticket or share thereof, or other writing or thing before mentioned, was issued by lawful authority, and binding upon the persons who issued the same.

Reward for prosecutor.
1833, 148, § 3.

SECT. 7. There shall be paid, for every person convicted and sentenced under the preceding section, to the person who shall inform and prosecute, the sum of fifty dollars, and for every person, who shall be convicted and punished by a fine, under any of the provisions of this chapter, there shall be paid, at the discretion of the court, a sum not exceeding one half of the fine actually paid by such offender, which rewards shall be paid out of the public treasury, in the manner provided in the one hundred and twenty seventh chapter.

All prizes forfeited to the Commonwealth
1833, 148, § 5.

SECT. 8. All sums of money, and every other valuable thing, drawn as a prize, or as a share of a prize, in any lottery, by any person, being an inhabitant or resident within this state, and all sums of money or other things of value, received by any such person, by reason of his being the owner or holder of any ticket, or share of a ticket, in any lottery or pretended lottery, contrary to the provisions of this chapter, shall be forfeited to the use of the Commonwealth, and

may be recovered by an information to be filed, or by an action for money had and received, to be brought by the attorney general or any district attorney, or other prosecuting officer, in the name and on behalf of the Commonwealth.

CHAPTER 133.

GENERAL PROVISIONS CONCERNING CRIMES AND PUNISHMENTS.

SECTION
1. Persons aiding in a felony, or accessory thereto before the fact, to be punished as principals.
2, 3. Accessories before the fact, when, how and where to be tried.
4. Who shall be deemed accessories after the fact.
5. Such accessories, how, when and where to be tried.
6. Defence, in cases of libel.
7. Offence on the boundary line of two counties.
8. Death ensuing from injury in another county;
9. Or on the high seas.
10. Embezzlement, indictment and evidence thereof.
11. Ownership of property embezzled, how stated, and what evidence required.
12. Attempts to commit crimes.
13. Case of convicts, who have before been twice sentenced to a state prison.
14. Fines, &c. to whose use they shall accrue, and how recovered.
15. Benefit of clergy and petit treason abolished.

SECTION 1. Every person, who shall be aiding in the commission of any offence, which shall be a felony either at common law, or by any statute now made, or which shall hereafter be made, or who shall be accessory thereto before the fact, by counselling, hiring or otherwise procuring such felony to be committed, shall be punished in the same manner, which is or which shall be prescribed for the punishment of the principal felon.

Persons aiding in a felony, or accessory thereto, before the fact, to be punished as principals. 1784, 65, § 1.

SECT. 2. Every person, who shall counsel, hire, or otherwise procure any offence to be committed, which shall be a felony, either at common law, or by any statute now made, or which shall hereafter be made, may be indicted and convicted as an accessory before the fact, either with the principal felon, or after the conviction of the principal felon, or he may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been convicted, or shall or shall not be amenable to justice, and in the last mentioned case, may be punished in the same manner, as if convicted of being an accessory before the fact.

Accessories before the fact, when, and how to be tried. 16 Mass. 423. 1830, 49, § 1.

SECT. 3. Any person, charged with the offence mentioned in the preceding section, may be indicted, tried and punished in the same court and the same county, where the principal felon might be indicted and tried, although the offence of counselling, hiring, or procuring the commission of such felony, may have been committed on the high seas, or on land either within or without the limits of this state.

Where to be tried. 1830, 49, § 2.

Who shall be deemed accessories after the fact.
1784, 65, § 2.
1804, 143, § 10.
1804, 123, § 2.
1805, 101, § 3.

SECT. 4. Every person, not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, to the offender, who, after the commission of any felony, shall harbor, conceal, maintain, or assist any principal felon, or accessory before the fact, or shall give such offender any other aid, knowing that he had committed a felony, or had been accessory thereto before the fact, with intent that he shall avoid or escape from detection, arrest, trial, or punishment, shall be deemed an accessory after the fact, and shall be punished by imprisonment in the state prison, not more than seven years, or in the county jail, not more than three years, or by fine not exceeding one thousand dollars.

Such accessories, how, when and where to be tried.
1830, 49, § 3.

SECT. 5. Every person, who shall become an accessory after the fact, to any felony either at common law, or by any statute now made, or which shall hereafter be made, may be indicted, convicted and punished, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, by any court having jurisdiction to try the principal felon, and either in the county, where such person shall have become an accessory, or in the county where such principal felony shall have been committed.

Defence, in cases of libel.
4 Mass. 163.
3 Pick. 304.
1826, 107, § 1.

SECT. 6. In every prosecution, for writing or for publishing a libel, the defendant may give in evidence, in his defence upon the trial, the truth of the matter contained in the publication, charged as libellous; provided, that such evidence shall not be deemed a sufficient justification, unless it shall be further made to appear on the trial, that the matter, charged to be libellous, was published with good motives, and for justifiable ends.

Offence, on the boundary line of two counties.
1794, 31, §§ 1, 2.

SECT. 7. Any offence, committed on the boundary of two counties, or within one hundred rods of the dividing line between them, may be alleged, in the indictment, to have been committed, and may be prosecuted and punished, in either county.

Death ensuing from injury in another county.
1795, 45, § 1.

SECT. 8. If any mortal wound shall be given, or other violence or injury shall be inflicted, or any poison shall be administered, in one county, by means whereof death shall ensue in another county, the offence may be prosecuted and punished in either county.

Or on the high seas.
1795, 45, § 2.

SECT. 9. If any such mortal wound shall be given, or other violence or injury shall be inflicted, or poison administered, on the high seas, or on land either within or without the limits of this state, by means whereof death shall ensue in any county thereof, such offence may be prosecuted and punished in the county where such death may happen.

Embezzlement, indictment and evidence thereof.
1834, 186, § 2.

SECT. 10. In any prosecution for the offence of embezzling the money, bank notes, checks, drafts, bills of exchange, or other securities for money, of any person, by a clerk, agent, or servant of such person, it shall be sufficient to allege generally, in the indictment, an embezzlement of money to a certain amount, without specifying any particulars of such embezzlement, and on the trial, evidence may be given of any such embezzlement, committed within six months next after the time stated in the indictment; and it shall be sufficient to maintain the charge in the indictment, and shall not be deemed a variance, if it shall be proved, that any money, bank note, check, draft, bill of exchange, or other security for money, of such person, of

whatever amount, was fraudulently embezzled by such clerk, agent or servant, within the said period of six months.

SECT. 11. In the prosecution of any offence, committed upon, or in relation to, or in any way affecting, any real estate, or any offence, committed in stealing, embezzling, destroying, injuring, or fraudulently receiving or concealing any money, goods, or other personal estate, it shall be sufficient, and shall not be deemed a variance, if it be proved on the trial, that at the time when the offence was committed, either the actual or constructive possession, or the general or special property, in the whole, or in any part, of such real or personal estate, was in the person or community, alleged in the indictment or other accusation, to be the owner thereof.

Statement and proof of ownership of property, embezzled, &c. 1 Mass. 476. 14 Mass. 217.

SECT. 12. Every person, who shall attempt to commit an offence prohibited by law, and in such attempt shall do any act towards the commission of such offence, but shall fail in the perpetration, or shall be intercepted or prevented in the execution of the same, where no express provision is made by law for the punishment of such attempt, shall be punished as follows:

Attempts to commit crimes. 1832, 62.

First, if the offence, attempted to be committed, is such as is punishable with death, the person, convicted of such attempt, shall be punished by imprisonment in the state prison, not more than ten years:

Secondly, if the offence, so attempted to be committed, is punishable by imprisonment in the state prison for life, or for five years or more, the person, convicted of such attempt, shall be punished by imprisonment in the state prison, not more than three years, or in the county jail, not more than one year:

Thirdly, if the offence, so attempted to be committed, is punishable by imprisonment in the state prison for a term less than five years, or by imprisonment in the county jail, or by fine, the offender, convicted of such attempt, shall be punished by imprisonment in the county jail, not more than one year, or by fine not exceeding three hundred dollars; but in no case shall the punishment, by imprisonment, exceed one half of the greatest punishment which might have been inflicted, if the offence so attempted had been committed.

SECT. 13. Whenever any person shall be convicted of an offence, the punishment whereof shall be imprisonment in the state prison for any term of years, and it shall be alleged in the indictment, on which such conviction is had, and admitted or proved on the trial, that such convict has, at two several times before, been sentenced to imprisonment in said prison, or in some other state prison within the United States, and at each time for more than one year, he shall be sentenced to be punished by imprisonment in the state prison for life, or for a term not less than seven years.

Case of convicts who have been twice sentenced to a state prison. 1827, 118, § 19. 1832, 73, § 1.

SECT. 14. All fines and forfeitures, imposed as a punishment for any offence, or for the violation or neglect of any duty imposed by a statute, where no other appropriation is expressly made, shall be deemed to be appropriated, and shall accrue to the use of the Commonwealth; and the same, together with all fines and forfeitures, expressly appropriated to the use of the Commonwealth, or of any county or town, may be prosecuted for and recovered, by indictment in the court of common pleas and the municipal court, respectively;

Fines, &c., to whose use they shall accrue, and how recovered.

or when the amount or value thereof does not exceed twenty dollars, the same may be prosecuted for by complaint before a police court or a justice of the peace, who shall have jurisdiction thereof, concurrently with the court of common pleas and the municipal court.

Benefit of clergy and petit treason abolished. 1784, 56 & 69.

SECT. 15. The plea of benefit of clergy, and the distinction between murder and petit treason, are abolished, and the last named offence shall be prosecuted and punished as murder.

TITLE II.

Of prcoceedings in criminal cases.

CHAPTER 134. Of proceedings to prevent the commission of crimes.
CHAPTER 135. Of the arrest and examination of offenders, commitment for trial, and taking bail.
CHAPTER 136. Of indictments and proceedings before trial.
CHAPTER 137. Of trials in criminal cases.
CHAPTER 138. Of appeals, new trials, and exceptions, in criminal cases.
CHAPTER 139. Of judgments in criminal cases, and the execution thereof.
CHAPTER 140. Of coroners inquests.
CHAPTER 141. Of the taxation, allowance and payment of costs in criminal prosecutions.
CHAPTER 142. General provisions concerning proceedings in criminal cases.

CHAPTER 134.

OF PROCEEDINGS TO PREVENT THE COMMISSION OF CRIMES.

SECTION
1. Officers, authorized to keep the peace.
2. Complaint, how made.
3. Arrest.
4. Trial—Recognizance to keep the peace.
5. Party, when to be discharged.
6. Refusing to recognize, to be committed.
7. Complainant, when to pay costs.
8. Payment of costs in other cases.
9. Appeal allowed.
10. On appeal, witnesses to recognize.
11. Proceedings upon an appeal.
12. Recognizance, when to remain in force.
13. Persons committed for not recognizing, how discharged.
14. Recognizances to be transmitted to the court.
15. " when to be required, on view of the court or magistrate.
16. Persons who go armed, may be required to find sureties for the peace, &c.
17. Court may remit part of penalty forfeited.
18. Surety may surrender his principal, who may recognize anew.

Officers' authorized to keep the peace.

SECTION 1. The justices of the supreme judicial court, the justices of the court of common pleas, justices of police courts, in vaca-

tion as well as in open court, and also all justices of the peace, shall have power to cause all laws, made for the preservation of the public peace, to be kept, and in the execution of that power, may require persons to give security to keep the peace, or for their good behavior, or both, in the manner provided in this chapter.

Complaint, how made.

SECT. 2. Whenever complaint shall be made to any such magistrate, that any person has threatened to commit an offence against the person or property of another, the magistrate shall examine the complainant, and any witnesses who may be produced, on oath, and reduce such complaint to writing, and cause the same to be subscribed by the complainant.

Arrest. 1794, 26, § 2.

SECT. 3. If, upon examination, it shall appear that there is just cause to fear that any such offence may be committed, the magistrate shall issue a warrant under his hand, reciting the substance of the complaint, and requiring the officer, to whom it may be directed, forthwith to apprehend the person complained of, and bring him before such magistrate, or some other magistrate or court having jurisdiction of the cause.

Trial. Recognizance to keep the peace. 4 Mass. 497. 8 Mass. 78. 2 B. & A. 278. 1833, 63, §§ 1, & 2.

SECT. 4. When the party complained of is brought before the magistrate, he shall be heard in his defence, and he may be required to enter into a recognizance, with sufficient sureties, in such sum as the magistrate shall direct, to keep the peace towards all the people of this Commonwealth, and especially towards the person requiring such security, for such term as the magistrate may order, not exceeding six months, but shall not be bound over to the next court, unless he is also charged with some other offence, for which he ought to be held to answer at such court.

Party, when to be discharged.

SECT. 5. Upon complying with the order of the magistrate, the party complained of shall be discharged.

Refusing to recognize, to be committed. 1833, 63, § 1.

SECT. 6. If the person, so ordered to recognize, shall refuse or neglect to comply with such order, the magistrate shall commit him to the county jail, house of correction, or house of industry, during the period for which he was required to give security, or until he shall so recognize; stating, in the warrant, the cause of commitment, with the sum and the time for which security was required.

Complainant when to pay costs.

SECT. 7. If, upon examination, it shall not appear that there is just cause to fear that any such offence will be committed by the party complained of, he shall be forthwith discharged; and if the magistrate shall deem the complaint unfounded, frivolous or malicious, he may order the complainant to pay the costs of prosecution, who shall thereupon be answerable to the magistrate and the officer for their fees, as for his own debt.

Payment of costs in other cases. 1824, 128, § 2. 1834, 151, § 4.

SECT. 8. When no order respecting the costs is made by the magistrate, they shall be allowed and paid, in the same manner as costs before justices in criminal prosecutions; but in all cases, where a person is required to give security for the peace, or for his good behavior, the court or magistrate may further order that the costs of prosecution, or any part thereof, shall be paid by such person, who shall stand committed, until such costs are paid, or he is otherwise legally discharged.

Appeal allowed. 1833, 63, § 1.

SECT. 9. Any person aggrieved by the order of any justice of the peace, or of a police court, requiring him to recognize as afore-

said, may, on giving the security required, appeal to the court of common pleas, next to be held in the same county, or, in the city of Boston, to the municipal court.

On appeal, witnesses to recognize.

SECT. 10. The magistrate, from whose order an appeal is so taken, shall require such witnesses, as he may think necessary to support the complaint, to recognize for their appearance at the court to which the appeal is made.

Proceedings on appeal.

SECT. 11. The court, before which such appeal is prosecuted, may affirm the order of the justice, or discharge the appellant, or may require the appellant to enter into a new recognizance, with sufficient sureties, in such sum, and for such time, as the court shall think proper, and may also make such order, in relation to the costs of prosecution, as may be deemed just and reasonable.

Recognizance, when to remain in force.

SECT. 12. If any party appealing shall fail to prosecute his appeal, his recognizance shall remain in full force and effect, as to any breach of the condition, without an affirmation of the judgment or order of the magistrate, and shall also stand as a security for any costs, which shall be ordered, by the court appealed to, to be paid by the appellant.

Persons committed for not recognizing, how discharged.

SECT. 13. Any person, committed for not finding sureties, or refusing to recognize, as required by the court or magistrate, may be discharged by any judge or justice of the peace, on giving such security as was required.

Recognizances to be transmitted to the court.

SECT. 14. Every recognizance, taken pursuant to the foregoing provisions, shall be transmitted by the magistrate to the court of common pleas for the county, or, in the city of Boston, to the municipal court, on or before the first day of the next term, and shall be there filed of record by the clerk.

— when to be required on view of the court or magistrate.

SECT. 15. Every person who shall, in the presence of any magistrate mentioned in the first section of this chapter, or before any court of record, make an affray, or threaten to kill or beat another, or to commit any violence or outrage against his person or property, and every person, who in the presence of such court or magistrate, shall contend with hot and angry words, to the disturbance of the peace, may be ordered, without process or any other proof, to recognize for keeping the peace, or being of good behavior, for a term not exceeding three months, and in case of refusal, may be committed, as before directed.

Persons who go armed may be required to find sureties for the peace, &c. 1794, 26, § 2.

SECT. 16. If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assualt or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Court may remit part of penalty. 7 Mass. 397. 1810, 80.

SECT. 17. Whenever, upon a suit brought on any such recognizance, the penalty thereof shall be adjudged forfeited, the court may remit such portion of the penalty, on the petition of any defendant, as the circumstances of the case shall render just and reasonable.

Surety may surrender his

SECT. 18. Any surety in a recognizance to keep the peace, or for good behavior, or both, shall have the same authority and right

to take and surrender his principal, as if he had been bail for him in a civil cause, and upon such surrender shall be discharged, and exempt from all liability, for any act of the principal subsequent to such surrender, which would be a breach of the condition of the recognizance; and the person, so surrendered, may recognize anew, with sufficient sureties, before any justice of the peace, for the residue of the term, and thereupon shall be discharged.

principal, who may recognize anew.

CHAPTER 135.

OF THE ARREST AND EXAMINATION OF OFFENDERS, COMMITMENT FOR TRIAL, AND TAKING BAIL.

SECTION
1. Officers, empowered to act under this chapter.
2. Complaints, warrants, and summonses for witnesses.
3. In what counties warrants may be executed.
4. Prisoners, when to be brought before magistrate, on arrest, &c.
5. Magistrate, if he take bail, to return the recognizance to court, &c.
6. Officer, how to proceed if prisoner is not bailed
7, 8. Prisoner when to be carried to the county whence the warrant issued.
9. Magistrate may adjourn the examination, &c.
10. In case of default, magistrate to certify recognizance to C. C. Pleas.
11. Proceedings, when the party fails to recognize.
12, 13, 14. Manner of conducting the examination.
15. Testimony may be reduced to writing.
16. Prisoner, when to be discharged.
17. " when to be bailed, or committed.
18. Witnesses to recognize.
19. Witnesses, when to recognize with sureties.
20. Recognizances of married women and minors.
21. Witnesses, refusing to recognize, to be committed.
22. Prisoners, by whom let to bail.
23. Examining magistrate may have associates.
24. Examinations and recognizances to be returned.
25. Commitments, when to be superseded, and recognizances discharged.
26. Orders therefor, how to be filed, and effect thereof.
27, 28, 29, 30. Proceedings on forfeited recognizances.

SECTION 1. For the apprehension of persons charged with offences, the justices of the supreme judicial court, justices of the court of common pleas, justices of any police court, in vacation as well as in term time, and all justices of the peace, are authorized to issue process, to carry into effect the provisions of this chapter.

Officers, empowered to act under this chapter.

SECT. 2. Upon complaint, made to any such magistrate, that a criminal offence has been committed, he shall examine on oath the complainant, and any witnesses produced by him, and shall reduce the complaint to writing, and shall cause the same to be subscribed by the complainant; and if it shall appear that any such offence has been committed, the court or justice shall issue a warrant, reciting the substance of the accusation, and requiring the officer, to whom it shall be directed, forthwith to take the person accused, and to bring him before the said court or justice, or before some other court or magis-

Complaints, warrants, and summonses for witnesses.

trate of the county, to be dealt with according to law, and in the same warrant, may require the officer to summon such witnesses, as shall be therein named, to appear and give evidence on the examination.

In what counties, warrants may be executed. 1820, 52.

SECT. 3. If any person, against whom a warrant shall be issued for an alleged offence, committed within any county, shall, either before or after the issuing of such warrant, escape from, or be out of the county, the sheriff or other officer, to whom such warrant may be directed, may pursue and apprehend the party charged, in any county of this state, and for that purpose may command aid, and may exercise the same authority, as in his own county.

Prisoners, when to be brought before magistrate on arrest, &c

SECT. 4. In all cases where the offence, charged in the warrant, is not punishable by death, or imprisonment in the state prison, if the person arrested shall request that he may be brought before a magistrate of the county, in which the arrest was made, for the purpose of entering into a recognizance, without a trial or examination, the officer, who made the arrest, shall carry him before a magistrate of that county, who may take from the person arrested a recognizance, with sufficient sureties, for his appearance at the court having cognizance of the offence, and next to be held in the county where it shall be alleged to have been committed, and the party arrested shall thereupon be liberated.

Magistrate, if he take bail, to return the recognizance to court, &c.

SECT. 5. The magistrate, who shall so let the person arrested to bail, shall certify that fact upon the warrant, and shall deliver the same, with the recognizance by him taken, to the person who made the arrest, who shall cause the same to be delivered, without unnecessary delay, to the clerk of the court before which the accused was recognized to appear; and on application of the complainant, the magistrate who issued the warrant, or the district attorney, shall cause such witnesses, as he may think necessary, to be summoned to the same court.

Officer, how to proceed, if prisoner is not bailed.

SECT. 6. If the magistrate, in the county where the arrest was made, shall refuse to let to bail the person so arrested and brought before him, or if no sufficient bail shall be offered, the person having him in charge shall take him before the magistrate who issued the warrant, or in his absence, before some other magistrate of the county in which the warrant was issued, to be proceeded with as hereafter directed.

Prisoner, when to be carried to the county whence the warrant issued.

SECT. 7. When the offence, charged in any warrant, is punishable with death, or by imprisonment in the state prison, the officer, making the arrest in some other county, shall convey the prisoner to the county where the warrant was issued, and he shall be proceeded with in the manner directed in the following section.

Same subject.

SECT. 8. Every person, arrested by warrant for any offence, where no other provision is made for his examination thereon, shall be brought before the magistrate who issued the warrant, or if he be absent or unable to attend, before some other magistrate of the same county; and the warrant, with a proper return thereon, signed by the person who made the arrest, shall be delivered to the magistrate.

Magistrate may adjourn examination, &c. 1821, 98, § 1.

SECT. 9. Any magistrate may adjourn an examination or trial, pending before himself, from time to time, as occasion shall require, not exceeding ten days at one time, without the consent of the de-

fendant or person charged, and to the same or a different place in the county, as he shall think necessary; and in such case, if the party is charged with a capital offence, he shall be committed in the mean time, otherwise, he may be recognized in a sum, and with sureties, to the satisfaction of the magistrate, for his appearance for such further examination, and for want of such recognizance, he shall be committed to prison.

SECT. 10. If the person so recognized shall not appear before the magistrate, at the time appointed for his further examination, according to the condition of such recognizance, the magistrate shall record the default, and shall certify the recognizance, with the record of such default, to the court of common pleas, and like proceedings shall be had thereon, as upon the breach of the condition of a recognizance for appearance before that court. **In case of default, magistrate to certify recognizance to C. C. Pleas. 1821, 98, § 2.**

SECT. 11. When such person shall fail to recognize, he may be committed to prison, by an order under the hand of the magistrate, stating concisely, that he is committed for further examination, on a future day, to be named in the order, and on the day appointed, he may be brought before the magistrate, by his verbal order to the same officer by whom he was committed, or by an order in writing to a different person. **Proceedings, when the party fails to recognize.**

SECT. 12. The magistrate, before whom any person is brought, upon a charge of having committed an offence, shall, as soon as may be, examine the complainant, and the witnesses to support the prosecution, on oath, in presence of the party charged, in relation to any matters, connected with such charge, which may be deemed pertinent. **Manner of conducting the examination.**

SECT. 13. After the testimony to support the prosecution, the witnesses for the prisoner, if he have any, shall be sworn and examined, and he may be assisted by counsel, in such examination, and also in the cross-examination of the witnesses in support of the prosecution. **Same subject.**

SECT. 14. The magistrate, while examining any witness, may, at his discretion, exclude from the place of examination all the other witnesses; he may also, if requested, or if he see cause, direct the witnesses, for or against the prisoner, to be kept separate, so that they cannot converse with each other, until they shall have been examined. **Same subject.**

SECT. 15. The testimony of the witnesses examined shall be reduced to writing by the magistrate, or under his direction, when he shall think it necessary, and shall be signed by the witnesses, if required by the magistrate. **Testimony may be reduced to writing.**

SECT. 16. If it shall appear to the magistrate, upon the whole examination, that no offence has been committed, or that there is not probable cause for charging the prisoner with the offence, he shall be discharged. **Prisoner, when to be discharged.**

SECT. 17. If it shall appear that an offence has been committed, and that there is probable cause to believe the prisoner guilty, and if the offence be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken, and the prisoner discharged; but if no sufficient bail be offered, or the offence be not bailable by the magistrate, the prisoner shall be commited to prison for trial. **When to be bailed or committed.**

SECT. 18. When the prisoner is admitted to bail, or committed by the magistrate, he shall also bind, by recognizance, such witnesses **Witnesses to recognize.**

against the prisoner, as he shall deem material, to appear and testify at the next court having cognizance of the offence, and in which the prisoner shall be held to answer.

When to recognize with sureties.

SECT. 19. If the magistrate shall be satisfied that there is good cause to believe that any such witness will not perform the condition of his recognizance, unless other security be given, such magistrate may order the witness to enter into a recognizance, with such sureties as may be deemed necessary, for his appearance at court.

Recognizances of married women and minors.

SECT. 20. When any married woman or minor is a material witness, any other person may be allowed to recognize for the appearance of such witness, or the magistrate may, in his discretion, take the recognizance of such married woman or minor, in a sum not exceeding fifty dollars, which shall be valid and binding in law, notwithstanding the disability of coverture or minority.

Witnesses refusing to recognize, to be committed.

SECT. 21. All witnesses, required to recognize, either with or without sureties, shall, if they refuse, be committed to prison by the magistrate, there to remain until they comply with such order, or be otherwise discharged according to law.

Prisoners, by whom let to bail.
8 Greenl. 179.

SECT. 22. Any justice of the supreme judicial court or of the court of common pleas, or the judge of the municipal court of the city of Boston, or any justice of a police court, or any two justices of the peace and of the quorum in any county, except the county of Suffolk, on application of any prisoner committed for a bailable offence, may inquire into the case, and admit such prisoner to bail; and any person, committed for not finding sufficient sureties to recognize for him, may be admitted to bail, by either of the said judges or by a police court or justice of the peace; provided, that no person shall be admitted to bail, by a police court or justice of the peace, in a less sum than was required by the order of commitment.

Examining magistrate may have associates.

SECT. 23. Any magistrate, to whom complaint is made, or before whom any prisoner is brought, may associate with himself one or more of the magistrates of the same county, and they may together execute the powers and duties before mentioned; but no fees shall be taxed for such associates.

Examinations and recognizances to be returned.

SECT. 24. All examinations and recognizances, taken by any magistrate, pursuant to the provisions of this chapter, shall be certified and returned by him, to the district attorney, or the clerk of the court before which the party charged is bound to appear, on or before the first day of the sitting thereof; and if such magistrate shall refuse or neglect to return the same, he may be compelled forthwith, by rule of court, and in case of disobedience, may be proceeded against by attachment, as for a contempt.

Commitments, when to be superseded, and recognizances discharged.

SECT. 25. When any person shall be committed to prison, or shall be under recognizance, to answer to any charge of assault and battery, or other misdemeanor, for which the party injured may have a remedy by civil action, except where the offence was committed by or upon any sheriff, or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear before the magistrate, who made the commitment or took the recognizance, and acknowledge in writing that he has received satisfaction for the injury, the magistrate may, in his discretion, on payment of all the costs which have accrued, discharge the recognizance, or su-

persede the commitment, by an order under his hand, and may also discharge all recognizances, and supersede the commitment of all witnesses in the case.

Orders therefor, how to be filed, and effect thereof.

SECT. 26. Every such order of the magistrate, discharging the recognizance of the party or witnesses, shall be filed in the office of the clerk, before the sitting of the court at which they are bound to appear, and every order, superseding the commitment of the party charged, or of any witness, shall be delivered to the keeper of the jail in which he is confined, who shall forthwith discharge him; and every such order, if so filed and delivered, and not otherwise, shall forever bar all remedy by civil action, for such injury.

Proceedings on forfeited recognizances. 1813, 182, § 2.

SECT. 27. When any person, under recognizance in any criminal prosecution, either to appear and answer, or to prosecute an appeal, or to testify in any court, shall fail to perform the condition of such recognizance, his default shall be recorded, and process shall be issued against the persons bound by the recognizance, or such of them as the prosecuting officer shall direct; but in the suit on such recognizance, no costs shall be taxed for travel.

Same subject.

SECT. 28. Any surety in such recognizance may, by leave of the court, after default, and either before or after the process has been issued against him, pay to the county treasurer, or to the clerk of the court, the amount for which he was bound as surety, with such costs as the court shall direct, and be thereupon forever discharged.

Same subject. 14 Mass. 65. 1810, 80.

SECT. 29. When any action is brought, on behalf of the Commonwealth, against a principal or surety in any recognizance, entered into either by a party or a witness, in any criminal prosecution, and the penalty of such recognizance shall be adjudged forfeited, the court may on application of the party defendant, remit any part or the whole of such penalty, and may render judgment thereon for the Commonwealth, according to the circumstances of the case and the situation of the party, and upon such terms and conditions, as to such court shall seem just and reasonable.

Same subject. 2 Greenl. 62. 9 Mass. 520. 12 Mass. 1. 16 Mass. 447.

SECT. 30. No such action brought on a recognizance, as mentioned in the preceding section, shall be barred or defeated, nor shall judgment thereon be arrested, by reason of any neglect or omission, to note or record the default of any principal or surety, at the term when such default shall happen, nor by reason of any defect in the form of the recognizance, if it sufficiently appear, from the tenor thereof, at what court the party or witness was bound to appear, and that the court or magistrate, before whom it was taken, was authorized by law to require and take such recognizance.

CHAPTER 136.

OF INDICTMENTS AND PROCEEDINGS BEFORE TRIAL.

SECTION
1, 2, 3. Return of grand juries.
4. Deficiency, how supplied.
5. Grand jurors, how empannelled and sworn.
6. " " when allowed to affirm.
7. Election of foreman.
8. His duty.
9. Who may swear witnesses, &c.
10. Grand jury may appoint a clerk—his duty.
11. " " may be re-summoned at the same term.
12, 13. Grand jurors and officers, when bound to secrecy.
14. Prisoner charged capitally, and not indicted, when to be discharged.
15. Proceedings, in case of his insanity.
16. Limitation of criminal prosecutions.
17. C. C. Pleas, when to order the arrest of persons indicted capitally.
18. Copy of indictment to be furnished, &c.
19, 20. Capital indictments in Duke's county.
21. One justice of S. J. Court may arraign and sentence to death, in case, &c.
22. Prisoner to have counsel, &c.
23. " " " copy of indictment, list of jurors, &c.
24. What other prisoners entitled to such copy, &c.
25. Prosecuting officers may issue subpœnas.
26. Witnesses for the state, not entitled to fees in advance.
27. What criminal proceedings may be stayed, upon reparation to the party injured.
28. Prisoner need not be asked, how he will be tried.
29. Case of prisoner refusing to plead.
30. Indicted persons in prison, when to be tried.
31. Plea in abatement, when to be verified.
32. Commission to examine witnesses, how granted.
33. Such commissions, how executed; and the depositions, how used.

Return of grand juries. 1807, 140, §§ 3 & 4. 1832, 130, § 6.

SECTION 1. The clerks of the court of common pleas, for every county, except the county of Suffolk, seven days at least, and not more than thirty days, before the commencement of the first term of the court in each year, in their respective counties, shall issue writs of venire facias for twenty three grand jurors to be returned to that court, who shall be held to serve at each term thereof, throughout the year, and until another grand jury shall be empannelled in their stead, except that in the counties, where terms of the court are established for the transaction of criminal business, the grand jurors shall be required to attend only at such terms.

Same subject. 1800, 44, § 2.

SECT. 2. The clerk of the supreme judicial court for the county of Suffolk, seven days at least, and not more than fourteen days, before the commencement of each term of the court, shall issue a writ of venire facias for twenty three grand jurors to be returned to serve at that court; and the grand jurors so returned shall also constitute the grand jury for the municipal court of the city of Boston, and shall be held to serve, at each term thereof, until another grand jury shall be empannelled in their stead.

Same subject.

SECT. 3. All grand jurors shall be drawn, summoned, and returned in the same manner as jurors for trials; and whenever grand jurors shall be drawn at the same time with jurors for trials, the persons, whose names are first drawn, to the number of grand jurors re-

quired, shall be returned as grand jurors, and those afterwards drawn shall be the jurors for trials.

Deficiency, how supplied. 1807, 140, § 7.

SECT. 4. In case of a deficiency of grand jurors in any court, writs of venire facias may be issued to the constables of such towns as the court may direct, or, in the county of Suffolk, to the constables of the city of Boston, to return forthwith such further number of grand jurors, as may be required.

Grand jurors, how empannelled and sworn. 1807, 140, §§ 10, & 14.

SECT. 5. The clerk of the court shall prepare an alphabetical list of the names of all the persons, returned as grand jurors, and when the jury is to be empannelled, the two persons, first named on the list, shall be first called, and the following oath shall be administered to them: You, as grand jurors of this inquest for the body of this county of ——— do solemnly swear, that you will diligently inquire, and true persentment make, of all such matters and things as shall be given you in charge; the Commonwealth's counsel, your fellows', and your own, you shall keep secret; you shall present no man for envy, hatred, or malice, neither shall you leave any man unpresented for love, fear, favor, affection, or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you God. The other jurors shall then be called, in such divisions as the court may deem proper, and the following oath shall be administered to them: The same oath which your fellows have taken on their part, you, and each of you, on your behalf, shall well and truly observe and keep; so help you God.

When allowed to affirm. 1807, 140, § 14.

SECT. 6. When any person is returned as a grand juror, who is conscientiously scrupulous of taking the oath above prescribed, such person shall be allowed to make affirmation, substituting the word affirm instead of the word swear, and also the words, this you do under the pains and penalties of perjury, instead of the words, so help you God.

Election of foreman. 1807, 140, § 10.

SECT. 7. After the grand jurors have been empannelled, and have received their charge from the court, they shall retire with the officer appointed to attend them, and before they proceed to discharge the duties of their office, they shall elect, by ballot, one of their number to be their foreman, and give notice thereof to the court, and the clerk shall record the same.

His duty. 1832, 150, § 6.

SECT. 8. The foreman, elected by the grand jury at the first term, shall be foreman during the whole period they are required to serve, but, in his absence, another foreman shall be elected in the same manner, who shall perform the duties of foreman during such absence, and in case of the death of the foreman, for the residue of their term of service.

Who may swear witnesses, &c. 1807, 140, § 10.

SECT. 9. The foreman of every grand jury, and the attorney general, district attorney, or other prosecuting officer, who shall be before them, shall have authority to administer all oaths and affirmations, in the manner prescribed by law, to witnesses who shall appear before such jury, for the purpose of testifying in any matter, of which they may have cognizance; and the foreman shall return to the court a list, under his hand, of all witnesses who shall have been sworn before the grand jury during the term, and the same shall be filed of record, by the clerk.

Grand jury may appoint a clerk; his duty.

SECT. 10. The grand jury may appoint one of their number to be their clerk, to preserve minutes of the proceedings before them, which minutes shall be delivered to the attorney general, or district attorney, when the grand jury shall so direct.

— may be resummoned at the same term.

SECT. 11. When the grand jury, attending any court, shall have been dismissed before the court is adjourned without day, they may be summoned to attend again, in the same term, at such time as the court shall direct, for the despatch of any business that may come before them.

Grand jurors and officers, when bound to secrecy.

SECT. 12. No grand juror or officer of the court shall disclose the fact, that an indictment for a felony has been found against any person, not in custody or under recognizance, otherwise than by issuing or executing process on such indictment, until such person has been arrested.

Same subject.

SECT. 13. No grand juror shall be allowed to state, or to testify in any court, in what manner he, or any other member of the jury, voted on any question before them, or what opinion was expressed by any juror in relation to such question; and in charging the grand jury, the court shall remind them of the provisions of this and the preceding sections.

Prisoner, charged capitally and not indicted, when to be discharged. 1784, 72, § 13.

SECT. 14. Any person, held in prison on any charge [*of*] having committed a crime, shall be discharged, if he be not indicted before the end of the second term of the court, at which he is held to answer, unless it shall appear to the satisfaction of the court, that the witnesses, on the part of the government, have been enticed or kept away, or are detained and prevented from attending the court, by sickness or some inevitable accident, and except in the case provided for in the following section.

Proceedings, in case of his insanity. 1816, 28, §§ 1 & 2. 1834, 150, § 3.

SECT. 15. When any person, held in prison on a charge of having committed an indictable offence, shall not be indicted by the grand jury, by reason of insanity, the grand jury shall certify that fact to the court; and thereupon, if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, the court may order him to be committed to the state lunatic hospital, otherwise he shall be discharged.

Limitation of criminal prosecutions.

SECT. 16. An indictment for the crime of murder may be found at any period, after the death of the person alleged to have been murdered; all other indictments shall be found and filed within six years after the commission of the offence; but any period, during which the party charged was not usually and publicly resident within this state, shall not be reckoned as part of the six years.

C. C. Pleas, when to order the arrest of persons indicted capitally. 1832, 130, § 6.

SECT. 17. If the grand jury, attending any court of common pleas, shall find and return to the court an indictment for any crime punishable with death, process shall be forthwith issued for the arrest of the party charged with such offence, if not already in custody.

Copy of indictment to be furnished, &c. 1832, 130, § 6.

SECT. 18. As soon as may be after the finding of such indictment, the party charged, if in custody, shall be served with a copy thereof, by the sheriff or his deputy, with an order of the court, notifying him that the indictment will be entered at the supreme judicial court, next to be held for the same county, and notice of such indictment shall also be forthwith given to the chief or first justice of that court, by the clerk of the court of common pleas.

SECT. 19. Whenever such an indictment shall be found by the grand jury in Duke's county, the same shall be returned to, and tried at, the supreme judicial court held in the county of Barnstable, and notice thereof, with a copy of the indictment, shall be served on the party charged, as before directed.

Capital indictments in Duke's county. 1832, 130, § 8.

SECT. 20. The clerk of the court of common pleas, in which any such indictment shall be found, shall transmit the same to the supreme judicial court, at the next term thereof, where it shall be entered, and the same proceedings shall be had, as if the indictment had been found in that court.

Same subject. 1832, 130, § 6.

SECT. 21. Any person, indicted for a crime punishable with death, may be arraigned before the supreme judicial court, where such indictment may be found or pending, at any term of the court, held by one justice thereof; and if the person indicted shall, by plea, confess himself to be guilty, as charged in the indictment, such justice may proceed to award sentence, according to law.

One justice of S. J. C. may arraign and sentence to death, in case, &c. 2 Mass. 303. 1832, 130, § 6.

SECT. 22. If, on his arraignment, the person so indicted shall deny the charge, and put himself on trial, counsel may be assigned by the justice holding the court, who may also take all needful measures preparatory to a trial; and when the court shall be held by three or more of the justices thereof, the person so indicted shall be tried, and in case of a conviction, the court shall proceed to award sentence according to law.

Prisoner to have counsel, &c. 1832, 130, § 6. 1814, 171, § 6. 1820, 14, § 8.

SECT. 23. Any prisoner, indicted for a crime punishable with death, shall, on demand upon the clerk, by himself or his counsel, have a list of the jurors returned delivered to him, and shall also have process to summon such witnesses, as are necessary to his defence, at the expense of the Commonwealth.

— to have copy of indictment, list of jurors, &c 13 Mass. 501.

SECT. 24. Every person, indicted for any offence, for which he may be imprisoned in the state prison, shall, if he be under recognizance or in custody to answer for such offence, be entitled to a copy of the indictment, and of all indorsements thereon, without paying any fees therefor.

What other prisoners entitled to such copy, &c

SECT. 25. The attorney general and other prosecuting officers may, in all cases, issue subpœnas for witnesses to appear and testify on behalf of the Commonwealth, and the subpœna, under the hand of such officer, shall have the same force, and be obeyed in the same manner, and under the same penalties, in case of default, as if issued by the clerk.

Prosecuting officers may issue subpœnas.

SECT. 26. It shall not be necessary to pay or tender any fees to any witness who is subpœnaed on behalf of the Commonwealth, to testify in support of any prosecution, but every such witness shall be bound to attend, and punishable for non-attendance, in the same manner as if the fees allowed by law had been paid to him.

Witnesses for the state, not entitled to fees in advance.

SECT. 27. Whenever an indictment is found against any person for an assault and battery, or other misdemeanor, for which the party injured may have a remedy by civil action, except where the offence was committed by or upon any sheriff, or other officer of justice, or riotously, or with intent to commit a felony, if the party injured shall appear in court where such indictment is pending, and acknowledge satisfaction for the injury sustained, the court may, on payment of the costs accrued, order all further proceedings to be stayed, and dis-

What criminal prosecutions may be stayed, upon reparation to the party injured.

charge the defendant from the indictment, which shall forever bar all remedy for such injury by civil action.

Prisoner need not be asked how he will be tried.

SECT. 28. When any person is arraigned upon an indictment, it shall not be necessary, in any case, to ask him how he will be tried.

Case of prisoner refusing to plead. 1795, 45, § 3.

SECT. 29. If, on the arraignment of any person who is indicted, he shall refuse to plead or answer, or shall not confess the indictment to be true, the court shall order a plea of not guilty to be entered, and thereupon the proceedings shall be the same as if he had pleaded not guilty to the indictment.

Indicted persons in prison, when to be tried 15 Mass. 277. 1784, 72, § 13.

SECT. 30. Every person held in prison upon an indictment, shall, if he require it, be tried at the next term of the court, after the expiration of six months from the time when he was imprisoned, or shall be bailed upon his own recognizance, unless it shall appear to the satisfaction of the court, that the witnesses on behalf of the government have been enticed or kept away, or are detained and prevented from attending the court, by sickness or some inevitable accident.

Plea in abatement, when to be verified.

SECT. 31. When a plea in abatement, or other dilatory plea to an indictment, shall be offered, the court may refuse to receive such plea, until the truth thereof shall be proved by affidavit, or other evidence.

Commission to examine witnesses, how granted.

SECT. 32. When an issue of fact shall be joined upon any indictment, the court, in which the same is pending, may, on application of the defendant, grant a commission to examine any material witnesses residing out of this state, in the same manner as in civil causes; and the prosecuting officer may, if he shall see fit, join in such commission, and name any material witnesses to be examined on the part of the Commonwealth.

Such commissions, how executed, and the depositions, how used.

SECT. 33. When any such commission shall be issued, the interrogatories to be annexed thereto shall be settled, and the commission executed and returned, in the manner prescribed by law, in relation to commissions in civil cases, and the depositions, taken thereon and returned, shall be read in the same cases, with the like effect, and subject to the same exceptions, as in civil cases; provided, that when the defendant shall decline to use, on his trial, the deposition so taken, the prosecuting officer shall not make any use of any deposition taken on the part of the Commonwealth, without the defendant's consent.

CHAPTER 137.

OF TRIALS IN CRIMINAL CASES.

SECTION
1. Issues of fact, how tried.
2. Grand juror, who found the bill, may be challenged.
3, 4. Same challenges allowed as in civil causes.
5. Peremptory challenges, when allowed.

SECTION
6. What scruples disqualify jurors, in capital cases.
7. Oaths of jurors.
8. Affirmation of jurors.
9. When the defendant shall be present, and when he may be absent, at his trial.
10. Court may order a view.
11. Proceedings on conviction of a part of the offence charged.
12. " on acquittal by reason of insanity.
13. Persons acquitted, &c. not liable for fees, &c.
14. Certain defects of form, not to vitiate indictments.

SECTION 1. Issues of fact, joined upon any indictment, shall be tried by a jury, drawn and returned in the manner prescribed by law for the trial of issues of fact in civil causes. *Issues of fact, how tried.*

SECT. 2. No member of the grand jury, which has found an indictment, shall be put upon the jury for the trial of such indictment, if challenged for that cause by the defendant. *Grand juror, who found the bill, may be challenged.*

SECT. 3. Every person, indicted for any offence, shall, when the jury is empannelled for his trial, be entitled to the same challenges, that are by law allowed to defendants in civil causes. *Same challenges allowed as in civil causes.*

SECT. 4. The attorney general, and any other officer prosecuting an indictment, shall be entitled to the same challenges, on behalf of the Commonwealth, that are by law allowed to parties in civil causes. *Same subject.*

SECT. 5. Any person, who is put on trial for an offence punishable with death, shall be allowed to challenge, peremptorily, twenty of the persons returned as jurors, and no more. *Peremptory challenges, when allowed. 1795, 45, § 3.*

SECT. 6. No person, whose opinions are such as to preclude him from finding any defendant guilty of an offence punishable with death, shall be compelled or allowed to serve as a juror, on the trial of any indictment for such an offence. *What scruples disqualify jurors, in capital cases.*

SECT. 7. The following oath shall be administered to the jurors for the trial of all criminal cases not capital: You shall well and truly try the issue, between the Commonwealth and the defendant, (or the defendants, as the case may be,) according to your evidence; so help you God. In capital cases, the following oath shall be administered to the jurors: You shall well and truly try, and true deliverance make, between the Commonwealth and the prisoner at the bar, whom you shall have in charge, according to your evidence; so help you God. *Oaths of jurors. 1807, 140, § 14.*

SECT. 8. Any juror, who is conscientiously scrupulous of taking either of the oaths above prescribed, shall be allowed to make affirmation, substituting the words, this you do under the pains and penalties of perjury, instead of the words, so help you God. *Affirmation of jurors. 1807, 140, § 14*

SECT. 9. No person, indicted for a felony, or for any offence punishable by imprisonment in the state prison, shall be tried, unless personally present during the trial; persons indicted for smaller offences may, at their own request, by leave of the court, be put on trial in their absence, by an attorney duly authorized for that purpose. *When the deft. shall be present and when he may be absent at his trial.*

SECT. 10. The court may order a view by any jury empannelled to try a criminal case. *Court may order a view.*

SECT. 11. Whenever any person indicted for a felony shall, on trial, be acquitted by verdict, of part of the offence charged in the indictment, and convinced of the residue thereof, such verdict may *Proceedings on conviction of part of the offence charged. 1805, 88, § 2.*

12 Pick. 507.

be received and recorded by the court; and thereupon, the person indicted shall be adjudged guilty of the offence, if any, which shall appear to the court to be substantially charged by the residue of such indictment, and shall be sentenced and punished accordingly.

— on acquittal, by reason of insanity. 1816, 28, §§ 1 & 2. 1834, 150, § 3.

SECT. 12. When any person indicted for an offence shall, on trial, be acquitted by the jury, by reason of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered manifestly dangerous to the peace and safety of the community, the court may order him to be committed to the state lunatic hospital; otherwise, he shall be discharged.

Persons acquitted, &c. not liable for fees, &c.

SECT. 13. No prisoner or person under recognizance, who shall be acquitted by verdict, or discharged because no indictment has been found against him, or for want of prosecution, shall be liable for any costs or fees of office, or for any charge for subsistence, while he was in custody.

Certain defects of form not to vitiate indictments. 7 Mass. 9. 11 Mass. 279. 2 Mass. 116. 5 Pick. 44. 6 Greenl. 148.

SECT. 14. No indictment shall be quashed, or deemed invalid, nor shall the judgment or proceedings thereon be arrested or affected, by reason of the omission or misstatement of the title, occupation, estate, or degree of the defendant, or of the name of the city, town, county or place of his residence; nor by reason of the omission of the words force and arms, or the words against the peace, nor by reason of omitting to charge any offence to have been committed, contrary to the form of the statute or statutes; provided, that such omission or misstatement do not tend to the prejudice of the defendant.

CHAPTER 138.

OF APPEALS, NEW TRIALS, AND EXCEPTIONS, IN CRIMINAL CASES.

SECTION

APPEALS.

1. Appeals from justices of the peace to the C. C. Pleas.
2. Justice's duty on such appeal—His fees therefor, how paid.
3. Appellant not required to advance any fees.
4. If the appeal is not prosecuted, the appellant shall be sentenced.
5. Appeals from the C. C. Pleas to the S. J. Court, when allowed.
6. Clerk to make copies. Appeal may be entered at an adjourned term.
7. Appellant not required to advance fees, &c.
8. When the appeal is not prosecuted, appellant to be sentenced.
9. When a forfeiture accrues to any person, the court may award it.

NEW TRIALS.

10. S. J. Court and C. C. Pleas may grant new trials.

EXCEPTIONS.

11. Exceptions may be taken, before the end of the term.
12. Report to be made by the judge.
13. Proceedings on the exceptions or report.
14. Party to recognize, or remain in prison, until, &c.

APPEALS.

Appeals from justices of the

SECTION 1. Every person, convicted before a justice of the peace, of any offence, in any county except Suffolk, may appeal from

the sentence to the court of common pleas, then next to be held in the same county; and such appellant shall be committed, to abide the sentence of the said court, until he shall recognize to the Commonwealth, in such reasonable sum, and with such sureties, as the justice shall require, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace, and be of good behavior.

peace to C. C. Pleas. 1783, 51, § 3.

SECT. 2. The justice, on such appeal, shall make a copy of the conviction and other proceedings in the case, and transmit the same, together with the recognizance, if any shall be taken, to the clerk of the court appealed to; and the fees of the justice therefor shall be paid from the county treasury, in like manner as other costs in criminal prosecutions are paid.

Justice's duty on such appeal. His fees therefor, how paid.

SECT. 3. The appellant shall not be required to advance any fees, upon claiming his appeal, nor in prosecuting the same; but if convicted in the court of common pleas, or if sentenced for failing to prosecute his appeal, he may be required, as part of his sentence, to pay the whole or any part of the costs of prosecution.

Appellant not required to advance fees, &c.

SECT. 4. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the court of common pleas may award sentence against him, for the offence whereof he was convicted, in like manner as if he had been convicted thereof in that court; and if he is not then in custody, process may be issued to bring him into court to receive sentence.

When the appeal is not prosecuted, appellant to be sentenced. 1783, 51, § 3.

SECT. 5. Every person, convicted in the court of common pleas, upon any indictment for a libel, or for a nuisance or a conspiracy, or who shall be convicted of any crime or offence, for which he may be punished by imprisonment in the state prison, or elsewhere, for a term exceeding five years, may appeal therefrom to the supreme judicial court, next to be held for the same county, if such appeal shall be claimed a convenient time before the end of the term at which the conviction is had; and such appellant shall be committed, to abide the sentence of the supreme judicial court, until he shall recognize to the Commonwealth, in such reasonable sum, and with such sureties, as the court of common pleas shall order, with condition to appear at the court appealed to, and there to prosecute his appeal, and to abide the sentence of the court thereon, and in the mean time to keep the peace, and be of good behavior.

Appeals from the C. C. Pleas to the S. J. Court, when allowed. 1832, 130, § 3.

SECT. 6. The clerk of the court of common pleas, upon such appeal, shall make out a copy of the conviction of the appellant, and of the other proceedings in the case, and place the same, together with the recognizance, when any shall be taken, upon the files of the supreme judicial court; and such appeal shall be entered at the next term of the court, or, at the option of the appellant, it may be entered at any session of such court, held by adjournment, if any such session shall be held before the next stated term; provided, that the appellant, at the time of claiming the appeal, shall give notice of his intention so to enter it, to the district attorney, or other prosecuting officer.

Clerk to make copies: Appeal may be entered at an adjourned term.

SECT. 7. The appellant shall not be required to advance any fees, upon claiming his appeal, nor in prosecuting the same; but if

Appellant not required to advance fees, &c.

he shall be convicted in the supreme judicial court, or if sentence be awarded against him for failing to prosecute his appeal, he may be required, as a part of his sentence, to pay the whole or any part of the costs of prosecution.

When the appeal is not prosecuted, appellant to be sentenced. 1832, 130, § 3.

SECT. 8. If the appellant shall fail to enter and prosecute his appeal, he shall be defaulted on his recognizance, if any was taken, and the supreme judicial court may award sentence against him, for the offence whereof he was convicted, in the same manner as if he had been convicted of such offence in that court; and if he is not then in custody, process may be issued to bring him into court to receive sentence.

When a forfeiture accrues to any person, the court may award it.

SECT. 9. Whenever, upon suit brought upon any recognizance to prosecute an appeal, the penalty thereof shall be adjudged to be forfeited, or when, by leave of court, such penalty shall have been paid to the county treasurer, or to the clerk of the court, without a suit, or before judgment shall be given, in the manner provided in the one hundred and thirty fifth chapter, if, by law, any forfeiture shall accrue to any person, by reason of the offence, of which the appellant was convicted, the court may award to him such sum as he may be entitled to, out of such forfeiture.

NEW TRIALS.

S. J. Court and C. C. Pleas may grant new trials. 1832, 130, § 4.

SECT. 10. The supreme judicial court, and the court of common pleas, may, at the term in which the trial of any indictment shall be had, or within one year thereafter, on the petition or motion in writing of the defendant, grant a new trial, for any cause for which by law a new trial may be granted, or when it shall appear to the court that justice has not been done, and on such terms or conditions as the court shall direct.

EXCEPTIONS.

Exceptions may be taken before the end of the term. 1832, 130, § 5.

SECT. 11. Any person, who shall be convicted of an offence, before the court of common pleas, being aggrieved by any opinion, direction or judgment of the court, in any matter of law, whether he have a right to appeal therefrom or not, if an appeal be not actually taken, or, having been taken, if it be waived by leave of the court, may allege exceptions to such opinion, direction or judgment; which exceptions, being reduced to writing in a summary mode, and presented to the court, a convenient time before the end of the term, and found conformable to the truth of the case, shall be allowed and signed by the presiding justice thereof, and thereupon all further proceedings in the case, in that court, shall be stayed, unless it shall clearly appear to the presiding justice, that such exceptions are frivolous, immaterial, or intended only for delay, and in that case, judgment may be entered, and sentence awarded, in such manner as the court may deem reasonable, notwithstanding the allowance of such exceptions.

Report to be made by the judge. 1832, 130, § 5.

SECT. 12. If, upon the trial of any person, who shall be convicted in the court of common pleas, or municipal court of the city of Boston, any question of law shall arise, which, in the opinion of the presiding judge, shall be so important or so doubtful, as to require the decision of the supreme judicial court, he shall, if the defendant

desire it or consent thereto, report the case, so far as may be necessary to present the question of law arising therein; and thereupon all further proceedings in that court shall be stayed.

Proceedings on the exceptions or report. 1832, 130, § 5.

SECT. 13. Any person, who shall file exceptions, or for whose benefit a report shall be made by the judge, as is provided in the two preceding sections, may recognize to the Commonwealth, in such sum as the court shall order, with sufficient sureties, for his personal appearance at the supreme judicial court, next to be held for the same county, and to enter and prosecute his exceptions with effect, and abide the sentence thereon, and in the mean time to keep the peace and be of good behavior.

Party to recognize, or remain in prison, until, &c. 1832, 130, § 5.

SECT. 14. If such person shall not so recognize, he shall be committed to prison, to await the decision of the supreme judicial court; and in that case, the clerk of the court, in which the conviction was had, shall file a certified copy of the record and proceedings in the case, in the supreme judicial court, and the court shall have cognizance thereof, and consider and decide the cause, in the same manner as they decide questions of law, reserved by one of the justices of that court, and shall render such judgment, and award such sentence, or make such order thereon, as law and justice shall require; and a new trial may be ordered, at the bar of the supreme judicial court, or the cause may be remanded to the court of common pleas, for a new trial there, as the justices of the supreme judicial court shall direct; but the proceedings herein prescribed shall not deprive any party of his writ of error, for any error or defect appearing of record.

CHAPTER 169.

OF JUDGMENTS IN CRIMINAL CASES, AND THE EXECUTION THEREOF.

SECTION
1. Sentence, where no punishment is specially provided.
2, 3. Conditional sentences.
4. Power of the court to inflict fine or imprisonment.
5. Sureties for the peace may be required, in certain cases.
6. Proceedings on forfeiture of the recognizance.
7. Sheriff to execute sentences.
8. Solitary imprisonment to precede hard labor, unless, &c.
9. Sentence to state prison for less than one year.
10. Proceedings for removal of a convict to the state prison.
11. " on a conviction of a capital offence.
12. " when convict has become insane, or is quick with child.
13, 14. Sentence of death, how to be executed.
15. Sheriff's return on a warrant for execution.

Sentence, where no punishment is specially provided. 1782, 9, § 1.

SECTION 1. In any case of legal conviction, where no punishment is provided by statute, the court shall award such sentence, as is conformable to the common usage and practice in this state, according to the nature of the offence, and not repugnant to the constitution.

Conditional sentences. 1788, 53, § 1. 1834, 151, § 17.

SECT. 2. When any person shall be convicted of an offence, punishable at the discretion of the court, either by a fine or imprisonment in the county jail, or house of correction, or by a fine or imprisonment in the state prison, the court may award against such offender a conditional sentence, and order him to pay a fine, with or without the costs of prosecution, within a limited time, to be expressed in the sentence, and in default thereof, to suffer such imprisonment as is provided by law, and awarded by the court.

Same subject. 1788 53, § 2.

SECT. 3. The person, against whom any such conditional sentence shall be awarded, shall be forthwith committed to the custody of an officer in court or to the county jail, to be detained until the sentence be complied with; and if he shall not pay the fine imposed, within the time limited, the sheriff shall cause the other part of the sentence to be executed forthwith.

Power of the court to inflict fine or imprisonment.

SECT. 4. Whenever it is provided, that an offender shall be punished by imprisonment in the county jail and a fine, or by imprisonment in the house of correction and a fine, such offender may, at the discretion of the court, be sentenced to be punished by such imprisonment, without the fine, or by such fine without the imprisonment.

Sureties for the peace may be required, in certain cases.

SECT. 5. Every court, before whom any person shall be convicted upon an indictment for any offence not punishable with death, or by imprisonment in the state prison, may, in addition to the punishment prescribed by law, require such person to recognize with sufficient sureties, in a reasonable sum, to keep the peace, or to be of good behavior, or both, for any term not exceeding two years, and to stand committed until he shall so recognize.

Proceedings on forfeiture of the recognizance.

SECT. 6. In case of a breach of the condition of any such recognizance, the same proceedings shall be had, that are prescribed in the one hundred and thirty fourth chapter, in relation to recognizances to keep the peace, and be of good behavior.

Sheriff to execute sentences.

SECT. 7. Whenever any person, convicted of an offence, shall be sentenced to pay a fine or costs, or to be imprisoned in the county jail, or in the house of correction, the clerk of the court shall, as soon as may be, make out and deliver to the sheriff of the county, or to some officer in court, a transcript from the minutes of the court, of such conviction and sentence, duly certified by such clerk, which shall be a sufficient authority for the sheriff to execute such sentence, and he shall execute the same accordingly.

Solitary imprisonment to precede hard labor, unless, &c.

SECT. 8. In every case, in which the punishment of imprisonment in the state prison is awarded against any convict, the form of the sentence shall be, that he be punished by confinement at hard labor, and he shall also be sentenced to solitary imprisonment, for such term as the court shall direct, not exceeding twenty days at one time; and in the execution of such sentence, the solitary imprisonment shall precede the punishment by hard labor, unless the court shall otherwise order.

No sentence to state prison for less than one year.

SECT. 9. No convict shall be sentenced to imprisonment in the state prison for any less time than one year.

Proceedings for removal of convict to the state prison. 1827, 118, § 9.

SECT. 10. When any convict shall be sentenced to imprisonment in the state prison, the clerk of the court shall make out a warrant, under the seal of the court, directed to the warden of the prison, requiring him, as soon as may be, to cause such convict to be removed

from the county jail to the state prison; and the clerk shall also annex to the warrant, a certified transcript of such conviction and sentence, and shall deliver the warrant and transcript to the sheriff of the county, who shall cause the same to be transmitted and delivered to the warden, to the end that the warden may, by himself, or such person as he may appoint for that purpose, cause the warrant to be duly executed, by the removal of such convict to the state prison, in the manner prescribed in the one hundred and forty fourth chapter.

SECT. 11. When any person shall be convicted of any crime, for which sentence of death shall be awarded against him, the clerk of the court, as soon as may be, shall deliver to the sheriff of the county a certified copy of the whole record of the conviction and sentence, and the sheriff shall forthwith transmit the same to the governor, and the sentence of death shall not be executed upon such convict, until a warrant shall be issued by the governor, with advice of the council, under the great seal, with a copy of the record thereto annexed, commanding the sheriff to cause execution to be done; and the sheriff shall thereupon cause to be executed, on such convict, the judgment and sentence of the law.

— on a conviction of a capital offence. 1777, 72, § 24.

SECT. 12. If it shall appear, to the satisfaction of the governor and council, that any convict, who is under sentence of death, has become insane, the warrant for his execution may be delayed, or if such warrant has been issued, the execution thereof may be respited, from time to time, so long as the governor and council shall think proper; and if any female convict, who is under sentence of death, shall be quick with child, the governor and council shall forbear to issue a warrant for her execution, or if such warrant has been issued, the execution thereof shall be respited, until it shall appear, to the satisfaction of the governor and council, that such female convict is no longer quick with child.

— when convict has become insane, or is quick with child.

SECT. 13. The punishment of death shall, in every case, be inflicted by hanging the convict by the neck, until he is dead; and the sentence shall, at the time directed by the warrant, be executed within the walls of a prison of the county in which the conviction was had, or within the enclosed yard of such prison.

Sentence of death, how to be executed.

SECT. 14. The sheriff of such county shall be present at the execution, unless he shall be prevented by sickness or other casualty, and also two of his deputies, to be designated by him, and he shall request the presence of the district attorney, clerk or clerks of the county courts, and twelve reputable citizens, including a physician or surgeon; and he shall permit the counsel of the criminal, such ministers of the gospel as the criminal shall desire, and his relations to be present, and also such officers of the prison, deputies and constables, military guard or other assistants, as he shall see fit.

Same subject.

SECT. 15. Whenever a sheriff shall inflict the punishment of death upon any convict, in obedience to a warrant from the governor, he shall make return thereof under his hand, with his doings therein, to the secretary's office, as soon as may be, and shall also file in the clerk's office of the court, where the conviction was had, an attested copy of the warrant and return; and the clerk shall subjoin a brief abstract of such return to the record of the conviction and sentence.

Sheriff's return, on a warrant for execution.

CHAPTER 140.

OF CORONERS' INQUESTS.

SECTION
1. Coroners' inquests, when to be taken.
2. Coroner to issue a warrant to a constable to summon a jury. Form of the warrant.
3. Penalty for constables' or jurors' neglect.
4. Jurors, how empannelled and sworn—Talesmen.
5. Witness, how summoned—Fees—Attendance, how enforced.
6. Oath of witnesses.
7. Testimony of witnesses to be reduced to writing, &c.
8. Inquisition how taken—Form thereof.
9, 10. Coroner's duty in case of murder, &c.
11. Coroner, when to bury the body, &c. —Costs, how paid.

Coroners' inquests, when to be taken. 1829, 57. 1830, 103, § 2.

SECTION 1. Coroners shall take inquests, upon the view of the dead bodies of such persons only, as shall be supposed to have come to their death by violence, and not when the death is believed to have been occasioned by casualty.

Coroner to issue a warrant to a constable to summon a jury. 1823, 39. 1830, 103, § 1.

SECT. 2. As soon as any coroner shall have notice of the dead body of any person, supposed to have come to his death by violence, found or lying within his county, he shall make his warrant to the constable of the town where such dead body is, or of one of the adjoining towns in the same county, requiring such constable forthwith to summon six good and lawful men of the county to appear before such coroner, at the time and place expressed in the warrant, which may be issued with or without a seal, and in substance as follows:

Form of the warrant. 1783, 43, § 2.

———ss.

To either of the constables of ——— in the county of ———. Greeting.

In the name of the COMMONWEALTH OF MASSACHUSETTS, you are hereby required immediately to summon six good and lawful men of the county of ——— to appear before me, ———, one of the coroners of said county, at the dwelling house of ———, or at a place called ———, within the town of ———, at the hour of ———, then and there to inquire, upon the view of the body of ———, there lying dead, when, how, and by what means he came to his death. Hereof fail not.

Given under my hand the ——— day of ——— in the year ———. ———, Coroner.

Penalty for constables' or jurors' neglect. 1783, 43, § 2.

SECT. 3. The constable, to whom such warrant shall be directed and delivered, shall forthwith execute the same, and shall, at the time mentioned in the warrant, repair to the place where the dead body is, and make return thereof to the coroner, and of his doings thereon, under his hand; and any constable, who shall unnecessarily neglect or fail to execute or return such warrant, shall forfeit the sum of ten dollars; and if any person, summoned as a juror shall fail to appear, without reasonable excuse therefor, he shall forfeit the sum of seven dollars; which forfeitures may be recovered to the use of the county, with costs of suit, by action of debt, or on the case, to be brought by the coroner.

SECT. 4. When the jurors who have been summoned appear, the coroner shall call over their names, and then, in view of the body, he shall administer to them the following oath: Jurors, how empannelled and sworn.

You solemnly swear, that you will diligently inquire, and true presentment make, on behalf of this Commonwealth, when, how, and by what means, the person, whose body lies here dead, came to his death; and you shall return a true inquest thereof, according to your knowledge, and such evidence as shall be laid before you; so help you God.

If the six jurors returned shall not all appear, the coroner may require the constable, or any other person whom he shall appoint, to return jurors from the bystanders, to complete the number. Talesmen. 1784, 43, § 2.

SECT. 5. The coroner may issue subpœnas for witnesses, returnable forthwith, or at such time and place as he shall therein direct; the persons served with such subpœna shall be allowed the same fees, and their attendance may be enforced in the same manner, by the coroner, and they shall be subject to the same penalties, as if they had been served with a subpœna in behalf of the Commonwealth, to attend a justice's court. Witnesses, how summoned. Fees. Attendance, how enforced. 1784, 43, § 2. 1830, 103, § 3.

SECT. 6. An oath, to the following effect, shall be administered to the witnesses, by the coroner: Oath of witnesses.

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of the person here lying dead, shall be the truth, the whole truth, and nothing but the truth; so help you God.

SECT. 7. The testimony of all witnesses, examined before any inquest, shall be reduced to writing by the coroner, or some other person by his direction, and subscribed by the witnesses. Testimony of witnesses, to be reduced to writing, &c. 1784, 43, § 2.

SECT. 8. The jury, upon the inspection of the dead body, and after hearing the testimony of the witnesses, and making all needful inquiries, shall draw up, and deliver to the coroner, their inquisition, under their hands, in which they shall find and certify, when, how, and by what means the deceased person came to his death, and his name, if it was known, together with all the material circumstances attending his death; and if it shall appear that he was murdered, the jurors shall further state who were guilty, either as principal or accessory, if known, or were in any manner the cause of his death; which inquisition may be, in substance, as follows: Inquisition, how taken.

———ss. An inquisition taken at ——— in the county of ——— on the ——— day of ———, in the year ———, before ——— one of the coroners of the said county of ———, upon the view of the body of ——— (or, a person,) there lying dead, by the oaths of the jurors, whose names are hereunto subscribed, who, being sworn to inquire on behalf of the said Commonwealth, when, how, and by what means the said ———, (or person,) came to his death, upon their oaths do say, (then insert when, how, and by what persons, means, weapon or instrument, he was killed.) In testimony whereof, the said coroner and the jurors of this inquest have hereunto set their hands, the day and year aforesaid. Form thereof. 1783, 43, § 2.

SECT. 9. If the jury find that any murder, manslaughter or assault had been committed on the deceased, the coroner shall bind over, by recognizance, such witnesses as he shall think proper, to ap- Coroner's duty in case of murder, &c. 1783, 43, § 2.

pear and testify at the next court, to be held in the same county, at which an indictment for such offence can be found; he shall also return to the same court the inquisition, written evidence, and all recognizances and examinations by him taken, and may commit to the jail of the county, any witnesses who shall refuse to recognize in such manner as he shall direct.

Same subject. 1783, 43, § 2.

SECT. 10. If any person, charged by the inquest with having committed such offence, shall not be in custody, the coroner shall have the same power as a justice of the peace, to issue process for his apprehension, and such warrant shall be made returnable before any justice of the peace, or other magistrate or court having cognizance of the case, who shall proceed therein in the same manner that is required of justices of the peace in like cases.

Coroner, when to bury the body, &c.

SECT. 11. When any coroner shall take an inquest upon the view of the dead body of a stranger, or, being called for that purpose, shall not think it necessary, on view of such body, that any inquest should be taken, he shall cause the body to be decently buried, unless the dissection thereof shall have been allowed by lawful authority; and if the coroner shall certify that, to the best of his knowledge and belief, the person found dead was a stranger, not belonging to this state, the expenses of burial, with the coroner's fees, and all the expenses of the inquisition, if any was taken, shall be paid to the coroner, from the state treasury, the account of such expenses being first examined and allowed by the general court; in all other cases, the expenses of the inquisition shall be paid by the county, in which it was taken, and the expenses of the burial, by the town where the body was found.

Costs, how paid. 1806, 29, § 1. 1830, 103, § 4.

CHAPTER 141.

OF THE TAXATION, ALLOWANCE AND PAYMENT OF COSTS IN CRIMINAL PROSECUTIONS.

SECTION
1. Costs in criminal prosecutions, how paid.
2, 3. Duty of justices of the peace, in taxing costs—Justice may retain his own fees out of costs received.
4. Costs, how certified on appeal, &c.
5. Police courts, except in Boston, to proceed like justices of the peace.
6, 7. Duty of clerk of police court in Boston, as to costs.
8. Costs in S. J. Court, C. C. Pleas and municipal court, how taxed and certified—Clerks to make returns of costs, fines, &c. to state treasurer.
9. Clerks, sheriffs, &c. to pay over fines and costs to the county treasurer—Liability for neglect—Liability of officer, suffering an escape.
10. Semi-annual returns of county treasurers to state treasurer; and proceedings relating thereto.
11. Annual returns of county treasurers to the governor and council.
12. Costs to be paid by the county treasurer, if demanded within three years, otherwise, &c.

Costs in criminal prosecu-

SECTION 1. All legal costs, which shall arise in any criminal prosecution, except when they shall be paid by the party prosecuted,

shall be paid out of the treasury of the Commonwealth, in the manner directed in this chapter; provided, that no costs, arising under any prosecution for the violation of a by-law of any town in this state, shall be included under the provisions of this section.

tions, how paid. 1817, 145. 1824, 117, § 1. 1825, 73, § 2.

SECT. 2. In all criminal prosecutions, instituted before justices of the peace, in the cases where they shall render any judgment, they shall tax the legal costs arising in such prosecutions, and certify their allowance of the same; but no such costs shall be taxed, in any case, by a justice, unless a warrant shall be duly served, and returned before him.

Duty of justices of the peace in taxing costs.

SECT. 3. In every case, in which justices of the peace shall exercise final jurisdiction in any criminal prosecution, they shall certify the costs, by them taxed and allowed, to the next court of common pleas for the same county, and the taxation of such costs shall be examined by the court, or by its order, and the errors therein, if any, shall be corrected, and such costs shall be allowed, and made up in the general bill of costs, for the same term of the court; provided, that when any person convicted before a justice of the peace, and sentenced to pay the costs of prosecution, or a fine and costs, shall comply with the sentence, the costs, or fine and costs, shall be paid to the justice, and such justice may retain his own fees, and pay over the residue of the costs to the officer and witnesses, or other persons entitled thereto; otherwise, such costs and the fine, if any was received, shall be paid over to the treasurer of the county or town, in the manner directed in the eighty fifth chapter.

Same subject.

Justice may retain his own fees out of costs received. 1824, 117, § 1.

SECT. 4. In all criminal prosecutions, which are carried to the court of common pleas, by appeal from the judgment of a justice of the peace, and where any person is bound by recognizance, or is committed for want of sureties, by any justice of the peace, to answer in the court of common pleas, the costs shall be taxed, and certified with the papers, to the court, and shall be there allowed and taxed in the costs of prosecution.

Costs, how certified by the justice on appeal, &c.

SECT. 5. The justices of police courts, except in the city of Boston, shall perform the same duties, in relation to the taxation and allowance of costs, and the accounting for fines and costs, in criminal prosecutions before them, that are required of justices of the peace, by the provisions of this chapter.

Police courts, except in Boston, to proceed like justices of the peace.

SECT. 6. The clerk of the police court of the city of Boston shall tax and certify the bills of costs, arising in criminal prosecutions, where that court has exercised final jurisdiction, and shall receive all fines and costs, that may be paid into the court by any person, who shall be sentenced to pay such fine or costs, in the same manner that is required of justices of the peace, by the foregoing provisions; and the said clerk shall account for all moneys so received, in the manner provided in the eighty seventh chapter.

Duty of clerk of police court in Boston as to costs.

SECT. 7. In all cases, where the said police court does not exercise final jurisdiction, the clerk shall tax and certify the costs to the municipal court of the city of Boston, and the same shall be included and allowed in the costs taxed there, in the same manner, that the costs before justices of the peace are required to be certified to the court of common pleas, and to be included and allowed in the costs taxed in that court.

Same subject.

Costs in S. J. Court, C. C. Pleas and municipal court, how taxed and certified.

SECT. 8. All costs, arising in criminal prosecutions, in the supreme judicial court, or court of common pleas, or in the municipal court of the city of Boston, shall be taxed by the attorney general, or by the district or county attorney, and the allowance thereof shall be certified by the clerk, under the direction of the court, and the clerks shall make and deliver to the treasurers of the respective counties, or towns, at the end of every term, or as soon thereafter as may be, copies of all the bills of costs, which have been taxed and allowed, and certificates of all fines imposed by the respective courts, to the use of the Commonwealth, county, or town; they shall also transmit, to the treasurer of the Commonwealth, a certificate of the amount of all such bills of costs, and all sums allowed by the courts as rewards, or compensations to prosecutors, and a statement of all fines and forfeitures to the use of the Commonwealth, which have been imposed or awarded by the court.

Clerks to make returns of costs, fines, &c. to state treasurer. 1783, 44, § 2.

Clerks, sheriffs, &c. to pay over fines and costs to the county treasurer.

SECT. 9. The clerks of the courts, mentioned in the preceding section, and all sheriffs, jailers and other officers, who shall receive any fines, forfeitures or costs, imposed or awarded by any courts to the use of the Commonwealth or of the county, shall forthwith pay over the same, without deduction, to the county treasurers of their respective counties; and if any clerk or other officer shall neglect to make such payment, for the space of thirty days, the county treasurer shall sue for and recover of him, in an action of debt or on the case, the amount of such fines, forfeitures and costs, with interest from the time of receiving the same, at the rate of twelve per cent. and costs of suit; and if any such officer, having any person in his custody, by virtue of a sentence of court, for the payment of any sum as a fine, forfeiture or costs, shall voluntarily or negligently suffer such person to escape, he shall be deemed to have received such fine, forfeiture and costs, at the time of the escape, and shall be held liable to pay over the same with interest and costs of suit, in like manner as in the other cases of neglect provided for in this section.

Liability for neglect,

Liability of officer, suffering an escape. 1791, 53. 1813, 182, § 1.

Semi-annual returns of county treasurers to state treasurer; and proceedings relating thereto. 1794, 48, § 2. 1791, 53, § 5.

SECT. 10. Every county treasurer shall, twice in each year, transmit to the treasurer of the Commonwealth an account upon oath, in which he shall charge the Commonwealth with the amount of all sums, which shall have been taxed for costs, or allowed for rewards or compensations to prosecutors, by the courts in his county, and duly certified by the clerk, since the last account rendered by such county treasurer; and for all such sums, the certificate of such clerk shall be a sufficient voucher, and the county treasurer shall be allowed commissions on the same, at the rate of five per cent: Each county treasurer shall also charge, in his said account, the amount of all sums paid by him pursuant to the order of the county commissioners, for the support of all prisoners in his county, whose support is chargeable to the Commonwealth, and he shall be allowed commissions on the same, at the rate of two and a half per cent; he shall also credit in his account the amount of all fines, forfeitures and costs, received by him to the use of the Commonwealth; his account shall be audited by the treasurer of the Commonwealth, to whom he shall forthwith pay over the balance, if any shall be found due; and if the balance shall be found in favor of the county treasurer, the account so audited shall be laid before the governor and council for examination, and a warrant

drawn accordingly on the treasury of the Commonwealth, for the balance found to be due; and if any county treasurer shall fail to present his accounts, in the manner provided in this section, he shall not be allowed any commissions on such accounts, without the special order of the governor and council.

Annual returns of county treasurers to the governor and council. 1794, 48, § 2.

SECT. 11. Each county treasurer shall annually transmit, to the governor and council, a general account, in which he shall credit to the Commonwealth all moneys, received by virtue of warrants on the treasury, and all sums received for fines, forfeitures and costs, with the names of the persons, from whom the same are received; and he shall charge the Commonwealth with all sums, actually paid by him on account of the Commonwealth, before the time of rendering the said general account, and the balance, if any, shall be credited to the Commonwealth in a new account; and he shall, at the same time, transmit to the governor and council a statement of all sums remaining due to any persons, on bills of costs or for any other allowance, which shall be certified to him, and also a statement of all fines, forfeitures and costs, remaining due to the Commonwealth, together with the names of the persons, from whom the same are due.

Costs to be paid by the county treasurer, if demanded within three years, otherwise, &c. 1809, 93, § 1.

SECT. 12. Each county treasurer shall pay over, to the persons entitled thereto, all sums, taxed for costs in criminal prosecutions, or allowed by the courts as rewards or compensations to prosecutors, which shall have been duly certified by the clerks, provided such sums shall be demanded within three years after the taxing or allowance thereof; and in his general account transmitted to the governor and council, and also in his account transmitted to the treasurer of the Commonwealth, next after such general account, as before provided, he shall credit to the Commonwealth all such costs and allowances, which shall not have been demanded within the said term of three years, and shall not have been credited by him, in any former account.

CHAPTER 142.

GENERAL PROVISIONS CONCERNING PROCEEDINGS IN CRIMINAL CASES

SECTION
1. Search warrants for property stolen, &c.
2. " " in what other cases to be issued.
3. " " to whom directed, and when and how to be executed.
4. " " to search in the night time, when allowed.
5. Property seized may be kept as evidence, and then restored to the owner or destroyed.
6. Provisions as to appointment of agents by the governor, to demand from other states, fugitives from justice.
7. Proceedings on such demands from other states.
8. Persons, demanded by other states, may be arrested, &c.
9. And may be required to recognize or be committed until a future day, &c.
10. How to be proceeded with, or discharged.

SECTION
11. Expenses of such proceedings, how paid.
12. Governor, authorized to grant conditional pardons.
13. Warrant for such purpose, how executed and returned.

Search warrants for property stolen, &c.

SECTION 1. When complaint shall be made on oath to any magistrate, authorized to issue warrants in criminal cases, that personal property has been stolen or embezzled, or obtained by false tokens or pretences, and that the complainant believes that it is concealed in any particular house or place, the magistrate, if he be satisfied that there is reasonable cause for such belief, shall issue a warrant to search for such property.

Search warrants,

SECT. 2. Any such magistrate may also, upon like complaint made on oath, issue search warrants, when satisfied that there is reasonable cause, in the following cases, to wit:

for counterfeit coin, notes, &c.; 1823, 40, § 1.

First, to search for and seize any counterfeit or spurious coin, forged bank notes, and other forged intruments, or any tools, machines, or materials, prepared or provided for making either of them:

for obscene books and prints,

Secondly, to search for and seize any books, pamphlets, ballads, printed papers, or other things containing obscene language, or obscene prints, pictures, figures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold, loaned, circulated or distributed, or to be introduced into any family, school or place of education:

for lottery tickets, &c.

Thirdly, to search for and seize lottery tickets, or materials for a lottery, unlawfully made, provided or procured, for the purpose of drawing a lottery:

for gaming apparatus, &c.

Fourthly, to search for and seize any gaming apparatus or implements used, or kept and provided to be used, in unlawful gaming, in any gaming house, or in any building, apartment, or place resorted to for the purpose of unlawful gaming.

To whom directed; when and how to be executed.

SECT. 3. All search warrants shall be directed to the sheriff of the county, or his deputy, or to any of the constables of a town, commanding such officer to search, in the day time, the house or place where the stolen property, or other things, for which he is required to search, are believed to be concealed, which place and property, or things to be searched for, shall be designated and described in the warrant; and to bring such stolen property, or other things, when found, and the persons, in whose possession the same shall be found, before the magistrate who issued the warrant, or before some other magistrate or court, having cognizance of the case.

Search in the night time, when allowed.

SECT. 4. If there be satisfactory evidence that any property stolen, embezzled, or obtained by false tokens or pretences, or that any of the other things, for which a search warrant may be issued, by the provisions of this chapter, are concealed, kept, prepared or used in any particular house or place, a warrant may be issued by any two magistrates, or by a police court, to authorize the searching of such house or place by a public officer, in the night time, and to bring the property or things described in the warrant, if found, and the persons in whose possession the same shall be found, before either of the magistrates who issued the warrant, or before some other magistrate or court, having cognizance of the case.

SECT. 5. When any officer, in the execution of a search warrant, shall find any stolen or embezzled property, or shall seize any of the other things, for which a search is allowed by the provisions of this chapter, all the property and things so seized shall be safely kept, by the direction of the court or magistrate, so long as shall be necessary, for the purpose of being produced or used as evidence on any trial; and as soon as may be afterwards, all such stolen and embezzled property shall be restored to the owner thereof, and all the other things, seized by virtue of such warrants, shall be burnt or otherwise destroyed, under the direction of the court or magistrate.

Property seized may be kept as evidence, and then restored to the owner, or destroyed.

SECT. 6. The governor of this Commonwealth may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any other state or territory, any fugitive from justice, or any person charged with treason, felony, or any other crime, in this state; and whenever an application shall be made to the governor for that purpose, the attorney general, or any other prosecuting officer of the government, when required by the governor, shall forthwith investigate the grounds of such application, and report to the governor all material circumstances, which may come to his knowledge, with an abstract of the evidence, and his opinion as to the expediency of making such demand; but the governor may, in any case, appoint such agents, without requiring the report or opinion of the attorney general; and the accounts of the agents, appointed for such purpose, shall, in all cases, be audited by the governor and council, and paid from the state treasury.

Provisions, as to appointment of agents by the governor to demand, from other states, fugitives from justice. 1801, 10, § 1. 1819, 76. 1834, 155, § 1.

SECT. 7. When a demand shall be made upon the executive authority of this Commonwealth, by the executive of any other state or territory, in any case authorized by the constitution and laws of the United States, for the delivery over of any person charged, in such state or territory, with treason, felony, or any other crime, the attorney general, or any other prosecuting officer of the government, when required by the governor, shall forthwith investigate the grounds of such demand, and report to the governor all material facts, which may come to his knowledge, as to the situation and circumstances of the person so demanded, and especially whether he is held in custody, or is under recognizance to answer for any offence against the laws of this Commonwealth, or of the United States, or by force of any civil process, and also whether such demand is made conformably to law, so that such person ought to be delivered up; and if the governor shall be satisfied that the demand is conformable to law, and ought to be complied with, he shall issue his warrant, under the seal of the state, authorizing the agents, who make such demand, either forthwith, or at such time as shall be designated in the warrant, to take and transport such person to the line of this state, at the expense of such agents, and shall also, by such warrant, require the civil officers, within this state, to afford all needful assistance in the execution thereof.

Proceedings on such demands from other states. 1801, 10, § 2. 1834, 155, § 2.

SECT. 8. Whenever any person shall be found within this state, charged with any offence committed in any other state or territory, and liable, by the constitution and laws of the United States, to be delivered over upon the demand of the executive of such other state or territory, any court or magistrate, authorized to issue warrants in

Persons, demanded by other states, may be arrested, &c.

criminal cases, may upon complaint under oath, setting forth the offence, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the same or some other court or magistrate, within the state, to answer to such complaint, as in other cases.

And required to recognize, or be committed, until a future day, &c.

SECT. 9. If, upon the examination of the person charged, it shall appear to the court or magistrate, that there is reasonable cause to believe that the complaint is true, and that such person may be lawfully demanded of the executive, he shall, if not charged with a capital crime, be required to recognize, with sufficient sureties, in a reasonable sum, to appear before such court or magistrate, at a future day, allowing a reasonable time to obtain the warrant of the executive, and to abide the order of the court or magistrate; and if such person shall not so recognize, he shall be committed to prison, and be there detained until such day, in like manner as if the offence charged had been committed within this state; and if the person so recognizing shall fail to appear, according to the condition of his recognizance, he shall be defaulted, and the like proceedings shall be had, as in the case of other recognizances entered into before such court or magistrate; but if such person shall be charged with a capital crime, he shall be committed to prison, and there detained until the day so appointed for his appearance before the court or magistrate.

How to be proceeded with or discharged.

SECT. 10. If the person, so recognized or committed, shall appear before the court or magistrate, upon the day ordered, he shall be discharged, unless he shall be demanded by some person authorized by the warrant of the executive to receive him, or unless the court or magistrate shall see cause to commit him, or to require him to recognize anew, for his appearance at some other day, and if, when ordered, he shall not so recognize, he shall be committed and detained as before; provided, that whether the person so charged shall be recognized, committed or discharged, any person, authorized by the warrant of the executive, may at all times take him into custody, and the same shall be a discharge of the recognizance, if any, and shall not be deemed an escape.

Expenses of such proceedings, how paid.

SECT. 11. The complainant, in such case, shall be answerable for all the actual costs and charges, and for the support in prison of any person so committed, to be paid in the same manner as by a creditor for his debtor committed on execution; and if the charge for his support in prison shall not be so paid, the jailer may discharge such person, in like manner as if he had been committed for debt on an execution.

Governor authorized to grant conditional pardons. 1803, 117.

SECT. 12. In all cases, in which the governor is authorized by the constitution to grant pardons, he may, by and with the advice of the council, and upon the petition of the person convicted, grant a pardon upon such conditions, with such restrictions, and under such limitations, as he may think proper, and he may issue his warrant to all proper officers, to carry into effect such conditional pardon; which warrant shall be obeyed and executed, instead of the sentence, if any, which was originally awarded.

Warrant for such purpose, how executed and returned

SECT. 13. Whenever any convict is pardoned by the governor, or his punishment is commuted, the officer, to whom the warrant for that purpose is issued, after executing the same, shall make return

thereof under his hand, with his doings therein, to the secretary's office, as soon as may be; and he shall also file, in the clerk's office of the court in which the offender was convicted, an attested copy of the warrant and return, a brief abstract whereof the clerk shall subjoin to the record of the conviction and sentence.

TITLE III.

Of imprisonment for offences, and the government and discipline of prisons.

CHAPTER 143. Of detention and imprisonment in the county jail, or the house of correction, and the government and regulation of those prisons.

CHAPTER 144. Of the state prison, and the government and discipline thereof.

CHAPTER 145. General provisions concerning imprisonment in criminal cases.

CHAPTER 143.

OF DETENTION AND IMPRISONMENT IN THE COUNTY JAIL, OR THE HOUSE OF CORRECTION, AND THE GOVERNMENT AND REGULATION OF THOSE PRISONS.

SECTION

1. County jails, for what purposes to be used as prisons.
2, 3. A house of correction to be provided in each county.
4. Master to be appointed, and rules established.
5, 6. Commitment of vagabonds, &c. to such house.
7. Disorderly persons arrested in the night, how to be secured.
8. Persons convicted on trial may appeal. Forfeiture of recognizance.
9. When there may be a discharge, on recognizing and paying costs.
10. Fees of officers, &c. how paid.
11. Overseers of houses of correction, their appointment, &c.
12. Overseers to make contracts for work—Their compensation.
13. Prisoners supposed to be reformed, may be discharged—Their sentence, if again convicted.
14. Materials for work—Compensation of master.
15, 16. Master's claim for keeping, &c., how allowed and paid—Proviso as to Boston.
17, 18. Courts may sentence to jail, or house of correction—Certain convicts in Boston may be sent to house of reformation.
19. Sentence of certain convicts not before sentenced.
20, 21. Sentence to solitary confinement and hard labor in jails, &c. how and where to be executed.
22. Prisoners refusing to work, &c. how punished.
23. Advancement of money for tools and materials.
24, 25. Such moneys and proceeds of labor to be accounted for.
26. Surplus earnings of prisoners.
27. Expense of supporting convicts in jails, &c. how paid.

SECTION
28. Inspectors of prisons. Keepers, &c. to make stated returns.
29, 30, 31, 32. Powers and duties of inspectors.
33. Inspectors to make annual returns to the governor—Contents thereof.
34. Spirits and strong drink prohibited, unless, &c.
35. Prisoners how to be classed and kept separate.
36. Penalties for neglect of duty by sheriff, jailer, &c.
37. Penalties for furnishing or attempting to furnish, spirits to prisoners.
38, 39. Regulations concerning health and cleanliness.
40. Prisoners to have bibles;—may be visited by ministers.
41. Removal of prisoners, in case of pestilence.
42. Same, in case of danger from fire.
43. Removal, to different jails in the same county.
44. Supply of fuel, &c. and allowance therefor.
45. Jailer, &c. to obey orders for furnishing specific rations, under penalty.
46, 47. Restraint and punishment of refractory prisoners.
48. Sheriff's and keeper's authority.
49, 50. Punishment of prisoners, for escaping.
51. " for attempting to escape.

County jails, for what purposes to be used as prisons. 1783, 44, § 1.

SECTION 1. The common jails in the several counties, in the charge of the respective sheriffs, shall be used as prisons:

First, for the detention of persons charged with offences, and duly committed for trial:

Secondly, for the detention of persons who may be duly committed to secure their attendance as witnesses, on the trial of any criminal cause:

Thirdly, for the confinement of persons committed pursuant to a sentence, upon conviction for an offence, and of all other persons duly committed for any cause authorized by law:

And the provisions of this and the following section shall extend to persons detained or committed by the authority of the courts of the United States, as well as the courts and magistrates of this Commonwealth.

House of correction to be provided in each county. 1834, 151, § 1.

SECT. 2. There shall be erected, or otherwise provided by the county commissioners, in their respective counties, and by the mayor and aldermen in the city of Boston, at the charge of the said counties and city, respectively, a fit and convenient house or houses of correction, where not already provided, with convenient yards and workshops, and other suitable accommodations, adjoining or appurtenant thereto, for the safe keeping, correcting, governing and employing of all rogues, vagabonds, and common beggars, all lewd, vicious, idle and disorderly persons, and all other offenders who may be committed thereto in due course of law.

Same subject. 1834, 151, § 1.

SECT. 3. The yards of such houses of correction shall be of sufficient extent for the convenient employment of the persons confined therein, and shall be enclosed by fences of sufficient height and strength to prevent escapes, and also to prevent all access to, or communication with, any persons confined therein, by persons without: Until such house of correction shall be provided, the jail in any county, or a part thereof, may be used for that purpose; but every jail so used shall be provided with a sufficient yard, which shall be enclosed in the manner directed in this section.

Master to be appointed, and

SECT. 4. The commissioners, in their respective counties, and

the city council, in the city of Boston, shall appoint a suitable person to be master of each house of correction, and to hold his office during their pleasure; they shall also establish such rules and orders, not repugnant to the laws of the Commonwealth, as they shall deem necessary, for restraining, governing and punishing the persons there confined.

rules established. 1834, 151, § 2.

SECT. 5. Any police court or justice of the peace, and also the court of common pleas and municipal court, may commit to the house of correction, to be there kept and governed according to law, and to the rules and orders thereof, all rogues and vagabonds, and all idle and dissolute persons, who go about begging; all persons who use any juggling, or unlawful games or plays; common pipers and fiddlers; stubborn children, runaways, common drunkards, common night walkers, pilferers, and all lewd, wanton, and lascivious persons, in speech or behavior; common railers and brawlers, and persons who neglect their calling or employment, mispend what they earn, and do not provide for themselves, or for the support of their families; all persons, who shall sell any spiritous or fermented liquor without license, in the open air, in any booth or other temporary building, in any house, shop, room or apartment, used for the purpose of tippling or gaming, or in which tippling or gaming is allowed, or which is used for the resort of loose, lascivious, wanton, or dissolute persons; all persons who shall be convicted of stealing money or goods, not exceeding the value of five dollars, and all other idle and disorderly persons, upon conviction, in the manner hereafter provided, of any of the offences aforesaid.

Commitment of vagabonds, &c. to such house. 1834, 151, § 2.

SECT. 6. When any person shall be accused of any offence, or of any disorderly conduct, mentioned in the preceding section, or shall be liable, by virtue of any law of this Commonwealth, to be committed, for any cause, to the house of correction of the county, or to the house of industry or workhouse established in any town, complaint shall be made in writing, under oath, to a justice of the peace for the county, or to a police court for the town where the offence shall be committed, and such magistrate shall thereupon cause the person complained of to be brought before himself, or before some other magistrate, by warrant, and upon conviction of the offence set forth in such complaint, such person may be sentenced to be committed to the house of correction for the county, or to the house of industry or workhouse, within the city or town, there to be kept at work for a term not exceeding six months; and the master, keeper, director or overseer of such house, shall receive all persons who shall be so committed, and set them to work, if they be able, and employ and govern them, while they remain in his custody, in the manner required by law, and prescribed by the rules and orders established for that purpose.

Same subject. 1834, 151, § 3.

SECT. 7. Any person, found in any street, highway, or other public place, in the night time, committing any of the offences or disorders before mentioned, may be apprehended by any sheriff, deputy sheriff, constable or watchman, or by any other person, by the order of any magistrate, or of either of the said officers, without a written warrant, and kept in custody in any convenient place, not more than twenty four hours, Sundays excepted, at or before the expira-

Disorderly persons arrested in the night time, how secured. 1834, 151, § 5.

tion of which time, every such person shall be brought before a justice of the peace, or police court, and proceeded against in the manner directed in the preceding section, or discharged, as such magistrate shall determine.

Appeal by persons convicted.

SECT. 8. Any person, convicted in the manner before provided, may appeal from the sentence, to the court of common pleas then next to be held in the same county, or, if in the county of Suffolk, to the next municipal court, and the appeal shall be allowed on the same terms, and the proceedings therein be conducted in the same manner as provided in the one hundred and thirty eighth chapter; and the commission of any like offence by the appellant, before judgment on the appeal, shall be deemed a breach of the condition of the recognizance, if any shall have been taken upon allowing the appeal.

Forfeiture of recognizance. 1834, 151, § 3.

When there may be a discharge on recognizance and paying costs.

SECT. 9. When any person shall be brought before a magistrate, upon a charge of any offence mentioned in the fifth section, except persons who shall be committed for stealing money or goods not exceeding the value of five dollars, such magistrate, or the court before which such cause may be carried by appeal, may, in any stage of the proceedings, direct the respondent or appellant to be discharged, upon his entering into a recognizance, in such sum as the magistrate or court shall direct, with sufficient sureties, for his good behavior for a term not less than six months, nor more than two years, and paying the costs of prosecution, or such part thereof as the magistrate or court shall direct.

Fees of officers, how paid,, &c. 1834, 157, § 4.

SECT. 10. All magistrates, and other officers and witnesses, shall receive the same fees and compensation, for any services in prosecuting any of the offences enumerated in this chapter, that are allowed by law for like services in other criminal proceedings, to be taxed, allowed and paid in the same manner.

Overseers of houses of correction, their appointment, &c. 1834, 151, § 6.

SECT. 11. The commissioners, in their respective counties, and the city council of Boston, may appoint two or more, not exceeding five, suitable and discreet persons of the county or city, to be overseers of the house of correction therein, who shall see that the rules established for the management of the house of correction, and the government of the persons confined therein, are strictly observed; the overseers shall examine all accounts of the master, relating to the earnings of the prisoners, and all the expenses of the institution, and they shall keep a register, fairly written, of all their official proceedings.

Overseers to make contracts for work.

SECT. 12. The overseers of each house of correction may make contracts, for work to be done in the house, with any person who may be disposed to supply materials to be there wrought; they may also make contracts for letting out to hire, during the day time, any of the persons there confined, to employers living near enough, in their opinion, to the house of correction, for the said overseers, or the master of the said house, to have the general inspection of the conduct of the persons so let out to hire, and of the treatment they receive; the overseers shall receive such reasonable compensation, as may be allowed by the commissioners, or city council, respectively, who may remove any overseer, and fill all vacancies.

Their compensation. 1834, 151, § 6.

Prisoners, supposed to be re-

SECT. 13. Whenever it shall appear to the overseers or direc-

tors of any house of correction, house of industry or workhouse, that any person there confined, on a conviction before any justice of the peace, of either of the offences mentioned in the fifth section, except stealing money or goods not exceeding the value of five dollars, has reformed, and is willing and desirous to return to an orderly course of life, they may, in their discretion, by a written order, discharge such person from confinement; and if such person shall have been committed by the court of common pleas, the municipal court of the city of Boston, or any police court, he may be discharged by such courts, respectively, upon the recommendation of the overseers or directors: and if a person so discharged shall afterwards be convicted of any of the said offences, committed after the former conviction, either in the same or a different county, he may be sentenced by the magistrate or court, before whom the second conviction is had, to hard labor in the house of correction, house of industry, or workhouse, for a term not exceeding one year.

formed, may be discharged.

Their sentence, if again convicted. 1834, 151, § 8.

SECT. 14. The commissioners in the several counties, and the overseers of the house of correction in Boston, shall cause to be provided, at the expense of the city and of the respective counties, suitable materials and implements, sufficient to keep at work all the persons committed to the house of correction, according to law, and may, from time to time, establish such rules as they shall think needful, for the employment and government of the persons so committed, for the procuring and preservation of such materials and implements, and for the keeping and settling of all accounts, of the costs and other expenses of procuring the same, and of all labor performed by each of the persons so committed; they shall also determine, from time to time, what sum the master shall receive, for the board of the persons so committed to his custody, and the master shall receive such further compensation for his services, in addition to the price allowed him for the board of those who are so committed, as the commissioners in their counties, and the city council in Boston, shall deem just and reasonable.

Materials for work.

Compensation of master. 1834, 151, § 9.

SECT. 15. The overseers of each house of correction shall, on the application of the master or keeper thereof, twice in each year, and oftener if they shall think necessary, examine and audit his accounts for the care and expense of supporting and employing the persons committed to his custody; they shall certify what sum is due for the supporting and employing of each of the said persons, after deducting the net profit, if any, of his labor; if any of the said persons shall refuse or neglect to pay the sum, so certified by the overseers to be due, for the space of fourteen days after demand in writing by such master or keeper, he may commence his action at law, by a general indebitatus assumpsit, and recover against such person the sum found to be justly due, which shall be deemed to be his [his] own proper debt; but the defendant in such action may prove on the trial, that the whole sum, allowed and certified by the overseers, was not justly due, and he may tender, or bring into court, such sum of money as he shall admit to be due to the plaintiff in such action, as in other cases.

Master's claim for keeping, &c. how allowed and paid. 1834, 151, § 10.

SECT. 16. Whenever the said overseers shall certify that any sum is due as aforesaid, for supporting and employing in the house

Same subject.

of correction any person who has not sufficient estate to pay the same, and such person shall have a parent, master, or kindred, liable by law to maintain him, the said master or keeper may demand and recover such sum, as may be justly due, of the person or persons so liable; if such pauper have no parent, master, or kindred, liable by law to maintain him, the same may be demanded and recovered of the town wherein he shall have his lawful settlement, and upon refusal or neglect to make payment, for the space of thirty days after the same shall have been demanded, in writing, of the parent, master or kindred, or of any member of the city council of the city, or any overseer of the poor of the town respectively liable by law therefor, the said master or keeper, at any time within two years after his account shall have been so certified, and not afterwards, may commence and maintain his action at law for the same, against the party so liable, in the same form of action, and subject to the same defence, which are prescribed and allowed in the preceding section; provided, that the city of Boston shall be entitled to the same remedies for maintaining any person in the house of correction in said city, which are provided for the masters or keepers of houses of correction.

Proviso as to Boston. 1834, 151, § 10.

Courts may sentence to jail or house of correction. 1834, 151, § 17.

SECT. 17. Any person, convicted of an offence, punishable wholly or in part by imprisonment in the county jail, may be sentenced to suffer such imprisonment in the house of correction, instead of the jail, or to suffer solitary imprisonment and be confined at hard labor, either in the jail or the house of correction.

Same subject.

SECT. 18. If any boy, under the age of sixteen years, shall be convicted of an offence, which is punishable by imprisonment in the state prison, such convict not having been before sentenced to imprisonment in the state prison in this state, or in any state prison or penitentiary within the United States, the court, if sentence of solitary imprisonment and confinement at hard labor, for a term not exceeding three years, is awarded against such convict, and also when the sentence of confinement, at hard labor, for any term of time, is awarded against a female convict of whatever age, shall order such sentence to be executed, either in the house of correction or in the county jail, and not in the state prison; but the provisions of this and the preceding section shall not prevent the courts in the city of Boston, from sentencing such convicts to confinement in any place, in which juvenile offenders may be by law confined.

Certain convicts in Boston may be sent to the house of reformation. 1834, 151, § 16.

Sentence of certain convicts, not before sentenced. 1834, 151, § 14.

SECT. 19. When the punishment of solitary imprisonment, and confinement at hard labor for a term not exceeding three years, shall be awarded by the court against any convict, who has not been before sentenced to the like punishment, by any court in this state, or within the United States, such sentence may be executed, either in the house of correction, or in the county jail, or in the state prison.

Sentence to solitary confinement and hard labor, in jails, &c. how and where executed. 1834, 151, § 14.

SECT. 20. When any convict shall be sentenced to solitary imprisonment and hard labor, in any house of correction or jail, the master or keeper thereof shall execute such sentence of solitary imprisonment, by confining the convict in one of the cells, if there be any in such house of correction or jail, and if there be none, then in the most retired and solitary part of such house or jail; and, during the time of solitary imprisonment, such convict shall be fed with bread and water only, unless other food shall be necessary for the

preservation of his health: No intercourse shall be allowed with any convict in solitary imprisonment, except for the conveyance of food, and other necessary purposes, unless some minister of the gospel shall be disposed to visit him, in the manner hereafter provided.

Same subject. 1834, 151, § 15.

SECT. 21. As soon as the term of solitary imprisonment shall have expired, the master or keeper shall furnish the convict with tools and materials, or with other means, to work in any suitable manner, in which he can be usefully or profitably employed, either in the said house of correction or jail, or within the close yard thereof; such convict may, if necessary, be confined by a log and chain, or in such other manner as shall prevent his escape, without unnecessarily inflicting bodily pain, or interrupting his labor; the overseers of the house of correction, or, when such punishment is inflicted in the jail, the sheriff of the county, shall oversee the execution of all such sentences.

Punishment of prisoners refusing to work, &c. 1834, 151, § 15.

SECT. 22. If any convict shall be refractory, or, during the time for which he is sentenced to hard labor, shall refuse or neglect, without reasonable cause, to labor in any suitable manner, when required, such convict, so long as he shall continue to be refractory, or shall refuse or neglect to labor, shall be kept in solitary confinement, and fed with bread and water only, in the manner before provided.

Advancement of money for tools and materials. 1834, 151, § 18.

SECT. 23. The commissioners, and the mayor and aldermen of the city of Boston, may order such sums of money, as may from time to time be necessary, to be advanced out of the treasuries of their respective counties, to the master of the house of correction, or keeper of the jail, for the purpose of providing such tools and materials, and such other things, as may be required for the employment, restraint, and safe keeping of the convicts.

Money advanced and proceeds of labor to be accounted for. 1834, 151, § 18.

SECT. 24. All money, so advanced, shall be by such master or keeper appropriated, under the direction of the officers, by whose order the same was advanced; and he shall account to them for the expenditure of the same, and shall keep, in the manner directed by them, a full and true account of all the labor and earnings of each prisoner in his custody, and of the proceeds thereof, of all the costs of the materials furnished to each, and of all other expenses, attending the execution of these provisions, in the house of correction or jail under his care.

Same subject. 1834, 151, § 18.

SECT. 25. Such master or keeper shall cause the articles, manufactured by the prisoners in his custody, or the produce of their labor, to be disposed of to the best advantage, and like accounts to be kept of the proceeds of the same; all such accounts shall be presented to and settled by the said officers, semiannually, and as much oftener as they shall think necessary; such master or keeper shall pay into the treasury of the county, at such times as the said officers shall direct, the amount of sales, and other proceeds of the labor and earnings of the prisoners in his custody, or the balance thereof.

Surplus earnings of prisoners. 1834, 151, § 18.

SECT. 26. When the term for which any prisoner has been sentenced expires, or he is otherwise discharged, if it shall appear that the proceeds of his labor are more than sufficient to pay the costs of the materials furnished to him, and for his maintenance in the jail or house of correction, with all other charges attending his confinement and employment, the residue shall be paid over to him, for his own

use; but the overseers of any house of correction may, at any time, during the confinement of such prisoner, when it shall appear that the proceeds of his labor are more than sufficient to pay the costs and charges aforesaid, order the surplus, or any part thereof, to be paid over for the use of his family, if he have one; in which case, the balance only of his earnings shall be paid over to him on his discharge, in the manner aforesaid.

Expense of supporting convicts in jails, &c. how paid. 1834, 151, § 18.

SECT. 27. All charges and expenses of safe keeping, maintaining, and employing convicts, who have been sentenced to imprisonment in the county jail or house of correction, except such part thereof as may be reimbursed by their labor, and also the expense of the safe keeping of all persons, charged with offences and committed for trial, shall be paid from the county treasury, the accounts of the keeper or master being first settled and allowed by the commissioners of such county, and in the county of Suffolk, by the board of accounts; but not more than one dollar per week shall be paid by the Commonwealth, for the support of any such person, and no allowance from the county treasury shall be made to any keeper or master, for the support of any prisoner, committed to such jail or house of correction, by virtue of the provisions contained in the fifth and sixth sections, when such prisoner shall be of sufficient ability to support himself, or shall have either parent, master or kindred, who are able, and obliged by law to maintain him, or when such prisoner shall have a legal settlement within this state.

Inspectors of prisons—keepers, &c. to make stated returns. 1834, 151, § 15.

SECT. 28. The commissioners for the several counties, and in the county of Suffolk, the judge of probate, the judge of the municipal court, and the justices of the police court, shall be inspectors of the prisons in the said counties, respectively, and shall, by themselves or their committee, visit and inspect the jails, houses of correction, and all other places of confinement or imprisonment, within their respective jurisdictions, and shall fully examine into every thing relating to the government, discipline and police thereof; and the keeper of each jail, and master of each house of correction, shall make returns, at least twice in each year, to the said inspectors, at such time and in such form as they shall direct, setting forth the names, ages, and residence, if known, of all persons who are or have been in custody, since the last return, the cause of their imprisonment, and the manner in which they have been treated and employed, the punishments inflicted, if any, and the names of all persons, who have died, escaped, been pardoned or discharged, with all other circumstances, required by the inspectors.

Powers and duties of inspectors.

SECT. 29. The commissioners, twice in each year, once in June or July, and once in December, shall, by a committee of not less than two of their members, visit and inspect all the prisons in their county; and such committee shall, as soon as may be after each inspection, make and subscribe a detailed report to the commissioners, stating the condition of each prison, as to health, cleanliness and discipline, at the time of inspection, the number of persons confined there within the six months next preceding, or since the last inspection, and for what causes, the manner in which convicts, if any, have been employed, the number of persons, usually confined in one room, the distinction, if any, usually observed in the treatment of

the different classes of persons, detained in such prisons, the punishments which have been inflicted, the evils or defects, if any, in the construction, discipline or management of such prisons, the names of the prisoners, who have died, escaped, been pardoned or discharged, and whether any of the provisions of law, in relation to such prisons, have been violated or neglected, with the causes, if known, of such violation and neglect.

SECT. 30. The said inspectors in the county of Suffolk shall, by a committee of not less than three of their members, visit and inspect, at the times and in the manner mentioned in the preceding section, the jail, the house of correction, and all other places of imprisonment and confinement, established by law in the city of Boston; and such committee shall, as soon as may be after each inspection, make and subscribe such a detailed report to the said mayor and aldermen, in relation to the prisons in the city of Boston, as is required by the preceding section to be made to the commissioners in their respective counties. Same subject. 1821, 109, § 10.

SECT. 31. Whenever the said inspectors, or any of them, shall visit any of the said prisons, either for the purpose of inspection, or any other cause, the sheriff, master, keeper, or other officer, having charge thereof, shall admit the said inspectors, when required, into every apartment of such prison, exhibit all books, precepts, documents, accounts and papers, which may be required, relating to the concerns of the prison, or to the detention or confinement of any person therein, and afford to the inspectors, or their committee, such aid as may be requested, in the performance of any part of their duties; the inspectors or their committee may examine, on oath, to be administered by one of them, either by interrogatories in writing, to be answered in writing and subscribed, or otherwise, as they may direct, any officer, keeper or other person, in relation to the concerns or management of any prison; they may also converse with any of the prisoners, apart and without the presence of any officer or keeper. Same subject.

SECT. 32. If it shall appear to the inspectors in any county, from the report of their committee or otherwise, that any of the provisions of law, in relation to prisons, have been violated or neglected, in their county, they shall forthwith give notice thereof to the county or district attorney. Same subject.

SECT. 33. Said inspectors shall cause to be transmitted to the governor, on or before the second Wednesday of January, in each year, authentic copies of all reports made to them within one year next preceding, in relation to the inspection and condition of prisons, or other places of confinement, and like copies of any information, by them given to the county or district attorney, in relation to any violation or neglect of the law respecting prisons, with such further statements and suggestions, as may, in their opinion require the attention of the government. Inspectors to make annual returns to the governor. Contents thereof.

SECT. 34. No sheriff, jailer, master of a house of correction, or other officer or under keeper of any prison, shall, under any pretence, give, sell or deliver, or knowingly suffer to be given, sold, or delivered, to any person committed to jail for debt, and supported at the charge of the creditor, or to any prisoner in confinement upon conviction or charge of any offence, any spiritous liquor, or mixed Spirit and strong drink prohibited, unless, &c. 1834, 151, § 27.

SECTION
28. Officers to perform the duties required by warden, &c.
29. Removal of convicts under sentence, to the prison.
30. Convicts sentenced in U. S. Courts, to be received, &c.
31. All offices forfeited, by commitment to state prison.
32. Solitary imprisonment, how to be inflicted.
33. Convicts, how employed, and kept separate.
34, 35. Proceedings against convicts, twice committed to a state prison.
36. Appeal when allowed; convict when remanded.
37. Punishment for escape, &c. when sentenced for years.
38. " " " when sentenced for life.
39. " of officers, for suffering a voluntary escape.
40. " for leaving prisoner at large, or for other unlawful indulgence.
41. Punishment for aiding in escape or rescue.
42. " " illicit conveyance of any article into the prison.
43. Concurrent jurisdiction of Suffolk and Middlesex.
44, 45. Subsistence and rations for convicts.
46. Subsistence and diet in the hospital.
47. Yearly clothing for convicts.
48. Warden's power to maintain order, &c.
49. Annual visitation of governor and council.
50. Governor and council authorized to provide additional cells and buildings.
51. " " " to draw warrants for moneys appropriated.
52. Treatment of convicts by officers.
53. Convicts, when discharged, to be decently clothed, &c.

State prison and penitentiary established.

SECTION 1. The state prison in Charlestown, in the county of Middlesex, shall be the general penitentiary and prison of the Commonwealth, for the reformation as well as for the punishment of offenders; in which shall be securely confined, employed in hard labor, and governed in the manner hereafter directed, all offenders, who have been convicted and sentenced, according to law, to the punishment of solitary imprisonment and confinement therein at hard labor.

Organization. 1827, 118, § 1. 1829, 16, § 1.

SECT. 2. The organization of the state prison shall include three inspectors, one warden, one deputy warden, one chaplain, one physician and surgeon, one clerk, one superintendent of the stone department, who shall also be an overseer, eight turnkeys, who shall be overseers, and ten watchmen.

Inspectors, how appointed, and tenure of office. 1827, 118, § 2.

SECT. 3. The inspectors shall be appointed by the governor, with the advice and consent of the council, and one of them shall be designated in his commission as chairman; they shall hold their offices during the pleasure of the executive, but not more than four years under one appointment.

Warden, chaplain, physician and surgeon, how appointed; tenure of office. 1827, 118, § 2.

SECT. 4. The warden, the chaplain, and the physician and surgeon, shall be appointed by the governor, with the advice and consent of the council, and commissioned to hold their offices during the pleasure of the executive.

Deputy warden and other officers, how appointed; tenure of office. 1827, 118, § 2.

SECT. 5. The deputy warden, and all other officers of the prison, shall be appointed by the warden, subject to the approval of the inspectors, and shall hold their offices during the pleasure of the warden and inspectors; but if the warden shall think any such officer ought to be removed, and the inspectors shall not consent thereto, the warden may appeal to the governor and council, who, after reasonable notice to the inspectors, may make such removal.

cil, forthwith, all violations of law and omissions of duty by the warden, chaplain, or physician and surgeon, that shall come to their knowledge; and every officer, who holds his place at the pleasure of the inspectors and warden, and who shall be found to be unfaithful or incompetent, shall be by them forthwith removed; the said inspectors shall also, on the last day of September, in each year, make a detailed report to the governor and council, which shall contain a full statement of all the concerns of the prison, for the year next preceding.

Duty of chaplain.

SECT. 12. The chaplain shall perform divine service in the chapel of the prison, instruct the convicts in their moral and religious duties, visit the sick on suitable occasions, and devote his whole time to the performance of the duties of his office.

Duty of physician and surgeon. 1827, 118, § 6.

SECT. 13. The physician and surgeon shall visit the hospital of the prison, at least once in each day, and as much oftener as may be necessary, prescribe for convicts who may be sick, and attend to the regimen, clothing and cleanliness of such of them as are in the hospital; he shall keep a regular journal, which shall remain at the prison, of all admissions to the hospital, stating the time, the nature of the disease, with his prescriptions, and the treatment of each patient, and the time of his discharge from the hospital, or of his death; the said journal shall also contain regular entries of all orders which shall be given for supplies for the hospital department, specifying the articles ordered; all such orders shall be in writing, and the warden shall provide the supplies so ordered.

Care and treatment of sick convicts.

SECT. 14. Whenever any convict shall complain of such illness as requires medical aid, notice thereof shall be given to the physician, who shall visit such convict, and if, in the opinion of the physician, the illness is such as to require his removal to the hospital, the warden may order such removal, and the convict shall remain in the hospital, until the physician shall determine that he may leave it without injury to his health.

Bond of warden to be approved, and lodged in treasury. 1827, 118, § 3.

SECT. 15. Before the warden enters upon the duties of his office, he shall give bond to the Commonwealth, in the sum of twenty thousand dollars, with sufficient sureties, to be approved by the governor and council, with condition that he shall faithfully account for all moneys placed in his hands as treasurer, and perform all the duties incumbent on him as warden of the said prison; and such bond, with the approval of the sureties indorsed thereon, shall be filed in the office of the treasurer.

Warden to have charge of the prison, to be treasurer thereof, &c. 1827, 118, § 3.

SECT. 16. The warden shall have the charge and custody of the prison, with the lands, buildings, furniture, tools, implements, stock and provisions, and every other species of property pertaining thereto, or within the precincts thereof; he shall be treasurer of the prison, and shall receive and pay out all moneys, granted by the legislature for the support thereof; and shall cause to be kept, in suitable books, regular and complete accounts of all the property, expenses, income, business and concerns of the establishment.

Inspectors to examine his books semiannually. 1827, 118, § 3.

SECT. 17. All the books and documents, relating to the concerns of the prison, shall at all times be open to the examination of the inspectors, who shall, semiannually, carefully examine the said books, and compare them with the vouchers and documents relating thereto.

vict, when remanded. 1827, 118, § 20.

right to appeal, as in other cases tried before the said court; but if the charge against such convict shall not be established, as above mentioned, he shall be remanded to the said prison by the court, there to remain in execution of his former sentence.

Punishment for escape, &c., when sentenced for years. 1827, 118, § 11.

SECT. 37. If any convict, committed to the state prison under sentence for any limited time, shall escape therefrom, or shall attempt by violence to escape, or shall assault the warden, or any inspector, or other officer or person employed in the government or custody of the said prison, he shall be punished by imprisonment in the said prison not more than ten years, in addition to his former sentence, and also by solitary imprisonment not more than one year, to be executed forthwith, or at such time or times, either before or after the expiration of any former sentence, as the court shall direct.

Punishment for escape, &c., when sentenced for life. 1827, 118, § 12.

SECT. 38. If any convict in the state prison, under sentence of imprisonment for life, shall escape therefrom, or shall attempt by violence to escape, or shall commit any such assault, as is mentioned in the preceding section, he shall be punished by solitary imprisonment not more than one year, to be executed at such time or times, as the court shall direct.

Punishment for officer, suffering voluntary escape. 1827, 118, § 22.

SECT. 39. If any officer, or other person employed in the state prison, shall voluntarily suffer any convict confined therein to escape, or shall in any way consent to such escape, he shall be punished by imprisonment in the said prison, not more than twenty years.

Punishment for leaving prisoner at large, or for other unlawful indulgence. 1827, 118, § 23.

SECT. 40. If any officer, or person employed in the state prison, shall suffer any convict, under sentence of solitary confinement, to be at large, or out of the cell assigned to him, or shall suffer any convict, confined in said prison, to be at large out of the prison, or to be visited, conversed with, or in any way relieved or comforted, contrary to the regulations of the prison, he shall be punished by fine not exceeding five hundred dollars.

Punishment for aiding in escape or rescue. 1827, 118, § 24.

SECT. 41. Every person, who shall convey into the state prison any disguise, instrument, tool, weapon, or other thing, adapted or useful to aid any convict in making his escape therefrom, with intent to facilitate the escape of any convict there lawfully committed or detained, or who shall, by any means, aid any convict in his endeavor to escape, whether such escape be effected or attempted, or not, and every person, who shall forcibly or fraudulently rescue, or attempt to rescue, any convict held in custody by any officer or other person, under sentence of imprisonment in the state prison, shall be punished by imprisonment in the said prison, not more than ten years, or by fine not exceeding five hundred dollars.

— for illicit conveyance of any article into the prison. 1825, 84, § 4.

SECT. 42. If any officer, contractor, teamster, truckman, boatman, or other person, who is employed in or about the state prison or its dependencies, shall deliver or procure to be delivered, or shall have in his possession, with intent to deliver, to any convict confined in the prison, or shall deposite or conceal, in or about the said prison or the dependencies thereof, or in any boat, carriage, or other vehicle going into the premises belonging to the said prison, any article or thing whatever, with intent that any convict confined in the prison should obtain or receive the same, without the knowledge and permission of the warden or an inspector of the prison, he shall be punished by imprisonment in the state prison or the county jail, not more than two years, or by fine not exceeding five hundred dollars.

Warden's power to maintain order, &c. 1827, 118, §§ 3 & 21.

SECT. 48. All necessary means shall be used, under the direction of the warden, to maintain order in the prison, enforce obedience, suppress insurrection, and effectually prevent escapes; for which purpose, he may at all times require the aid and utmost exertions of all the officers of the institution, the inspectors, chaplain and physician excepted.

Annual visitation of governor and council. 1827, 118, § 17.

SECT. 49. The state prison shall be visited by the governor and council, annually, and as much oftener, as they may think proper, for the purpose of examining into its concerns, and ascertaining its condition; they shall inquire into all alleged abuses, or neglects of duty, and may make such alterations in the general discipline of the prison, as, on examination, they may find necessary.

Governor and council may provide additional cells and buildings. 1827, 118, § 17.

SECT. 50. The governor, with the advice and consent of the council, may, from time to time, cause additional buildings to be erected, or alterations to be made in the existing buildings of the prison, so that there shall be, at all times, as many separate cells, as there are convicts in the prison; he may, in like manner, cause such additions or alterations to be made, as shall be found necessary, for the accommodation of such of the officers, as are required by law to reside constantly within the precincts of the prison.

And may draw warrants for moneys appropriated. 1827, 118, § 17.

SECT. 51. Whenever an appropriation of money is made by the legislature, for the support of the state prison, the governor, with the consent of the council, shall draw a warrant, in favor of the warden, for such portions thereof, from time to time, or for the whole amount at one time, as he shall think proper.

Treatment of convicts by officers.

SECT. 52. The warden, and all the officers of the prison, shall treat the convicts with kindness, so long as they shall merit such treatment, by their obedience, industry, and good conduct.

Convicts, when discharged to be decently clothed, &c. 1827, 118, § 13.

SECT. 53. The warden may pay to any convict, who shall, in his opinion, deserve it by his good conduct, on his leaving the prison, a sum not exceeding five dollars, out of the treasury of the prison; and no convict shall leave the said prison, without being furnished with decent clothing.

CHAPTER 145.

GENERAL PROVISIONS CONCERNING IMPRISONMENT IN CRIMINAL CASES.

SECTION
1. Provision for convicts who become insane, while imprisoned.
2. If restored, before term expires, then, &c.
3. Poor convicts, how discharged from prison.
4. Fees for such discharge, how taxed and paid.

Provision for convicts who become insane, while imprisoned.

SECTION 1. Whenever a convict, confined in prison in any county, shall there become insane, the physician attending such prison shall make report thereof to the jailer, who shall transmit such report

respectively, for the purpose of electing a register of deeds for the residue of the term for which the former register was elected, or for the term of five years from the annual meeting aforesaid, and until another shall be chosen and qualified in his stead, unless he shall within that time be removed, as provided in the one hundred and first section of the fourteenth chapter; and such notice to the selectmen shall prescribe the day and hour when such meetings shall be held, and the time and place of making returns to the said commissioners of the number of votes, and the names of the persons voted for; provided, that the time of making such returns shall never exceed thirty days from the date of such notices.

R. S. ch. 15.

SECTION 4. The fifteenth chapter shall be amended, by inserting at the end thereof two new sections, in the words following:

Who may recognize for a city or town, and how authorized. 1833, 216.

SECT. 88. When any city or town shall be required to enter into a recognizance, the mayor and aldermen of the city, or the selectmen of the town, may by an order or vote authorize any person to enter into the recognizance in the name and behalf of the city or town, and such recognizance shall be binding on the city or town, and on the inhabitants thereof, like any other contract lawfully made by such corporation.

Surety, not to be required in such recognizances. 1833, 216.

SECT. 89. No surety shall be required in any recognizance of a city or town.

R. S. ch. 52.

SECTION 5. The fifty second chapter shall be amended, by inserting at the end thereof one new section in the words following:

Provisions for regulating the floating of timber down Connecticut river, and for damage caused thereby. 1814, 50.

SECT. 5. No person shall cause or permit to be driven or floated down Connecticut river, any masts, spars, logs, or other timber, unless the same shall be formed and bound into rafts, and placed under the care of a sufficient number of persons to govern and manage the same, so as to prevent damage thereby; and if any damage shall be done to any bridge or dam upon or over the said river, by any timber driven or floated down the same, in any manner not herein allowed, the owner of the timber, and every person who shall cause or permit the same to be so driven or floated down said river, shall be jointly and severally liable for all such damage, to be recovered by the party injured, in an action on the case.

R. S. ch. 53.

SECTION 6. The fifty third chapter shall be amended, by inserting at the end thereof one new section in the words following:

Deer, in Plymouth and Barnstable, not to be hunted with dogs, &c. 1823, 74.

SECT. 8. If any person shall at any time of the year hunt, chase or kill, with hounds or dogs, any deer within the counties of Plymouth or Barnstable, he shall for every such offence forfeit the sum of twenty dollars to the use of the town where the offence shall have been committed.

R. S. ch. 60.

SECTION 7. The sixtieth chapter shall be amended, by inserting at the end thereof five new sections in the words following:

S. J. C. may allow tenant for life to cut full grown trees. 1818, 96.

SECT. 33. When any wood land is held by one person for life, with remainder or reversion to another in fee simple, or fee tail, and the trees thereon have come to an age and growth fit to be felled, and are in such a state that they will probably become of less value by standing, the supreme judicial court may, on the petition of any

R. S. ch. 83.

SECTION 11. The eighty third chapter shall be amended, by striking out the word "also" from the twenty second section thereof.

R. S. ch. 90.

SECTION 12. The ninetieth chapter shall be amended, by inserting in the first clause of the seventeenth section thereof, after the words "inhabitants of a county," the words, "or of the city of Boston;" so that the said first clause as amended, shall read as follows:

SECT. 16. When any corporation, other than the inhabitants of a county or of the city of Boston, is a party to any action, the county in which such action may be brought, shall be determined by the following rules, to wit.

R. S. ch. 90.

SECTION 13. The said ninetieth chapter shall be further amended by inserting at the end thereof five new sections in the words following:

Actions, &c. against the city of Boston, where they may be brought. 1808, 19. 1815, 103.

SECT. 120. All actions, suits and prosecutions against the city of Boston, may be brought in the county where the plaintiff lives, or in either of the counties of Suffolk, Essex, Middlesex or Norfolk.

— by the city of Boston, where they may be brought, and when and to what counties they may be removed. 1828, 13.

SECT. 121. All actions, suits and prosecutions by the city of Boston, or by any officer for the use of the said city, may be brought in either of the four counties mentioned in the preceding section; but any such action, suit or prosecution, if brought in the county of Suffolk, may be removed to one of the said other counties in the manner provided in the following section.

Such suits how removed, entered, &c. 1828, 13.

SECT. 122. The defendant or tenant, at the term at which his appearance is entered, may file a motion in writing for the removal of the suit to some other county, and the court shall thereupon order it to be removed to such one of the said other three counties as the attorney of the city of Boston shall elect, to be there heard and determined in any court proper to try the same; and the attorney of the said city shall enter the same accordingly, in the court so designated, at the then next term thereof, and shall file therein certified copies of the writ or other process, and of the order of removal.

How conducted. 1828, 13.

SECT. 123. The court to which the suit is so removed shall have jurisdiction thereof, and all the proceedings therein shall be conducted in like manner as if the suit had been originally commenced in that county.

Inhabitants of Boston, not disqualified by interest from acting as jurors, &c. 1815, 103. 1828, 13.

SECT. 124. No person shall be disqualified from acting as a magistrate, juror, appraiser, or officer of any kind, in any suit or process in which the city of Boston is interested, by reason of any interest that he may have as an inhabitant of the said city.

R. S. ch. 104.

SECTION 14. The one hundred and fourth chapter shall be amended, by striking out from the third section thereof the words "party complained of," and inserting instead thereof the word "defendant;" and by striking out from the same section the words "filing of the complaint," and inserting instead thereof the words "commencement of the suit;" so that the said section, as amended, shall read as follows:

No restitution, after three years' possession, unless, &c.

SECT. 3. No restitution shall be made under the provisions of this chapter of any lands or tenements of which the defendant, or his ancestors, or those under whom he holds the premises, have been in the quiet possession for three years next before the commencement of the suit, unless his estate therein is ended.

R. S. ch. 127.

SECTION 15. The one hundred and twenty seventh chapter shall be amended, by inserting in the eighth section thereof, after the words "es-

tion to the punishment prescribed by law for the offence of which he shall then be convicted.

Same, where convict has been twice before sentenced to a state prison. 1833, 85.

SECT. 17. When any such convict shall have twice before been sentenced to confinement to hard labor, for a period of not less than one year at each time, by any court in this state, or in any other of the United States, he shall be sentenced to confinement to hard labor for his life, or for a term of not less than seven years, in addition to the punishment prescribed by law for the offence of which he shall then be convicted.

Same subject.

SECT. 18. When the last conviction, in any case mentioned in the two preceding sections, shall be had for any offence committed before this statute shall take effect, the additional punishment shall be regulated according to the statutes which were in force in this state at the time when such last offence was committed, and the sentence shall be awarded accordingly, notwithstanding the repeal of those former statutes.

R. S. ch. 142.

SECTION 18. The one hundred and forty second chapter shall be amended, by inserting at the end thereof a new section in the words following:

Governor may offer a reward, not exceeding $1000, in certain cases. 1801, 73.

SECT. 14. The governor shall be authorized, whenever in his opinion the public good may require it, to offer and pay a suitable reward, not exceeding one thousand dollars in any one case, to any person who shall, in consequence of such offer, apprehend, bring back, and secure any person who shall be convicted of any capital crime, or other high crime or misdemeanor, or shall be charged therewith, and shall have escaped from any prison in this state; and he may offer and pay a like reward to any person who shall, in consequence of such offer, apprehend and secure any person charged with any such offence, when the person charged cannot be arrested and secured in the common course of proceeding; and the governor may, with the advice of the council, issue his warrant on the treasury for the payment of every such reward.

R. S. ch. 143.

SECTION 19. The one hundred and forty third chapter shall be amended, by inserting at the end thereof three new sections, in the words following:

Jailers to return lists of prisoners to S. J. C. and C. C. Pleas at the opening thereof. 1784, 41.

SECT. 52. At the opening of the supreme judicial court, and of the court of common pleas, in the several counties, the jailers of the respective counties shall return to the court a list of the prisoners in their custody, therein specifying the cause for which, and the person by whom, they were committed; and they shall return a like list of all persons committed during the session of the court, in order that the several courts 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 their jurisdiction respectively.

In Suffolk such returns to be made to the municipal court.

SECT. 53. The return, required by the preceding section to be made to the court of common pleas, shall be omitted in the county of Suffolk, and instead thereof a like return shall be made to the municipal court of the city of Boston.

he shall have the same right to appeal from the judgment rendered in pursuance of this section, as in other cases tried before the said municipal court.

HOUSE OF REPRESENTATIVES, FEB. 13, 1836.

Passed to be enacted,

JULIUS ROCKWELL, *Speaker.*

IN SENATE, FEB. 15, 1836.

Passed to be enacted,

HORACE MANN, *President.*

COUNCIL CHAMBER, 15th FEB. 1836.

Approved,

EDWARD EVERETT.

Chap. 15. An act for the admeasurement of boards, and regulating the tale of shingles, clapboards, hoops and staves, and for other purposes therein mentioned.
Chap. 22. An act to prevent the destruction of white pine trees in this Commonwealth.
Chap. 24. An act prescribing the manner of devising lands, tenements, and hereditaments.
Chap. 32. An act directing the settlement of the estates of persons deceased, and for the conveyance of real estates in certain cases.
Chap. 36. An act directing the descent of intestate estates, and for empowering the judge of probate to make partition in certain cases.
Chap. 37. An act directing the mode of transferring real estates by deed, and for preventing fraud therein.
Chap. 38. An act empowering the judges of probate to appoint guardians to minors and others.
Chap. 39. An act for the better managing lands, wharves, and other real estate lying in common.
Chap. 40. An act for the speedy assignment of dower, and for the preventing of strip and waste by tenants therein.
Chap. 41. An act for the more easy partition of lands, or other real estate.
Chap. 42. An act describing the power of justices of the peace in civil actions.
Chap. 43. An act describing the duty and power of coroners.
Chap. 44. An act defining the general powers and duties, and regulating the office, of sheriffs.
Chap. 51. An act vesting certain powers in justices of the peace, in criminal cases.
Chap. 53. An act to prevent frauds on the Massachusetts Bank.
Chap. 54. An act in addition to an act, entitled "An act for the admeasurement of boards, and regulating the tale of shingles, clapboards, hoops and staves, and for other purposes therein mentioned."
Chap. 57. An act directing the issuing, extending and serving of executions.
Chap. 58. An act prescribing the method of satisfying judgments in favor of this Commonwealth.
Chap. 59. An act to authorize the courts of law to enter up judgment against the goods and estate of deceased persons, when the executor or administrator neglects or refuses to prosecute or defend.
Chap. 60. An act for the more safe keeping the registry of deeds and conveyances of lands, and for appointing the time and manner of choosing registers.
Chap. 66. 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.

1784. *The following acts, passed in the political year one thousand seven hundred and eighty four, to wit:*

Chap. 2. An act for the distribution of insolvent estates.
Chap. 8. An act directing the proceedings against forcible entry and detainer.
Chap. 10. An act regulating bail in civil actions.
Chap. 28. An act prescribing forms of writs in civil causes, and directing the mode of proceeding therein.
Chap. 30. An act regulating the exportation of flax seed, pot ash, pearl ash, beef, pork, barrelled fish, and dried fish.
Chap. 40. An act against adultery, polygamy, and lewdness.
Chap. 41. An act for providing and regulating of prisons.
Chap. 42. An act to prevent the destroying and murdering of bastard children.
Chap. 50. An act against selling unwholesome provisions.
Chap. 56. An act for taking away the benefit of clergy in all cases whatsoever, and directing adequate punishment for the crimes where the same used to be allowed.
Chap. 59. An act in addition to an act prescribing forms of writs in civil causes, and directing the mode of proceeding therein.
Chap. 65. An act against accessories to crimes, and felonious assaulters.
Chap. 69. An act for annulling the distinction between the crimes of murder and petit treason.
Chap. 72. An act directing the process in Habeas Corpus.

1785. *The following acts, passed in the political year one thousand seven hundred and eighty five, to wit:*

Chap. 1. An act for preventing common nuisances.
Chap. 6. An act providing a speedy method for doing justice, when, through mistake, executions are levied on real estate not belonging to the debtors.
Chap. 12 An act for the filing and recording of wills proved without this government, and for taking affidavits in writing for the probate of wills in certain cases.
Chap. 21. An act making additional provision for the punishment of frauds and misdemeanors.
Chap. 23. An act regulating the admission of attorneys.
Chap. 25. An act for regulating the exportation of tobacco and butter, and the weight of onions in bunches, and the size of lime casks.
Chap. 28. An act for the more effectually preventing of trespasses in divers cases.
Chap. 29. An act for repealing certain parts of an act entitled "an act for regulating pilotage in several ports in this Commonwealth," and for otherwise regulating the pilotage of the port of Newburyport.
Chap. 42. An act empowering the selectmen of such towns, where there may be fire engines, to appoint engine men; and repealing the laws made for that purpose.
Chap. 46. An act for enforcing the speedy payment of rates and taxes, and directing the process against deficient constables and collectors.
Chap. 48. An act for regulating the proceedings in actions of account.

Chap. 16. An act to prevent fraud and perjury.

Chap. 19. An act to confirm the doings of justices of the peace, whose commissions have expired, or may hereafter expire, and be again renewed.

Chap. 20. An act in addition to the act, "for regulating the proceedings on probate bonds in the courts of common law, and directing their form in the supreme court of probate."

Chap. 30. An act for erecting work houses for the reception and employment of the idle and indigent.

Chap. 47. An act directing the mode of prosecuting writs of review, after the death of any or all of the parties in the original suit.

Chap. 49. An act in addition to an act, passed in the year of our Lord one thousand seven hundred and eighty one, entitled "an act to incorporate certain physicians by the name of the Massachusetts Medical Society."

Chap. 51. An act authorizing executors and administrators to make sale of real estate mortgaged to their testators or intestates, and such as they shall take in execution in certain cases.

Chap. 53. An act authorizing courts, having criminal jurisdiction, to award, in certain cases, conditional sentences against offenders.

Chap. 55. An act respecting lost goods, and stray beasts.

Chap. 66. An act for limiting the time within which suits may be prosecuted against executors and administrators, and for perpetuating the evidence of notice given by them, and by guardians and others, respecting the sale of real estate.

1789. *The following acts, passed in the political year one thousand seven hundred and eighty nine, to wit:*

Chap. 2. An act directing an equal distribution of the estates of intestates.

Chap. 4. An act further to enable constables and collectors of taxes to complete their collections in certain cases.

Chap. 11. An act authorizing the settlement of the claims of executors and administrators in the probate court by referees.

Chap. 20. An act in addition to the act regulating the exportation of flax seed and other articles, passed on the ninth day of November, anno domini one thousand seven hundred and eighty four.

Chap. 26. 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.

Chap. 42. 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.

Chap. 45. An act making compensation to the attorney general of this Commonwealth for his services.

Chap. 50. An act empowering commissioners appointed to receive and examine the claims of the creditors to insolvent estates, to require of, and administer to them an oath or affirmation, the better to discover the truth of their claims.

Chap. 58. An act authorizing particular persons, in certain cases, to prosecute and defend suits at law.

1790. *The following acts, passed in the political year one thousand seven hundred and ninety, to wit:*

Chap. 40. An act in addition to, and to explain an act, passed the tenth day of March in the year of our Lord one thousand seven hundred and eighty four, entitled "an act for the better managing lands, wharves, and other real estate lying in common."

Chap. 42. An act for the relief of poor prisoners confined in gaol for taxes.

1791. *The following acts, passed in the political year one thousand seven hundred and ninety one, to wit:*

Chap. 3. An act for the preservation and encouragement of the fur trade within this Commonwealth.

Chap. 8. An act to ascertain the quality of pot and pearl ashes, and for the more effectual inspection of the same.

Chap. 12. An act in addition to an act, entitled "an act for the more safe keeping the registry of deeds and conveyances of land, and for appointing the time and manner of choosing registers."

Chap. 13. An act directing the manner in which inquests of office shall be taken to revest real estate in the Commonwealth, or to entitle the Commonwealth thereto.

Chap. 17. An act in addition to an act, entitled "an act empowering the justices of the supreme judicial court to grant writs of review in certain cases."

Chap. 22. An act in addition to the several laws now in force, providing for the collection of taxes.

Chap. 28. An act in addition to, and for repealing and altering part of an act, entitled "an act for limiting the time within which suits may be prosecuted against executors and administrators, and for perpetuating the evidence of notice given by them, and by guardians and others, respecting the sale of real estate."

Chap. 38. An act to prevent damage by mischievous dogs.

Chap. 42. An act to prevent appeals, in certain cases, from the judgment of a court of common pleas.

Chap. 53. An act providing for the payment of costs in criminal prosecutions, and for preventing unnecessary costs therein.

Chap. 58. An act providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose.

Chap. 59. An act providing for the security of the treasury of this Commonwealth.

Chap. 55. An act for regulating elections.
Chap. 61. An act directing the proceedings in actions of debt on judgments.
Chap. 62. An act for appointing commissioners of sewers, and making provision for the better improvement of low lands in certain cases.
Chap. 68. An act to enable sheriffs, deputy sheriffs, and constables, to require aid in the execution of their respective offices, in criminal cases.
Chap. 69. An act for recording births and deaths by the clerks of towns and districts.
Chap. 71. An act to prevent the destruction of oysters and other shell fish in this Commonwealth.
Chap 74. An act for the support and regulation of mills.
Chap. 75. An act relating to actions of ejectment, and disclaimer, and for preventing strip and waste pending such actions.
Chap. 80. An act to repeal all the existing excise acts, and to provide for the expenses of justice in the several counties.
Chap. 81. An act for giving to the supreme judicial court, holden at Boston within and for the county of Suffolk, original jurisdiction of certain crimes committed within the county of Nantucket.

1796. *The following acts, passed in the political year one thousand seven hundred and ninety six, to wit:*

Chap. 4. An act to amend the "act directing the manner in which inquests of office shall be taken to revest real estate in the Commonwealth, or to entitle the Commonwealth thereto."
Chap. 13. An act in further addition to an act entitled "an act concerning general and common fields."
Chap. 42. An act for regulating ferries.
Chap. 47. An act for regulating drains and common shores.
Chap. 58. An act in addition to the several acts now in force respecting highways.
Chap. 65. An act to regulate the going at large of sheep and rams and he goats, at certain seasons of the year.
Chap. 67. An act to prevent fraud in firewood, bark or coal, exposed for sale.
Chap. 71. An act for the limitation of actions against sheriffs for the misconduct and negligence of their deputies.
Chap. 82. An act for keeping watches and wards in towns, and for preventing disorders in streets and public places.
Chap. 85. An act in addition to an act, entitled "an act for regulating pilotage in several ports in this Commonwealth," and for otherways regulating the pilotage of the port of Boston.
Chap. 88. An act for the extinguishment of fire, and to direct the proceedings thereat.
Chap. 89. An act in addition to an act, entitled "act providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose."
Chap. 95. An act in addition to an act, entitled "an act establishing a supreme judicial court within the Commonwealth."

1797. *The following acts, passed in the political year one thousand seven hundred and ninety seven, to wit:*

Chap. 13. An act in addition to an act, entitled "an act in addition to an act, entitled an act for regulating pilotage in several ports in this Commonwealth, and for otherways regulating the pilotage of the port of Boston."
Chap. 14. An act to enable the treasurer of this Commonwealth, and the treasurers of counties, towns, and other corporations for the time being, to commence and prosecute suits at law, upon securities given to their predecessors.
Chap. 16. An act to prevent the spreading of contagious sickness.
Chap. 21. An act for removing doubts which have arisen in the construction of an act passed in the year of our Lord one thousand seven hundred and eighty four, entitled "an act describing the power of justices of the peace."
Chap. 23. An act to exempt the people, called Quakers, from paying taxes for the support of public worship.
Chap. 30. An act in addition to an act, entitled "an act directing the method for laying out highways."
Chap. 35. An act prescribing the mode of taking depositions, and administering oaths and affirmations.
Chap. 50. An act relating to suits against defendants out of the state, also to giving notice to defendants sued.
Chap. 63. An act in addition to an act, entitled "an act for the support and regulation of mills."

1798. *The following acts, passed in the political year one thousand seven hundred and ninety eight, to wit:*

Chap. 5. An act in addition to an act, 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."
Chap. 14. An act in addition to an act, entitled "an act to prevent the destruction of oysters and other shell fish in this Commonwealth."
Chap. 20. An act more effectually to prevent the pernicious practice of gaming.
Chap. 31. An act in addition to the several laws regulating elections.
Chap. 33. An act to prevent profane cursing and swearing.
Chap. 42. An act in addition to an act, entitled "an act directing that pews and rights in houses of public worship shall be considered as real estate, and for registering the same."
Chap. 43. An act in addition to an act, made and passed in the year of our Lord one thousand seven

Chap. 33. An act in addition to an act, entitled "an act directing the mode of transferring real estates by deed, and for preventing frauds therein."

Chap. 129. An act in addition to an act, entitled "an act to exempt the people, called Quakers, from paying taxes for the support of public worship," passed the twenty third day of June, in the year of our Lord one thousand seven hundred and ninety seven.

Chap. 135. An act in addition to and amendment of an act, entitled "an act directing the method for laying out highways."

Chap. 136. An act to prevent the wilful destruction and casting away of ships and cargoes.

1803. *The following acts, passed in the political year one thousand eight hundred and three, to wit:*

Chap. 54. An act to regulate the manufacture of chocolate in this Commonwealth, to prevent deception in the quality and exportation thereof, and to repeal a law for that purpose, passed March the eighth, one thousand eight hundred and three.

Chap. 77. An act in addition to an act, entitled "an act to prevent damage being done upon the improved lands adjoining Connecticut river, by reason of timber being left thereon by the spring floods, and for fixing a time for the owners to remove it," made in the year of our Lord one thousand seven hundred and eighty one.

Chap. 117. An act respecting conditional pardons.

Chap. 132. An act in addition to an act, entitled "an act regulating bail in civil actions."

Chap. 133. An act providing for the appointment of a reporter of decisions in the supreme judicial court.

Chap. 135. An act to regulate the taking of mackerel, and to prevent the destruction of the same.

Chap. 139. An act to repeal in part, and making further additions to, an act entitled "an act to regulate the inspection of beef, intended to be exported from this Commonwealth."

Chap. 141. An act in addition to an act entitled "an act for the due regulation of weights and measures."

Chap. 150. An act making provision for the payment of costs in laying out turnpike roads.

1804. *The following acts, passed in the political year one thousand eight hundred and four, to wit:*

Chap. 5. An act in addition to an act, entitled "an act to secure to owners their property in logs, masts spars and other timber, in certain cases."

Chap. 59. An act in addition to an act, entitled "an act providing a more easy and simple method than is now in use of barring estates tail in lands, and for making the same liable to the payment of the debts of the tenant in tail.

Chap. 67. An act in addition to an act, entitled "an act for the relief of poor prisoners who are committed on execution for debt."

Chap. 81. An act to provide for the proof of fire arms manufactured within this Commonwealth.

Chap. 83. An act directing the mode of attaching on mesne process, and selling by execution, shares of debtors in incorporated companies.

Chap. 103. An act providing for the regular discharge of mortgages made to the Commonwealth.

Chap. 105. An act making further provision in the judicial department.

Chap. 117. An act in addition to an act, entitled "an act in addition to an act, entitled an act in addition to the several acts for regulating elections, and for repealing the first section of said act."

Chap. 120. An act against forgery and counterfeiting.

Chap. 121. An act in addition to an act to regulate the inspection and exportation of pork, passed March the eleventh, one thousand eight hundred and two, and to repeal a part of the same.

Chap. 123. An act providing for the punishment of the crimes of murder, manslaughter, felonious maims and assaults, and duelling, and for the prevention thereof.

Chap. 125. An act defining the general powers and duties of turnpike corporations.

Chap. 131. An act providing for the punishment of incendiaries, and the perpetrators of other malicious mischiefs.

Chap. 133. An act against sodomy and bestiality.

Chap. 136. An act to prevent the circulation of private notes, bills, orders and checks, under five dollars.

Chap. 143. An act providing for the punishment of the crimes of robbery and other larcenies, and for the prevention thereof.

1805. *The following acts, passed in the political year one thousand eight hundred and five, to wit:*

Chap. 35. An act for limiting the times within which writs of error shall be brought for the reversing of any judgments.

Chap. 36. An act prescribing the manner of proving private acts and resolves of this Commonwealth, in courts of law.

Chap. 42. An act to annex the town of Hinsdale to the middle district, for the registry of deeds, for the county of Berkshire.

Chap. 57. An act in addition to an act entitled "an act regulating marriage and divorce."

Chap. 63. An act to increase the fees of grand and petit jurors and witnesses, in criminal causes.

Chap. 72. An act to enable the proprietors of social libraries to manage the same.

Chap. 80. An act for continuing an act, entitled "an act providing for the appointing of a reporter of decisions in the supreme judicial court."

Chap. 82 An act in addition to an act, entitled "an act empowering the selectmen of such towns where there may be fire engines, to appoint engine men, and repealing the laws heretofore made for that purpose."

Chap. 88. An act to repeal divers laws respecting crimes and offences.

Chap. 90. An act regulating the descent and distribution of intestate estates.

tions in which the inhabitants of the town of Boston, in the county of Suffolk, shall be a party."

Chap. 107. An act making provision for the holding of a term of the supreme judicial court in the counties of Franklin and Hampden, and for altering the time of holding the same in the counties of Hampshire and Berkshire.

Chap. 114. An act in addition to the several acts now in force to regulate the inspection of butter and lard to be exported.

Chap. 130. An act in addition to the several laws now in force, providing for the collection of taxes.

Chap. 131. An act for promoting the sale and settlement of the public lands, in the district of Maine.

Chap. 135. An act in addition to an act, entitled "an act in addition to an act, entitled an act providing for the due observation of the Lord's day, and repealing the several laws heretofore made for that purpose."

Chap. 136. An act for the suppression and punishment of cheats.

Chap. 137. An act in addition to the several acts for giving remedies in equity.

Chap. 138. An act establishing the salary of the adjutant general.

1816. *The following acts, passed in the political year one thousand eight hundred and sixteen, to wit:*

Chap. 10. An act to enforce the rendition of an account of fees of office.

Chap. 28. An act extending the powers of the justices of the supreme judicial court in certain cases.

Chap. 45. An act in addition to the act for regulating, governing and training the militia of this Commonwealth.

Chap. 55. An act in further addition to an act, entitled "an act for the relief of poor prisoners, who are committed by execution for debt."

Chap. 60. An act to authorize the use of the vibrating steelyard.

Chap. 62. An act to authorize the supreme judicial court to grant leave to claimants upon insolvent estates to institute suits in certain cases.

Chap. 84. An act concerning dower.

Chap. 94. An act in addition to the several acts concerning probate bonds.

Chap. 95. An act authorizing judges of probate to make allowances to widows of persons deceased, whose estates are insolvent.

Chap. 109. An act concerning jurors in the county of Suffolk.

Chap. 111. An act in addition to an act, entitled "an act for the relief of poor debtors."

1817. *The following acts, passed in the political year one thousand eight hundred and seventeen, to wit:*

Chap. 13. An act to extend the powers and duties of sheriffs, coroners and constables, in certain cases.

Chap. 34. An act in addition to the several acts concerning the curing, packing and exportation of smoked and pickled fish.

Chap. 63. An act vesting further powers in the supreme judicial court, respecting amendments on review, and the return of writs of venire facias.

Chap. 69. An act in addition to an act, entitled "an act in addition to the several laws now in force, providing for the collection of taxes."

Chap. 77. An act explanatory of an act, entitled "an act regulating the choice of town officers, and town meetings."

Chap. 84. An act in addition to the several laws now in force to secure to owners their property in logs, masts, spars and other timber.

Chap. 87. An act for giving further remedies in equity.

Chap. 88. An act establishing the compensation of witnesses.

Chap. 89. An act concerning constables.

Chap. 103. An act to prevent the destruction of certain useful birds at unseasonable times of the year.

Chap. 108. An act in addition to an act, entitled "an act exempting certain goods and chattels of debtors from attachment and execution."

Chap. 120. An act to define the powers, duties and restrictions of insurance companies.

Chap. 130. An act regulating the sale of salt and grain.

Chap. 131. An act regulating the practice of physic and surgery.

Chap. 140. An act in addition to the several acts defining the powers and duties of turnpike and bridge corporations.

Chap. 142. An act for facilitating trials in civil causes.

Chap. 144. An act to encourage the destruction of bears, wolves and other mischievous animals.

Chap. 145. An act further to provide for the payment of costs in criminal prosecution.

Chap. 146. An act in addition to "an act regulating bail in civil actions."

Chap. 148. An act in addition to an act, 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."

Chap. 170. An act regulating the packing and selling of paper, within this Commonwealth, and for repealing an act heretofore made on that subject.

Chap. 173. An act to prevent the destruction of white pine and other forest trees in this Commonwealth.

Chap. 181. An act in addition to an act, entitled "an act prescribing the mode of taking depositions, and administering oaths and affirmations."

Chap. 182. An act directing the mode of selling real estate lying within this Commonwealth, belonging to persons living without the same.

Chap. 184. An act further regulating parish and precinct meetings.

Chap. 186. An act concerning poor prisoners, and other persons.

Chap. 54. An act further to regulate the jurisdiction and proceedings of the courts of probate.
Chap. 56. An act respecting cases of divorce and alimony.
Chap. 65. An act establishing the law of the road.
Chap. 74. An act regulating the number and compensation of the clerks in the offices of the secretary and treasurer of the Commonwealth.
Chap. 79. An act to establish a court of common pleas for the Commonwealth of Massachusetts.
Chap. 82. An act to exempt certain officers of the Massachusetts general hospital from militia duty.
Chap. 84. An act in addition to an act, entitled "an act to establish a court of common pleas for the Commonwealth of Massachusetts."
Chap. 85. An act to transfer the duties of the quarter master general to the adjutant general, and to reduce the compensation of certain officers therein named.

1821. *The following acts, passed in the political year one thousand eight hundred and twenty one, to wit:*

Chap. 10. An act to prevent the destruction of birds on salt marshes, at particular times of the year.
Chap. 22. An act in addition to an act to relieve towns from the expenses of persons imprisoned for debt.
Chap. 23. An act in further addition to an act entitled "an act to establish a court of common pleas for the Commonwealth of Massachusetts."
Chap. 29. An act relative to filling any vacancy in the office of secretary or treasurer of the Commonwealth.
Chap. 32. An act to provide for the discharge of officers in the militia.
Chap. 52. An act respecting the courts of probate in the county of Norfolk.
Chap. 54. An act in addition to an act, entitled "an act determining the places for holding the courts of probate, and the town in which the register of probate shall keep his office, within and for the county of Franklin."
Chap. 55. An act in addition to an act, entitled "an act to ascertain the quality of pot and pearl ashes, and for the more effectual inspection of the same."
Chap. 67. An act in addition to an act, entitled "an act regulating parishes and precincts, and the officers thereof."
Chap. 72. An act in addition to an act, entitled "an act for the distribution of insolvent estates."
Chap. 73. An act to regulate the admeasurement of timber."
Chap. 85. An act making further provision for the redemption of mortgages.
Chap. 92. An act in further addition to an act entitled "an act for regulating, governing and training the militia of this Commonwealth."
Chap. 94. An act in addition to an act ascertaining what shall constitute a legal settlement in any town or district within this Commonwealth.
Chap. 96. An act for limiting the term of imprisonment for fines and forfeitures, incurred for breaches of the laws regulating the militia of this Commonwealth.
Chap. 97. An act for the preservation and regulation of the fishery in the towns of Fairhaven, New Bedford, Dartmouth and Westport.
Chap. 98. An act to authorize justices of the peace to take recognizances in certain cases.
Chap. 101. An act for the preservation of bridges.
Chap. 102. An act in addition to an act, entitled "an act to prevent the destruction of the lobster fishery, in the town of Provincetown."
Chap. 104. An act to provide a salary for the county attorney for the county of Suffolk.
Chap. 109. An act to regulate the administration of justice within the county of Suffolk, and for other purposes.

1822. *The following acts, passed in the political year one thousand eight hundred and twenty two, to wit:*

Chap. 3. An act respecting the court of probate in the county of Worcester.
Chap. 12. An act in addition to an act, entitled "an act to regulate the administration of justice within the county of Suffolk, and for other purposes."
Chap. 13. An act respecting the municipal court of the city of Boston, and regulating the selections, the empannelling and services of grand, traverse, and petit jurors.
Chap. 20. An act in addition to an act, entitled "an act defining the general powers and duties, and regulating the office of sheriffs."
Chap. 21. An act to prevent the destruction of pickerel and trout in the rivers, streams and ponds, within this Commonwealth.
Chap. 49. An act to enlarge the jurisdiction of the court of common pleas in and for the county of Nantucket.
Chap. 51. An act respecting law libraries.
Chap. 60. An act in addition to an act, entitled "an act for regulating fences."
Chap. 61. An act in addition to the several acts respecting writs of review.
Chap. 62. An act respecting the inspection of beef.
Chap. 71. An act in addition to the several acts for the more easy partition of lands, or other real estate.
Chap. 86. An act in addition to the several acts now in force, regulating the limits of prison yards, and the discharge of poor debtors from prison.
Chap. 87. An act imposing a duty on sales at auction.
Chap. 92. An act in addition to "an act for the better securing and rendering more effectual grants and donations to pious and charitable uses."
Chap. 93. An act regulating attachment on mesne process.
Chap. 102. An act in further addition to an act, entitled "an act for regulating, governing and training the militia of this Commonwealth."

Chap. 124. An act in addition to an act, entitled "an act in addition to an act to relieve towns from the expenses of persons imprisoned for debt."

Chap. 126. An act in addition to an act, entitled "an act in addition to the several acts now in force respecting highways."

Chap. 127. An act in addition to an act, entitled "an act to prevent the destruction of pickerel in the ponds and streams within this Commonwealth."

Chap. 129. An act in addition to "an act imposing a duty on sales at auction."

Chap. 130. An act to allow grace on bills of exchange and notes, according to the custom of merchants.

Chap. 136. An act in further addition to an act, entitled "an act for the admeasurement of boards, and regulating the tale of shingles, clapboards, hoops, and staves, and for other purposes therein mentioned."

Chap. 137. An act in addition to an act, entitled "an act to prevent the wilful destruction and casting away of ships and cargoes."

Chap. 138. An act for the appointment of trustees in certain cases of divorce.

Chap. 139. An act authorizing the city of Boston and towns in this Commonwealth to make by-laws restraining dogs going at large.

Chap. 144. An act to prevent forcibly passing and avoiding toll gates.

Chap. 146. An act in addition to an act, entitled an "act to prevent fraud and deception in the packing of pickled fish, and to regulate the size and quality of the casks, and the sale and exportation thereof within and from this Commonwealth, and to repeal all laws heretofore made on this subject."

Chap. 147. An act in addition to "an act imposing a duty on sales at auction."

Chap. 153. An act in addition to an act, entitled "an act for the support and regulation of mills," and the several acts in addition thereto.

1825. *The following acts, passed in the political year one thousand eight hundred and twenty five, to wit:*

Chap. 14. An act making provision for holding an additional term of the supreme judicial court, in the county of Franklin.

Chap. 73. An act further to provide for the payment of costs in criminal prosecutions.

Chap. 84. An act for the erecting another building within the limits of the state prison, in Charlestown, and for the better government thereof.

Chap. 89. An act providing further remedies for landlords and tenants.

Chap. 90. An act authorizing senators and representatives to administer oaths and affirmations in certain cases.

Chap. 92. An act regulating appeals in certain cases.

Chap. 103. An act in addition to an act, entitled "an act in addition to the several acts regulating the inspection of beef and pork intended to be exported from this Commonwealth."

Chap. 105. An act for abolishing the punishment of whipping within this Commonwealth.

Chap. 107. An act for altering the time of holding the courts of common pleas in Nantucket and Duke's County.

Chap. 109. An act relating to the support and regulation of mills.

Chap. 110. An act to alter the times of holding the supreme judicial court.

Chap. 114. An act to establish a term of the supreme judicial court in Nantucket.

Chap. 123. An act relating to a library for the general court.

Chap. 143. An act to establish the rate of interest, and to restrain the taking of excessive usury.

Chap. 145. An act in addition to the several acts now in force regulating the choice of registers of deeds in the several counties of this Commonwealth.

Chap. 152. An act to restrain public shows and theatrical exhibitions.

Chap. 153. An act in addition to an act, entitled "an act to regulate the militia of this Commonwealth."

Chap. 163. An act in addition to an act, entitled "an act imposing a duty on sales at auction," and the acts in addition thereto.

Chap. 173. An act in addition to an act, entitled "an act for the punishment of fornication, and for the maintenance of bastard children."

Chap. 176. An act relating to jurors in the counties of Duke's County and Nantucket.

Chap. 177. An act to regulate damages on foreign bills of exchange.

1826. *The following acts, passed in the political year one thousand eight hundred and twenty six, to wit:*

Chap. 3. An act to prevent damages from firing crackers, squibs, serpents and rockets.

Chap. 9. An act in addition to an act passed February the twenty fourth, A. D. one thousand eight hundred and eighteen, concerning poor prisoners and other persons.

Chap. 12. An act respecting the choice and service of jurors from the town of Chelsea within the county of Suffolk.

Chap. 27. An act in addition to an act, entitled "an act to establish the rate of interest, and to restrain the taking of excessive usury."

Chap. 37. An act to provide for the more uniform and perfect engrossing of bills, and for preserving the same.

Chap. 51. An act relating to the duties of the reporter of decisions in the supreme judicial court.

Chap. 63. An act in addition to acts empowering judges of probate to appoint guardians to minors and others.

Chap. 64. An act in addition to an act, entitled "an act in addition to the acts concerning the sale of real estate by administrators, executors and guardians."

Chap. 70. An act to prevent unnecessary delay and expense in the prosecution of real actions.

Chap. 160. An act in addition to an act to provide for the inspection of hops for exportation.
Chap. 161. An act in addition to "an act to provide for the instruction of youth."
Chap. 162. An act giving further remedies between co-executors and co-administrators.
Chap. 164. An act in further addition to an act, 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."
Chap. 166. An act for the due regulation of licensed houses.

1833. *The following acts, passed in the political year one thousand eight hundred and thirty three, to wit:*

Chap. 9. An act for the relief of poor convicts.
Chap. 22. An act in addition to "an act defining the general powers and duties of turnpike corporations."
Chap. 30. An act in addition to the acts empowering the judges of probate to appoint guardians to minors and others.
Chap. 40. An act in addition to "an act to regulate the jurisdiction and proceedings of the courts of probate."
Chap. 49. An act respecting the mode of calling and organizing meetings of corporations.
Chap. 63. An act respecting sureties of the peace.
Chap. 67. An act in addition to "an act providing for the government and regulation of the state prison."
Chap. 68. An act to divide the Commonwealth into districts for the choice of Representatives in the Congress of the United States, and prescribing the mode of election.
Chap. 74. An act concerning school districts.
Chap. 83. An act concerning corporations.
Chap. 85. An act in addition to "an act for the government and regulation of the state prison."
Chap. 88. An act relating to the surviving of petitions to the county commissioners for juries.
Chap. 89. An act in addition to the several acts imposing a duty on sales at auction.
Chap. 100. An act in addition to the several acts to regulate the jurisdiction and proceedings of the courts of probate.
Chap. 101. An act concerning clerks of the supreme judicial court.
Chap. 102. An act in addition to "an act regulating elections and declaring the qualifications of voters in town affairs."
Chap. 110. An act in addition to the several acts respecting highways.
Chap. 122. An act in addition to "an act for the due regulation of licensed houses."
Chap. 124. An act to regulate the service of writs and other process upon certain corporations.
Chap. 127. An act to authorize payments to married women in certain cases.
Chap. 133. An act in addition to "an act to provide for the instruction of youth."
Chap. 134. An act to abolish the action of debt for an escape.
Chap. 141. An act concerning elections.
Chap. 145. An act to provide for the appointment of trustees of certain insurance companies.
Chap. 147. An act to authorize the laying out of turnpike roads as common highways.
Chap. 148. An act for the suppression of lotteries.
Chap. 166. An act in addition to "an act for the choice and appointment of assessors, and for assigning their power and authority.
Chap. 170. An act concerning the salaries of clerks of the judicial courts.
Chap. 171. An act in addition to the several acts concerning the trustee process.
Chap. 173. An act in addition to an act establishing salaries for judges and registers of probate.
Chap. 176. An act in relation to petitions for acts of incorporation for canal, rail road, and turnpike companies.
Chap. 178. An act to prevent trespasses on the state house, and other public buildings.
Chap. 187. An act for defining the rights and duties of rail road corporations in certain cases.
Chap. 189. An act to authorize the courts of probate to grant leave to claimants upon insolvent estates to institute suits in certain cases.
Chap. 193. An act regulating the admeasurement of charcoal.
Chap. 194. An act concerning parties in actions at law.
Chap. 200. An act to regulate the slaughtering and weighing of beef cattle.
Chap. 201. An act in addition to "an act making further provision for the redemption of mortgages."
Chap. 206. An act to prevent private banking.
Chap. 209. An act in addition to "an act for apprehending offenders in any county."
Chap. 215. An act for the prevention of fraud in the sale of oils.
Chap. 216. An act concerning recognizances.
Chap. 222. An act in addition to "an act against forgery and counterfeiting."

1834. *The following acts, passed in the political year one thousand eight hundred and thirty four, to wit:*

Chap. 2. An act in addition to "an act making further provision for the survivorship of civil actions."
Chap. 50. An act concerning the appointment of engine men.
Chap. 69. An act concerning unlawful oaths.
Chap. 81. An act concerning penalties for the breach of town by-laws.
Chap. 83. An act transferring to the selectmen of the town of Nantucket the powers and duties of county commissioners for the county of Nantucket.
Chap. 85. An act in addition to "an act for the relief of poor convicts."
Chap. 86. An act concerning the entry of actions and appeals.
Chap. 99. An act to regulate the compensation of assessors.

ACTIONS, *(Continued)*.
executors, &c., not personally liable for costs, when defaulted without appearing, 567.
estate of the deceased liable for costs, in such case, 568.
liable personally for costs, in actions commenced or prosecuted by them, 437. 653.
may charge costs, in such case, in accounts of administration, 437. 654.
liable on deceased's joint contract, &c. as if joint and several, 435.
scire facias against, on deceased's debts by recognizance, 691.
by, for such debts due to deceased, 691.
may issue against, if execution for deceased's debts be unsatisfied, 654.
how far personally liable, on such scire facias, if they have wasted deceased's effects, 654.
special administrator may maintain, but shall not be liable to, 426.
may be prosecuted or defended, on their death or removal by administrator de bonis non, 654.
administrator de bonis non, in such case, may be cited, or come in voluntarily, as might original, on deceased's death, 651.
liable to scire facias, &c., on judgment against original, 654.
not liable for costs, for which original was personally answerable, 654.
liable to, and may bring, writ of error, on judgment for or against original, 654.
not to be brought against, after estate is represented insolvent, except, &c., 441.
between coexecutors or coadministrators, when may be determined in equity by supreme court, 451.
on bonds given by, how brought and pursued. See *Bond*.
ACTS of legislature. See *Statutes*.
of incorporation, to be deemed public acts, 59.
ADJOURNMENT, of legislature, 34. 36.
of senate, and of house of representatives, respectively, 30. 32.
of elections by legislature, 40
of military officers, 113.
of town meetings, generally, 179.
for choice of representatives, 52.
of meetings of mill owners, 682.
auditors, 586,
of sales, by collectors, on tax warrants, 84. 86.
of land of banks, taken in execution, 315.
by executors and administrators, 455.
of franchises of certain corporations, on execution, 365.
of equities of redemption, on execution, 469.
of chattels seized in execution, 590.
of courts martial, 131.
of trials of military delinquencies, 129.
of county commissioners, to count votes for registers of deeds, 173.
of courts of probate, 515—of justices' courts, 530.
of supreme court and court of common pleas, 503. 504. 512.
of municipal court, 531.
of all courts, in case of war, pestilence, &c. 544.
of examinations of persons arrested on warrants, 752.
causes of restraint, on habeas corpus, 658.
ADJUTANT, one to each regiment and battalion, 105. 106.—rank of, 106.
how appointed, 37. 112.—to keep roster and orderly book, &c. 107.
to distribute regimental and battalion orders, 108.
to enrol militia and return the roll, where they have never been enrolled, 103.
compensation of, 135.
ADJUTANT-GENERAL, how appointed, 37. 112. 151.—rank of, 105.—salary of, 151.
may have an assistant or clerk, 151.—his clerk's salary, 151.
to have care of magazines, &c. when not in use, 93. See *Land and Lands*.
to furnish blanks and instructions, for rolls and returns, 103. 108. 110.
blank orders and notifications, 110. 119.
governor, yearly, with abstracts of returns of brigade, &c. officers, 108.
to make yearly return, in duplicate, of all the militia, 108.
to deliver one copy of return to the governor, and the other to the president of U. States, 108.

ADULTERY, how punished, 739.
cause for divorce, 480.
ADVANCEMENT, to be taken, in division, &c. of estates, as part of a share thereof, 414. 415.
not to be refunded, though it exceed a share, 415.
how to be considered, in division of estate, 415.
questions of, may be determined by judge of probate, subject to appeal, 626.
when raised on writ, &c. of partition, how determined, 626.
how to be proved, 415.
value of, expressed in the gift, charge, &c. to be taken as true, in making division, &c. 415.
if not expressed, to be its worth when given, 415.
to be considered in division, &c. if donee dies, leaving issue, before donor, 415.
not to affect title of tenants in dower, or by the curtesy, 415.
to be deducted, in computing widow's distributive share, 424.
AFFIDAVIT, by executors, &c. of having given notice of their appointment, 431.
and guardians, of notice of sale of real estate, 455. 456. 460. 461.
of demand of taxes, and of notifications of sale of land to pay them, 85. 86.
of truth of dilatory plea to an indictment, necessary, 760.
of justice, &c. of claim, by petitioner, for dissolving a prior attachment, 557.
to warrant arrest, &c. of defendant, on actions for debt, 560. See *Arrest.*
making false, as to invoices of property on board vessels, how punished, 726.
by a person convicted of perjury, receivable in his own cause, 733.
for verification of commercial papers, not punishable as unauthorized, 736.
AFFIRMATION, included in the word "oath," where by law it may be substituted therefor, 60.
may be made by Quakers, and others scrupulous of taking oath of office, or as witnesses or jurors, 50. 571. 757. 761.
wilfully false, punishable as perjury, 571.
of judgments and decrees appealed from. See *Appeal.*
AFFRAYERS, before a court of record, or in presence of certain magistrates, may be ordered, without process, to recognize to keep the peace, 750.
may be committed, if they refuse to recognize, 750.
arrested, without warrant, by order of justice of the peace, 529. 530.
AGENTS, of foreign insurance companies. See *Insurance Companies.*
of receivers or trustees of corporations, 364.
of absent defendant, when writ may be served on, 552.
to sell county lands, how appointed, 159. 160.
of towns, to convey real estate of town by deed, 177.
of manufacturing corporations, 328.
to prosecute and defend for proprietors of common lands, &c. 358.
to demand fugitives from justice, &c. 775.
AGRICULTURAL SOCIETIES, if incorporated for a territory not less than a county, entitled to receive money from state treasury, 354. 355.
when entitled to an act of incorporation, 354.
terms on which they are to receive money, 354.
to offer premiums, yearly, for encouragement of agriculture, 354. 355.
to transmit statements, &c. to secretary of the Commonwealth, 355.
surplus money of, to be put at interest, 355.
to offer encouragement, &c. for raising trees for ship timber, 355.
may regulate cattle shows, ploughing matches, &c. 355.
may fix bounds for pens, yards, &c. within which spectators, &c. shall not enter, under a penalty, 355.
such bounds not to include highways, &c. nor private estates, without the owner's consent, 355.
may appoint marshals, with power of constables, 355.
term of their marshals' office, 355.
AID, may be required by collectors, sheriffs, constables, &c. 83. 84. 168. 185. 209. 211. 752.
punishment for refusing, to officers and justices, 735. 737.
for requiring, under pretence of being an officer or justice, 735.
for refusing to seize rioters, 737.
of sheriffs, in criminal cases, fees of, 711. 712.
refusal to give, not excused by pretence of ignorance of justice's office, if he be personally known, 735.
AIDERS, in committing a felony, to be punished like principal felon, 745.

APPEAL, *(Continued)*.

2. *From court of common pleas*, to supreme court, in personal actions, when more than $100 are demanded, 508.
in actions wherein title to real estate may be concerned, 508. 527.
in all proceedings from judgment on matter of law apparent on the record, 508, 509.
from judgment on a case stated, unless otherwise agreed, 509.
for plf., on demurrer, or plea in abatement, as from a final judgment, 509.
on pleas in bar, on complaint for flowing lands, 677.
in audita querela, 661.
on trial of charges of fraud by debtors, 600.
interlocutory and final, in petitions for, and writs of, partition, 620. 622. 627.
in bills in equity for contribution among mill owners for repairs, &c., 683.
from decree, &c., on bill in equity by one mill owner against another, 683.
on process to enforce mechanics' lien, 688.
on libel of forfeited goods, 693.
of actions wherein attachments are contested, carries up the question concerning the attachment, 558.
may be to adjourned session of supreme court, on giving notice to appellee, 505. 509.
when may be entered at a law term of supreme court, 509.
not allowed from order or judgment on an award under statute, 672.
respecting improvement of meadows, &c., 675.
fee to clerk, for entering, 709.
costs of, from common pleas, 703. 704. See *Costs*.

3. *Miscellaneous*.
from commissioners for improving meadows, &c., to common pleas, 675.
of insolvency to common pleas or supreme court, 439.
from two justices' decision, on objections to a marriage, to supreme court or common pleas, 477.
by warden of state prison, from inspectors to governor and council, as to removing officers, 790.
from regimental to general court martial, 143.
from clerk's taxation of costs, to court or judge, 706.
decision on sufficiency of sureties in bond to absent deft., 565.

4. *From justices of peace, police courts, except in Boston, justices' court in Boston, and court of common pleas—matters common to all.*
not allowed till appellant recognize to prosecute, &c., 509. 528. 600.
appellant to produce copies, except of depositions, &c., 509. 528. 600. 601.
when not seasonably entered in appellate court, through mistake, &c., may be entered afterwards, and within what time, 503. 510. 511.
so of appellee's complaint for non-entry of, if omitted through mistake, &c., 503. 511.
when not entered, or papers not produced, former judgment may be affirmed on complaint, 509. 528.
may be entered and prosecuted, where action survives, though party die before court sits, 567.

5. *From judge of probate*, to supreme court, allowable in all cases, 421. 434. 451. 517. 519. 626. 627.
to next court held after 30 days from act appealed from, 439. 440. 519.
must be claimed, and notice given, within those 30 days, 441. 519.
exception, in cases transferred from Nantucket to Barnstable, 516. 517. 519.
reasons of, when to be filed, and copy of served on adverse party, 519.
when claimed and notice of given, further proceedings cease, till it is determined by supreme court, 519.
from decree appointing special administrator, not to prevent his proceedings, 426.
when, and on what conditions, may be entered at adjourned session, 519.
if not seasonably claimed, or prosecuted, through mistake, &c., when and on what terms, may be entered, &c., afterwards, 519.
petition for entry of, may be filed in clerk's office in vacation, 519.
when may be filed by party who was out of the U. S. at time of decree, &c., 519.
if appellant fail to enter, &c., supreme court may affirm decree, &c., on complaint, 520.
supreme court may reverse or affirm decree, &c., on appeal, or pass such order as law, &c., require, 520.
may remit the case to judge of probate, for further proceedings, 520.
may cause questions of fact to be tried by a jury, 418. 520.
may award costs as justice, &c., may require, and issue execution therefor, 520.

ASSESSORS, *(Continued.)*
to commit tax lists, with their warrant, to collectors, 80. 245.
may issue new warrant, if original be lost, &c. 804. 805.
to post notice of discount, when towns allow it, for prompt payment of taxes, 81.
warrant of, need not be sealed, 80. 222.
to specify collector's duty, and when and to whom he shall pay in taxes, 80.
to be committed to sheriff or his deputy, if there be no collector, 81.
of unincorporated places, to be chosen when state or county tax is laid, and treasurer issues warrant, &c. 82.
to have powers and duties of selectmen, as to ways, 240.
to be sworn, and assess taxes, as in towns, 82.
to have selectmen's power, &c. as to spendthrifts, 491.
compensation of, 82. 181. 223.
responsible for want of fidelity only, when they assess taxes pursuant to vote duly certified, 81. 82.
to assign limits to surveyors of highways, 244.
to add unpaid highway tax, and price of school books, to usual tax of delinquents, 220. 245.
when may deliver warrants of distress to surveyors, to collect highway tax, 245.
to assess *school taxes*, like town taxes, within thirty days after receiving certificate of amount voted to be raised, 222. 224.
to commit school tax to collector, and order him to pay to town treasurer, 222. 223.
to deliver certificate of assessment to said treasurer, 223.
to certify lists of enginemen to treasurer, &c. 195.
may appear to oppose discharge of prisoner committed for taxes, 804.
of parishes, two or more to be chosen, at annual meeting, 201.
to be sworn, and by whom, 201.
form of oath, 201. 183.
to manage prudential affairs, unless there be a special prudential committee, 202.
to have same power as selectmen, to call meetings, 202.
to insert, in warrant for meeting, any matter which five voters shall, in writing, request, 202.
of *proprietors* of general fields. See *General Fields.*
of private ways and bridges. See *Private Ways and Bridges.*
ASSETS, do not include articles that are to be omitted in making inventory, 428. 429.
goods ordered, by judgment in replevin, to be returned by executor, &c. 558. 568.
certain goods and damages recovered by executor, &c. of trustee, &c. 568.
may be ordered to be retained to pay debts that have not become due, 432.
received by executor, &c. after four years from administration taken, render him again liable to suits of creditors, 431.
to be marshalled by courts, conformably to will of deceased, so far as consistent with rights of creditors, 420. 453. See *Estates of persons deceased, &c.*
ASSISTANT ASSESSORS. See *Assessors.*
ASSISTANT CLERK, of police and justices' court in Boston, 536. See *Clerk of Courts.*
ASSISTANT WATCHMAN, of state house. See *Watchman.*
ASSIGNMENT, general, by limited partnership, must provide for equal division among all creditors, 305. See *United States.*
of claims, when to prevent or not prevent set-off, 584. See *Set-off.*
of goods, credits, &c. by principal defendant, in trustee process, how may be contested, &c. by plaintiff, 645. See *Trustee Process.*
of errors, to be according to course of common law, &c. 662—of dower. See *Dower. Grant.*
of mills, renders assignee answerable for former damages by flowing, &c. 679.
ASSUMPSIT, action of, lies to recover damages, &c. assessed for flowing lands by mill dams, 679.
to be brought within six years after cause of accrues, 699.
indebitatus, may be brought by master of house of correction, to recover expense of supporting prisoners, 781. See *Rules of Court. Limitation.*
ATTACHMENT, what property exempted from, 110. 549. 589.
what liable to, 549. 555. 558. 589—when may be made on writ of review, 603.
may be made on writ issued to bring in new defendants, 606.
to continue thirty days after final judgment rendered for plaintiff, 549. 506.
how long subsequent shall continue, when prior is dissolved, &c. 591.
how long to continue, in certain cases, in Nantucket, 549.

AUCTIONEERS, *(Continued)*.
to render, twice in a year, to state treasurer, an account of all sales, &c., that are taxable, and of moneys arising therefrom, 90. 91.
such account to distinguish between sales of real and personal property, &c., 91.
oath to such account, to be made and indorsed thereon, 91.
to pay treasurer amount of tax on sales contained in such account, deducting 4 per cent. of it for compensation, 91.
may make return in December, for whole year, if amount of tax for six first months of year does not exceed $10, 91.
penalty on, for not paying taxes to treasurer, 91.
for fraud, &c., as to taxable sales, 91.
AUDITA QUERELA, form and service of writ of, 661.
writ of, to be indorsed like original writs, 663.
where to be sued out and returned, in different cases, 661.
allowed in case of executions on recognizances for debts, 692.
general issue, and evidence admissible under it, 661.
trial of, as in other cases; and judgment, 661.
plaintiff in, entitled to recompense for what damages, 661.
judgment in, when a bar to other action for same damages, 661.
appeal from common pleas allowed to either party, 661.
plaintiff, if imprisoned on process complained of, may be enlarged on giving bond, 661.
condition of such bond, that plaintiff shall surrender himself, if, &c., 662.
when plaintiff surrenders, according to his bond, to be in custody as if writ had not been brought, 662.
AUDITORS, may be appointed by courts, to examine and state accounts, in certain suits, 586.
compensation of, how made, paid, and taxed in bill of costs, 586.
to give notice of their meetings, to parties, 586.
all must meet, but report of majority to be valid, 586.
may compel attendance of witnesses, 586.
may be discharged by court, and others appointed, 586.
report of, may be recommitted to same or others, 586.
prima facie evidence for either party, on jury trial, 586.
punishment of, for accepting a bribe, 733. 734.
punishment for bribing or attempting to bribe them, 734.
AUTHORITY, conferred by statute on more than two, may be exercised by majority, unless, &c., 60.
AWARD, of persons appointed by judge of probate to settle amount to be paid by executors, &c., for income of deceased's real estate, 436.
of arbitrators, on claims of executors, &c., against deceased's estates, subject to decision of judge of probate, 434.
of arbitrators under a submission before a justice. See *Arbitration*.

BAGGAGE, supposed to be infected, how to be secured, &c., 210. 211. See *Board of Health*.
BAIL, excessive not to be required, 14.
when excessive is required, how party shall be relieved, 656. 659.
In civil actions.
granted to persons in jail, while question of their taking poor debtor's oath is pending, 601.
to be taken by bond, and to whom, 561. See *Bail Bond*.
when and on what terms, may be required in actions on contracts made since July 4, 1834, 560.
not to be required of representatives, during attendance, &c., on general court, 33.
shall satisfy judgment against the principal, if he avoids, &c., unless, &c., 562.
not discharged by the case being carried to supreme court on exceptions, 510.
not liable unless sued within a year after final judgment, 562. 506.
liability of, not revived by entry of appeal, &c., of plaintiff, on petition, 503. 511.
pleadings and evidence, in suits against, 562.
when sued, how discharged by surrender of principal, 562. 563.
how to surrender principal and be discharged, before suit, 562. 564.
when to pay costs of scire facias, if they surrender after it issues, 562. 563.
to deliver to jailer, when they surrender to him, an attested copy of bail bond, 563.
and within 14 days an attested copy of the writ, &c., and return, 563.
to give notice to the plaintiff, &c., within 14 days, of surrender to jailer, 563.

BASTARD, *(Continued)*.
adjudged father of, to give bond to perform order of court, and indemnify town, 384.
may be committed, till he gives such bond, 384.
entitled to relief of poor debtors, after ninety days' confinement, 384.
how to give notice of intention to take poor debtor's oath, 384.
liable to mother and to town, after discharge on such oath, 384.
BATTALIONS, to be arranged according to laws of U. States, 104. 805. See *Militia*, 2. *Major*.
BATTERY. See *Assault and Battery*.
BAYONET and BELT, to be provided by soldiers, 109. See *Militia*, 6.
penalty for deficiency of, 120—how recovered, 124. 125.
BEACHES. See *Meadows, &c.*
BEACON, on spit of sand, in Boston harbor, ceded to United States, 57.
See *Nix's Mate. Half Way Rock.*
BEARS, bounty for killing, and how obtained, 392. See *Noxious Animals.*
BEASTS, of the plough, exempted from distress for taxes, 84.
to be impounded, if found at large, contrary to law, 199. 664.
for doing damage, 665.
damage done by, may be sued for in action of trespass, 665.
See *Replevin. Distraining. Pound Keeper. Field Driver.*
punishment for wilfully killing, maiming, poisoning, &c., 726.
for cruelly beating or torturing, 742.
for driving, &c., on rail roads, without leave of proprietors, 348. 349.
BEATING animals cruelly. See *Beasts.*
BEDS, BEDSTEADS and BEDDING for every two of a family, exempted from distress for taxes, from execution, &c., 84. 589. 549.
BEEF, inspector general of, and of pork, may appoint deputies, who shall be sworn and give bonds, 256.
responsible for his deputies, 256.
to attend, or a deputy, to inspection of, on request, 256.
to make return, yearly, of amount inspected by him and deputies, 256.
salted, not to be exported, except in certain casks, and inspected, branded, &c., 256.
penalty for exporting without inspection, &c., 260.
quality, &c., of, when packed for exportation, 256.
sorts and denominations of, and how branded, 256. 257.
mess, navy mess, number one, prime and cargo, of what to consist, 256. 257.
how salted, 257.
to be cut, weighed, packed, &c., by inspectors, 257.
casks for, of what timber, size, &c., 257.
when imported, not subject to inspection, if branded, &c., 257. 258.
if repacked and inspected, how to be branded, 258.
rounds of, in kegs or tubs, may be exported as heretofore, being first branded, 258.
inspectors of, fees, &c., same as for inspecting, &c., pork. See *Pork.*
penalty on, for neglect or fraud, 260.
deputy inspector, penalty on for inspecting or branding out of his town, &c., 260.
penalty for branding without authority, 260.
for intermixing or shifting contents of casks, 260.
for selling, &c., casks of, not packed, &c., according to law, 260.
casks of, not legally inspected, packed, &c., may be seized, &c., if laden on board vessel, 260.
cattle for, when killed, how to be prepared for weighing, unless a different mode be agreed on, 260. 261.
penalty for preparing cattle differently, 261—for buying them contrary to law, 261.
to be weighed by sworn weighers, and at what time, 260. 261.
weighers of, how appointed and sworn, 261.
to certify the weight of; form of certificate, 261.
fees of, and by whom paid, 261—See *Weighers.*
what scales, &c., to be used in weighing more than 50 pounds, for sale, 261.
penalty on certain persons, for weighing in a different manner, 261.
BEER and ALE, not to be exposed to sale in certain casks, unless the true guage, &c., is marked on both heads, 262.
penalty for violating this provision, 262.
in contracts for sale of, by barrel, &c., how much casks &c., shall be deemed to contain, 262.

BOARD OF ACCOUNTS, *(Continued.)*
three members of, to be a quorum. 165.
compensation of, 165.
BOARD OF EXAMINERS. See *Examiners.*
BOARD OF HEALTH, may be chosen by towns, if no special provision is made by law, 208.
number of, in towns, 208.
selectmen to be, if other provision is not made, 208.
in Boston, city council to do duties of, 208.
may appoint their physician, and establish his pay, 208.
to regulate charges of all whom they employ, 208.
to make regulations as to nuisances, causes of sickness, &c. 208.
as to articles that may contain infection, &c. 208.
penalty for violating such regulations, 208.
may regulate burial grounds and interments, 208.
how to give notice of their regulations, 208. 209.
to examine nuisances, and sources of filth and sickness, and destroy or remove them, 209.
may order nuisances on private property to be removed by the owner, 209.
may remove them at owner's expense, if he neglect, 209.
penalty on owner for neglect, 209.
may make compulsory examinations, &c. if owners refuse, 209.
how to proceed in such compulsory examinations, &c. 209.
may grant permits for removal of nuisances, sick persons, and infected articles, 209. 210.
to provide for safety of inhabitants, in case of dangerous sickness, 210.
for the comfort of the sick, 210.
may remove the sick, or others, to hospital, &c. 210. 213.
may station persons on borders of adjoining states, to prevent entry of passengers from infested places, &c. 210.
penalty on such passengers for disobeying orders, &c. 210.
may, under warrant of two justices, impress houses, nurses, &c. for the sick, 210.
may apply to a justice for warrant to impress men to secure, &c. infected articles, 210. 211.
such warrant to be issued by the justice, 210. 211.
may be executed by breaking doors, if necessary, 211.
may order removal of sick prisoners from jail, into a hospital, &c. 211.
return of such removal to be made to the clerk of the court, by whose process the prisoner was confined, 211.
may, under a justice's warrant, impress houses, &c. for keeping of infected articles, 211.
owners of such houses to be paid by the town, 211.
to determine the charges to be paid, by the owners, for securing, &c. infected articles, 211.
may remove, to hospital, persons on board infected vessels, &c. 212.
penalties for violating orders, &c. of, how recovered, and to whose use, 214.
See *Nuisance. Quarantine. Hospital.*
BOARD OF OFFICERS. See *Militia*, 11.
BOARDS. See *Lumber.*
BOATS, on canals. See *Canal.*
BODIES, of the dead. See *Dead Bodies.*
BOND, mode of declaring on, may be prescribed by general rules of supreme court, 607.
judgment on, to be for penal sum, on default, verdict, &c. 607.
execution on, to issue for what is justly due, 607.
scire facias on, may be issued, to recover for further breaches, 607.
for liberty of prison limits, penalty and condition of, 594.
to be given to the creditor, with surety or sureties having sufficient within the county, 594.
sureties in, when to be approved by two justices of the quorum, 594.
to be left with jailer, if creditor be absent, or refuse to accept it, 594.
action on, to be brought within a year after breach of, 594.
execution for breach of, for what amount to issue, 594.
becomes void, as to future breaches of, if debtor surrenders, or is surrendered by his sureties, to the jailer, 594.
of sheriffs. See *Sheriffs.* in replevin suits. See *Replevin.*

BOND, *(Continued)*.
after judgment on, attaching creditor not a party to the suit on, may have scire facias to recover what may be due to him, 555.
suit on, and scire facias on judgment on, limited to a year after cause of action, 555. See *Attachment*.
BOOTS, SHOES, &c. makers of, to have exclusive right to stamp, 274.
how to stamp; and stamp to be deemed a warranty, 274.
not deemed merchantable, unless so stamped, 274.
penalty for fraudulent stamping with others' names, 274.
BOSTON, city of, to retain powers, &c. conferred in special acts, 186.
actions by and against, where may be tried. See *Actions*.
inhabitants of, not prevented, as such, to act as magistrates, appraisers, jurors, or other officers, in suits in which the city is interested, 808.
See *Board of Health. Auctioneer. Lumber. Pilots. Elections. City. Suffolk.*
BOUNDARY LINES, of towns, to remain as now established, 176.
to be perambulated every fifth year, by selectmen of each town, or their substitutes, 176.
marks of, to be renewed and proceedings recorded, 176.
notice of meeting to perambulate, how to be given, 176.
penalty for not giving notice, and for not attending, 176. 177.
what monuments of, to be erected at every angle, except, &c. 176.
between towns and unincorporated places, how and by whom to be perambulated, 176. 177.
perambulation of, in towns adjoining other states, 177.
penalty on selectmen for not erecting monuments, &c. 177.
punishment for removing, destroying, &c. monument of boundary of towns, 727.
BOUNTY, for destroying noxious animals, 392.
BOXES, for measure of charcoal. See *Charcoal*.
BRADS. See *Nails*.
BRAWLERS and RAILERS, common, how to be arrested, secured and punished, 777. 780.
BREAKING and entering, in the night, offices, shops and vessels, with intent to commit felony, how punished, 722.
in day time, or entering in the night without breaking, a dwelling house, or outhouse occupied therewith, or any office, shop, &c., with intent to commit felony, the owner therein being put in fear; how punished, 722.
how same act punished, when no person is thereby put in fear, 722.
BRIBERY, conviction of, in obtaining an appointment or election, to disqualify party to hold any office of trust, 46.
punishment for accepting bribe, by juror, arbitrator, auditor, &c., 734.
for bribing, or attempting to bribe, juror, &c., 733. 734.
for taking reward, &c., by officers, to omit or delay service of process, 736.
for bribing, or attempting to bribe judicial, executive or legislative officers, 733.
for accepting bribes, by such officers, 733.
for accepting any money, gratuity, &c., to conceal or compound offences, 735. 736.
BRIDGES, to be kept in repair by towns, unless, &c., 243.
damages caused by defect of, to be paid as in case of roads, 246.
when life is lost by defect of, fine to be recovered as in case of roads, 246. See *Highway*.
turnpike, loss by breaking, &c., of, not to be paid for, if caused by too great weight, &c., 341. 342.
private, how managed, &c. See *Private Ways and Bridges*.
county, town, and incorporated, not to be travelled over by horses faster than a walk, if by-laws forbid, 249.
by whom such by-laws to be made, in each case, 249.
by-laws of towns, in such case, to be approved by county commissioners, 249.
penalties for violation of such by-laws, and how and to whose use recovered, 249.
not recovered, unless by-laws are posted at each end of bridges, 249.
punishment for maliciously breaking down, removing, &c., public or toll, 726.
made by rail road corporations, over or under, canals, ways, &c., to be kept in repair by them, 346.
on Connecticut river. See *Timber*.
BRIEF STATEMENT, in what cases to be filed, when the general issue is pleaded, 609.
See *General Issue*.
of claim, &c. respecting which a deposition, to perpetuate testimony, is to be taken. See *Depositions*.

BUTTER and LARD, *(Continued).*
casks for, to be filled with brine three days, before butter, &c., is packed, 263.
when to be weighed, and weight marked thereon, &c., 263.
not to be shipped for exportation, until inspected, unless first imported, &c., 262. 263.
penalty for shipping or exporting before inspection, &c., 264.
when imported, having been inspected where packed, need not be reinspected, 263.
fees for inspection, weighing, branding, &c., 263.
penalty for delaying inspection, 263.
for counterfeiting inspector's brand, 263.
for others using inspector's brand, 263.
for owner's falsely marking kegs, &c., 263.
for changing contents of branded casks without first removing brand, &c., 264.
may be seized and libelled by inspectors, if shipped, &c., contrary to law, 264.
BUYING property known to be stolen, how punishable, 723.
notes or other demands, by attorneys, sheriffs, &c., with intent, &c., how punished, 544. 545.
See *Beef. Birds.*
BY-LAWS, may be made by all corporations, 363.
of city government, may be annulled by general court, 49. See *Municipal Court.*
of proprietors of land, wharves, &c., lying in common, 357. See *Common Lands, &c.*
of towns. See *Town.*

CALENDAR of prisoners, to be exhibited to courts, by jailers, 811.
penalty for neglect or refusal of jailer so to exhibit, 811.
CAMP KETTLES. See *Militia*, 6.
CANAL, petitions for corporation, to have accompanying documents, as in case of rail roads, 349.
See *Rail Road.*
land of married woman taken for, how released, &c. 350.
conductors of boats on, to exhibit certificates of lading to collector of toll, 349.
to pay costs of unlading, &c., if lading be found greater than stated in certificate, 349.
required contents of such certificate, 349.
penalty on such conductor for refusing to exhibit, or exhibiting false certificate, 349.
on owner of boat or other person, for false statement as to boat's lading, 349.
how penalties to be recovered, 350.
collector of tolls on, may require boat's lading to be weighed, 349.
proprietors of, to pay for detention of boat, if lading is found, on weighing, to conform to certificate, 350.
to prepare forms of certificates of lading and furnish them to boatmen without expense, 350.
punishment for constructing through a burial ground, without authority of law, or consent of parties, 742.
for maliciously and without right drawing water from, 726.
for wilfully breaking down, injuring, &c., locks, culverts, or embankments of, 726.
CANNON, in public magazines, &c., yearly account of to be delivered, and by whom, to the governor, 57.
CAPE COD, land on, ceded to United States, 57.
CAPE POGE, ceded to United States, 57.
CAPTAIN, one to each military company, 106.
how chosen, or appointed and commissioned, 36. 50. 106. 111. 112. 113.
oath of, and by whom administered and certified, 114.
how to be equipped and uniformed, 109. 110.
to enrol soldiers and notify them of enrolment, 102.
when others shall have captain's powers and powers of clerk, 106. 107.
to make yearly return to colonel, &c., of list and state of company, 108.
to appoint non-commissioned officers and clerk, 112.
to parade his company for inspection, &c., on 1st Tuesday in May, 116.
for discipline, &c., once a year, 116.
to issue orders to notify soldiers to appear, &c., 118.
may notify verbally at parades, 119.
not to receive excuses after 20 days, &c. See *Militia*, 5.
not to parade company on election days. See *Militia*, 4.
to certify list of soldiers entitled to pay, 136.
penalty on, for refusing so to certify, or making false certificate, 122. 136.

CHELSEA, *(Continued)*.
ways in, under jurisdiction of court of common pleas in Suffolk, 238.
to be laid out by that court, as by commissioners, except, &c. 238.
petitions concerning the laying out, altering or discontinuing of, to be acted on by commissioners, 238.
proceedings of such commissioners subject to final action of said court, 238.
jury to be ordered by said court, and trial to be at bar thereof, 238. 239.
verdict of, to be received, &c. or set aside as in other counties, 239.
grand and traverse jurors from, to serve in municipal court, 582.
innholders, &c. in, to be licensed by common pleas in Suffolk, 377.
CHICKEN-BIRDS. See *Birds*.
CHILDREN, may be bound as apprentices, &c. 494.
by whom, and how, to be so bound, 494. 495. See *Apprentices. Servant. Master. Parents.*
legitimate, to follow and have the settlement of their father, or mother, 367.
illegitimate. See *Bastard*.
fathers of, retain common law right to assign their services, 497.
to maintain their poor parents and grand parents by consanguinity, 370. 487.
by consanguinity or affinity, not punishable as accessories, after the fact, to felony, &c. committed by parents or grand parents, 746.
custody of, while libel is pending for divorce of either parent, 482.
stubborn, how may be treated, 779. 780. See *Minor. Youth. Divorce.*
CHOCOLATE, pans for, how to be stamped, 264.
of what the different numbers are to be made, 264.
boxes for, how to be branded, 264.
if not made and marked according to law, may be seized and libelled, 264.
CHURCHES, connected with parishes, &c. to have their accustomed privileges, &c. 201.
deacons, churchwardens, &c. of, deemed corporate bodies, to hold certain donations, 205.
ministers of, together with deacons, &c. when to be deemed a corporation, &c. 205.
conveyance of lands of, by deacons, &c. invalid, unless made with consent of church, &c. 206.
may, if not episcopal, choose committees to settle deacons' accounts, &c. 206.
amount of income of donations to, limited, 206. See *Ministers, &c. Meeting house.*
CHURCH WARDENS, if citizens of U. States, a corporation to take, &c. grants and donations to their churches, 205.
when to be a corporation for such purpose, together with the minister, or vestry, 205.
cannot convey church lands, without consent of vestry, 206. See *Episcopal Churches. Vestry.*
CIDER. See *Barrels, &c.*
CITATION, of creditor, when poor debtor desires to be discharged on oath, 596. See *Poor Debtors.*
of executors and administrators, to defend suits against the deceased, 567. 651. See *Actions.*
CITY governments may be constituted, by general court, in towns; and on what terms, 49.
by-laws of, may be annulled by general court, 49.
included in the word "town," unless, &c. 61.
inhabitants of, competent witnesses in suits by and against, 576. 577. See *Boston.*
CLAPBOARDS, of pine, exposed to sale, required quality of, 278.
dimensions and quality of all, 278.
surveyors of, and of shingles, to be chosen by towns, 278.
CLARKE'S POINT, land on, ceded to United States, 57.
CLAY, punishment for wilfully digging up, &c. without license, 727.
CLERGY, benefit of, abolished, 748.
CLERK, TO EACH MILITIA COMPANY, 106—to be one of the sergeants, 106.
by whom appointed, 112. 106. 107—appointment of, how certified, 106. 112.
warrant of, by whom given, &c. 112.
pro tempore, when and how appointed, 107.
penalty on, for not serving, 107. 121—how recovered, 124.
duties of, by whom done, in case of vacancy in office of, 107.
to be sworn; form of oath, and how certified, 106. 115.
may resign, and be discharged by captain, 116.
to note deficiencies, &c. at company inspections, 116.
to revise, &c. company roll, 116—to keep orderly book, 107.
to record company orders, &c. 107. 108. 119.

CLERK OF COURTS, *(Continued.)*
of police and justices' court in Boston, to be sworn, and give bond, 530.
to attend said courts, and record their proceedings, separately, 536.
to make all processes ordered by the courts, 536.
to render quarterly account of fees received, and pay them to city treasurer, 536. 709.
to account for and pay costs received in criminal cases, 771. 536.
may appoint assistants, who shall be sworn, 536.
to be responsible for conduct of assistants, 536.
neither they nor their assistants to be counsel, &c. in cases that are, or have been, in said courts, 536.
assistant, to be approved by justices of the courts, 536.
exempted from serving as juror, 578.
salary of, and of his assistants, how determined, 536.
pro tempore, may be appointed by the court, 535.
of police courts, duties of, to be performed by justices of, 537. 538. 771.
CLOTHING, supposed to be infected, how to be secured, &c. 210. 211. See *Board of Health*.
of convicts in the state prison, 797.
decent, to be furnished to such convicts, on their leaving the prison, 798.
COACHES. See *Public Vehicles. Drivers.*
COAL. See *Charcoal.*
COCCULUS INDICUS, not to be put into waters, to take, &c. fish, 392. 393.
CODICIL, included in the term "will," 61.
CO-EXECUTORS and CO-ADMINISTRATORS, may be required to give separate bonds to judge of probate, 446.
suits between, when may be decided in equity, 451.
COIN, punishment for counterfeiting, having, or uttering counterfeit, or making or having tools, &c. to coin, 729. 731. See *Counterfeiting. Search Warrant.*
current gold and silver, may be taken in execution, 589.
and paid to the creditor as money collected, 589.
COLLECTORS, of taxes, to be chosen by *towns*, 180. 185—by written ballots, 180.
to be sworn, 82. 180.
if none are chosen, or, if those chosen refuse, constables to be town collectors, 180. 185.
to give bond, 185—compensation of, 88. 223.
to deliver to selectmen lists of those who have paid taxes, 63. 185. See *Voters.*
may demand aid, when resisted, &c. in exercise of office, 83.
penalty for refusing them aid, 84.
liability of towns for collectors' neglect to pay state and county taxes, 87.
of unincorporated places, to have authority to collect taxes, like collectors of towns, 82.
in case of death of, before completing collection of taxes, assessors may appoint persons to complete it, 87.
such persons to have power, duty, and liability of other collectors, 88.
may be removed by assessors, for inability, absence, default, &c. and others may be appointed, 88.
unsettled tax lists of, to be delivered, by their executors, &c. to assessors, 88.
may supply, from town taxes, deficiency in state or county tax, if not in fault, 88.
or, if they have no proceeds of town taxes, may require town treasurer to supply such deficiency, 88.
to be credited with all sums abated; and amount of taxes of such as are committed, &c. within a year, 88. 804.
may appear as creditors, to oppose discharge of prisoners committed for taxes, 804.
liable to pay tax and charges of commitment therefor, unless, &c. 804.
liable to towns, on bond, for state and county taxes paid by towns by reason of their neglect, 88.
for not accounting for, &c. town taxes, 88.
to exhibit, every two months, if required, accounts of moneys received, &c., 88.
penalty for not exhibiting accounts, 88.
how to collect highway taxes, in certain cases, 245.
to pay highway taxes to surveyors, 245.
treasurer, of town or parish, may be appointed collector, 183. 203.
may appoint deputies, 183. 203.
to give bond, and have powers of collectors, 183. 203.

CONVICTION, *(Continued)*.
of three similar offences, at same term, effect of. See *Larceny*. *Counterfeiting*.
of part of a felonious offence charged, and acquittal of the residue, effect of, 761. 762.
out of the state, shall not render the convict an incompetent witness; but may be given in evidence to affect his credibility, 577. See *Jurors*.
CONVICTS. See *Jails*. *State Prison*. *Costs, in criminal prosecutions*. *Houses of Correction*.
CORN, to be sold by weight, &c. 279. 284.
standard weight of bushel of, 284. See *Grain*.
punishment for wilful cutting down, or carrying away any kind of, 727.
CORONERS, appointed by the governor, 36—to be sworn, and to give bond, 171.
bonds of, to be examined yearly, and new ones required, if necessary, 171.
suits on, how brought, &c. 171.
sureties of, how discharged, 171.
penalty on, for refusing to give bond, 171.
to serve process of attachment for contempt against sheriff or his deputy, 659.
to do all sheriff's duties, when office of sheriff is vacant, 171.
to serve writs, &c. when sheriff is interested, 171. 524.
though their county, town, &c. is a party, 171.
to take inquests on view of dead bodies, 768. See *Inquest*.
may not act as attorneys, nor fill writs, &c. under a penalty, 169. 542.
buy, or advance money on demands for collection, &c. 544.
penalty on, for taking dead body on process, 169.
exempted from serving as jurors, 578.
fees of, for summoning juries, &c. in highway cases, 233. 234.
for serving notice of petitions to the general court, 61. 62.
for taking inquests on view of dead bodies, 712.
CORPORALS, four to each company, 106—how appointed, 112.
appointments of, to be returned to colonel, &c. 112.
warrants of, to be given, &c. by colonel, &c. 112.
pay of, when called into actual service, 136. 137.
CORPORATIONS, general powers of, when other special provision is not made, 362. 363.
may regulate the calling, &c. of meetings, mode of voting, selling shares, &c. 363.
how first meeting of, shall be called, 363.
when meetings of may be called by a justice, &c. what may be done at such meetings, 363.
may hold and convey lands, 363.
shall continue three years after charter expires, &c., for certain purposes, 363.
not for the continuance of their business, 363.
receivers or trustees of their effects, may be appointed by supreme court, after charters expire, &c. 364.
powers, &c. of such receivers and their agents, and equity jurisdiction of court over their proceedings, 364.
franchises of such as are entitled to toll, liable to attachment and execution, &c. 364.
See *Franchise*. *Execution*. *Writs*.
cannot sue for certain penalties, after franchise is sold, 365.
have all other powers, duties and liabilities after such sale, 365.
may redeem their franchise, and on what terms, 365.
liable to warrant of distress, for not paying assessed damages, &c. 365.
not liable to taxes for parochial purposes, 203.
in what county legal proceedings against may be had, 366.
when officers and members of may have a bill in equity, for adjustment, &c. 366.
how far incorporating acts subject to alteration or repeal, 366.
actions by and against, in what county to be brought, 548. 549.
may be summoned as trustees of their creditors; and how their answer may be made, 644.
how process against shall be served, 552.
shares in stock of, how attached, taken and sold on execution, 551. 591. See *Execution*.
recording, &c. officer of, to give attaching officer a certificate of defendant's shares, under penalty 551.
how travel of, shall be taxed, in actions by and against, 707.
CORRUPTION. See *Bribery*

COSTS, *(Continued).*

for the Commonwealth, not to include travel of attorney general, &c., 705.
in suits by private persons, in name of Commonwealth, to be paid by them, 705.
judgment and execution for, against them, 705.
may be required by courts, as condition of continuance, amendments, &c., 705. 706.
in suits in equity, where no express provision is made, to be at discretion of court, 705.
not to be greater than in suits at law, 705.
in cases of arbitration, &c., to be subject to award of referees, &c., 705.
on petitions of private persons for *certiorari, mandamus*, &c., may be allowed to respondents, at court's discretion, 705. See *Certiorari.*
by guardians, executors, &c., for license to sell lands, 458. 461.
on writs of error, and *libels of forfeited goods*, to be recovered by prevailing party, 662. 693.
of *review*, to be recovered by party prevailing, 603.
on petition for a review, court may impose terms as to costs, 603.
what allowed to persons summoned under the trustee process, 649. 650.
against administrators and executors in actions at law, 437.
in process for contesting validity of attachments, 558.
in suits against judge advocates, how paid, 124. See *County Treasurer.*
on complaints for neglect and maltreatment of apprentices, 495.
in process against absconding apprentices, 496.
in contested cases before judge, or supreme court, of probate, to be at discretion of the respective courts, 520.
on petitions to revise or alter decrees, in cases of divorce and alimony, may be awarded to either party, according to justice, &c., 484.
of complaint to compel kindred of poor persons to pay for their support, how to be taxed, 370.
in questions of contested attachments, 558.
for travel, attendance and attorney's fee, how much to be taxed, in different cases, 706. 707.
for declaration, in any court, to be fifty cents, 706.
In criminal prosecutions.
when not paid by deft., shall be paid from state treasury, except, &c., 770. 771. 772. 773.
exception of prosecutions for breach of town by-laws, 771.
and on the arrest of one seized as a fugitive from justice, 776.
before justices, to be taxed, and allowance of certified, by them, 771.
not to be taxed, unless on a warrant duly served and returned, 771.
to be certified to next court of common pleas, and there examined, &c., 771.
when may be paid to them by party convicted, and how by them disposed of, 711.
when certified to common pleas, to be put into general bill, 711.
on appeal from their judgment, and in process for sureties of the peace, to be certified to common pleas and there taxed, &c., 711.
in municipal court, to be paid, &c., as in common pleas, 532.
before police court in Boston, to be taxed and certified by the clerk, and when paid to him, how to be accounted for, 536. 771.
to be certified to municipal court, 771.
before other police courts, to be taxed, &c., and disposed of by justices thereof, as above by justices of the peace, 771.
in process against vagabonds, drunkards, &c., may be imposed on deft. on his discharge upon recognizance, 780.
in proceedings to remove attorneys for malpractice, to be paid as in criminal prosecutions, 542.
in process for sureties of the peace, if frivolous or malicious, may be imposed on the complainant, 749.
when may be, wholly or in part, imposed on the deft., and be committed for not paying, 749.
when no order is made concerning, to be paid as in other cases before justices, 749.
how, and at what time, poor convict discharged, when committed for not paying, 799.
when may be paid, and to whom, by sureties in recognizances, 755.
for travel, not to be taxed in suits on recognizances, 755.
in supreme and municipal court, and common pleas, to be taxed by attorney general, or district or county attorney, 772.
allowance of to be certified by clerk, 772.

COUNTY COMMISSIONERS, *(Continued.)*
returns of votes to be examined, by board of examiners, who shall give notice to persons elected, 161.
if choice of, is not made, examiners to issue warrants to selectmen to call meetings to fill vacancies, 161. 162.
selectmen to call such meetings, 161.
these proceedings to be repeated, till three are chosen, 161. 162.
penalty on selectmen and town clerk, for wilful neglect of duty in the premises, 162.
a chairman of, to be chosen by ballot, at first meeting of, 162.
to give notice to one or more of special commissioners, to attend, when themselves interested or unable, 162.
not to determine on business, where opposing parties appear, unless three disinterested are present, 162.
these two last provisions not to extend to Duke's county, 162.
to provide for erection and repair of county buildings, 163.
to lay out, alter and discontinue ways, &c. 163.
to make estimates for county taxes, and cause taxes to be assessed, 163.
to record said estimates, and send copy to secretary of Commonwealth, 163.
to settle accounts of receipts and disbursements of county moneys, 163.
to have care of county property, and to represent county, 163.
may grant licenses to innkeepers, &c. 163.
to examine and allow county treasurer's accounts, 163.
to publish, yearly, account of county receipts and expenditures, 164.
exempted from serving as jurors, 578.
may license auctioneers, when selectmen unreasonably refuse, 287. 288.
shall provide fire proof rooms, &c. for registers of deeds, 172.
duties of, in election, &c. of registers of deeds, 172. 173. 805. 806.
may appoint agents, to sell real estate of counties, 159. 160.
county treasurer pro tempore, when office of is vacant, 165.
compensation of, and of special commissioners, 524.
not to be paid for services on more than one case at same time, 524.
meetings of, when and where held in different counties, 525.
may punish contempts and interruptions, 524.
warrants, &c. of, to be served by sheriffs, &c. 524.
clerk of, how appointed, and his duties, 524. See *Clerk of Courts.*
power of, to abate taxes, 81. 359.
may appoint presiding officer to attend jury, on trial of highway questions, 233.
compensation of such officer determined by common pleas, 235.
to take notice, for county, of petitions for juries, in highway cases, 233.
may agree with petitioners to submit case to a committee, 233.
shall appoint agent for county, to attend jury or committee, 233.
compensation of such agent, 233.
may regulate travelling with horses over certain county bridges, 249.
to decide on by-laws of town concerning such travelling over certain town bridges, 249.
power, &c. of, as to ferries, 250. See *Ferry. Ferrymen.*
as to expenses of drains, common sewers, &c. 251. See *Drains, &c.*
as to appointing enginemen for private engines, 194.
as to licensing innkeepers, retailers, &c. 377. 378.
as to houses of correction, &c. 780. 788.
further powers and duties of. See *Highway. Town Ways. Rail Road. Turnpike Corporations. Assessors.*
special commissioners, two to be chosen, at same time and in same manner, as the others, 162.
term of office, 162.
to be of different towns, except in Duke's county, 162.
if more than one, either county or special, from the same town, have majority, he who has highest number, to be declared elected, 162.
vacancy, by death, &c. in office of either, may be filled by election, when examiners direct, 162.
to take place of county commissioners, when they are interested, or unable to attend, 162.
exempted from serving as jurors, 578.
COUNTY TREASURER, to be chosen, yearly, at annual town meetings, by written votes, 165.
except in Suffolk and Nantucket, 165.

COURT OF COMMON PLEAS, *(Continued).*
Original and appellate jurisdiction of, in civil cases.
actions not to be commenced before, (except, &c.) wherein damages demanded do not exceed $20, 508.
exception of actions wherein title to real estate may be concerned, &c. 508.
appeal from judgment, &c. of, when allowed, &c. See *Appeal.*
exceptions to opinion, judgment, &c. of. See *Exceptions, in civil cases.*
may set aside verdicts, and grant new trials, for legal cause, 510.
may issue all processes necessary to enforce injunction to stay, &c. nuisances, 209.
may determine finally on objections to a marriage, upon appeal from decision of two justices, 477.
may discharge apprentices, on complaint that they are neglected or maltreated by masters, 495.
may apportion expense of supporting poor persons, among their kindred liable for their support, 370.
may appoint commissioners for improving meadows, &c. and supervise their proceedings, 673. 675.
power of, as to by-laws of towns, 178.
Original and appellate jurisdiction of, in criminal cases, except in Suffolk.
shall have original jurisdiction of all crimes and misdemeanors, 511.
appellate, of all offences tried before a justice or police court, 511. 537.
final, except in cases of libel, nuisance, conspiracy, and offences punishable by confinement to hard labor for more than five years, 511.
concurrent with a justice, of certain malicious trespasses, 727. 728.
may grant new trials, for legal cause, at terms when trial is had, or within a year after judgment, 511. 764. See *Exceptions, in criminal cases.*
may report a case of doubtful law to supreme court, if party consent, and stay proceedings, 764. 765.
final judgments of, may be re-examined on writ of error, in supreme court, in same county, 512.
shall issue warrant to arrest party charged, by indictment, with a capital offence, if he be not in custody, 511.
not to try nor arraign those who are indicted capitally, 511. See *Indictment.*
COW, one exempted from execution and attachment, 589. 549.
COW POX. See *Inoculation.*
CRACKERS, not to be kept for sale, nor lighted, thrown, &c., without license, 401. See *Rockets.*
CREDITORS of persons deceased intestate, when entitled to administration, 425.
insolvent, how to proceed, &c. See *Insolvent Estates.*
how to proceed against executors, &c. See *Executor. Bond. Administrator.*
power of, and on what terms, to commit debtors to prison. See *Poor Debtors.*
CRIER OF COURTS, exempted from serving as juror, 578—compensation and fees of, 709.
not to receive pay for attending court as deputy sheriff also, 709.
CROSS ACTIONS. See *Actions. Absent Defendant.*
CRUELTY, to horses, oxen and other animals, how punished, 742.
to apprentices or servants by indenture, how redressed, 495.
extreme, of husband or wife, a cause of divorce, 480.
CULLERS, of hoops and staves. See *Hoops and Staves.*
CULVERTS of canals, punishment for injuring, 726. See *Canal.*
CURLEWS. See *Birds.*
CURRENCY, penalty for issuing or passing certain paper to be circulated as, 303. 318.
CURSING. See *Profane Cursing, &c.*
CURTESY, tenant by, who is, 411.
to hold wife's land during his life, 411.
liable for waste, and how far, 630.
title of, not affected by distribution of estates, 415.
tenancy by, how to affect limitation of actions, 696.

DAMAGES, on protested bills of exchange, &c., in different cases, 302. 303.
in actions for dower. See *Dower.*
in actions of trespass, after trespasser's death, to be only what were actually sustained, 568.
what may be recovered in audita querela, 661.
done by others' beasts, may be recovered in action of trespass, or by distraining, 665.
for injury done by dogs. See *Dogs.*
on default, may be assessed by court, unless either party moves for assessment by a jury, 587.

DISCLAIMER, may be pleaded in bar or in abatement, 611.
party pleading, not to have costs that accrue before plea filed, 611.
DISCONTINUANCE of actions, not allowed, except by consent, after set-off filed, 585. 586. See *Actions*.
of libel for forfeited goods, entitles claimant to restitution, 693.
of possession, &c., shall not defeat right of entry, or of action for recovery of real estate, 610
of ways. See *Highway*, 1. *Town Way, &c.*
DISCOUNT, on taxes. See *Taxes*, 3. *Assessors*.
on drafts, &c. See *Exchange*. *Banks*.
DISCOVERY, bill for, when cognizable by supreme court, 500. 295. See *Equity*.
DISFIGURING horses and other beasts maliciously, how punished, 726.
persons by maiming, &c. See *Maiming*.
DISGUISE, punishment for the conveying of into jails, houses of correction, &c., or state prison, to aid a prisoner's escape, 734. 796. See *Escape*.
for persons disguising, with intent to obstruct the execution of the law, or to intimidate, &c., officers, &c., in performance of duty, 735.
DISORDERLY CONDUCT, at town and parish meetings, how punished, 65. 179. 202.
in presence of either branch of the general court, 32. 33. See *Contempt*.
DISORDERLY PERSONS, how to be arrested, secured and punished, 779. 780. 529.
DISSECTION of human bodies. See *Dead Bodies*.
DISSEIZIN, of precedent estate, shall not bar or defeat estate in expectancy, 405.
of devisor, after devise made, shall not affect the devisee's right to the estate, 416.
DISSEIZOR, who may be deemed, for purpose of trying right to lands, 611.
judgment creditor may be deemed, if he refuse to release to debtor land taken in execution, after tender, &c., of the debt, 467.
DISSOLUTE persons. See *Idle, &c. persons*.
DISSOLUTION of limited partnership. See *Limited Partnership*.
of attachments. See *Attachment*. *Trustee Process*.
DISTRAINING, of cattle doing damage, or being at large, contrary to law, 199. 664. 665.
legality of, not to be questioned in suit for rescuing cattle, 666.
where beasts distrained shall be impounded, 199. 665.
beasts distrained for doing damage to be fed, &c., by person distraining, 665.
when person distraining to leave with pound keeper memorandum of the cause, amount of damage, &c., 665.
when to give like memorandum to owner of the beasts, 665.
when and how person impounding shall give notice thereof to owner, &c., 665.
how notice of impounding shall be given, when owner is not known, 665.
how damages done by cattle impounded shall be determined, in case of dispute, 665. 666.
when owner does not pay damages, within fourteen days after notice, &c., cattle to be appraised and damages, &c., determined, 666.
such appraisers may be appointed and sworn by a justice or town clerk, 666.
if damages, determined by appraisers, be not forthwith paid, cattle to be sold by auction, 666.
notice of such auction, how given, 666.
proceeds of sale of impounded cattle, how disposed of, 666.
penalty, &c., for rescue of cattle distrained or impounded, 666.
replevin of cattle impounded, &c. See *Replevin*.
DISTRIBUTION, of personal estate, after payment of deceased's debts, rules of, 424.
what articles not subject to distribution or liable for debts, 424. 428. 429.
of land mortgaged to deceased, or taken on execution by executor, &c., for deceased's dues, to be like that of personal estate, 430.
of surplus of sales of real estate, for payment of debts, to be like that of real estate, 457.
of personal property of foreigners, &c., to be according to laws of their country, &c., 449.
of foreigners' estates, when insolvent, to be so made that all creditors shall receive an equal share, 449. See *Insolvent Estates*.
residue of foreigners' estates, when solvent, may be transmitted, for distribution, to foreign administrator, &c., 449.
if insolvent, not to be so transmitted, till creditors in this state receive their just proportion of the whole estate, 449. 450.
what evidence of distribution, by executors, &c., guardians and trustees, according to decree, may be furnished, so as to entitle them to a discharge, 450. 451.

DIVORCE, *(Continued)*.
when granted for any cause, except her adultery, wife to have all her real estate, and restoration of such other property, as court shall deem just, &c. 482.
court may appoint trustees of property awarded to wife, 482.
may examine husband, on oath, as to wife's personal property, 483.
See *Alimony*.
DOGS, may be restrained, &c. by by-laws of towns, 402.
owners of, may be required to procure license, 402.
to pay town treasurer for license, 402.
to keep a collar on the neck of; and how marked, 402.
when liable to person injured by, for double or treble damages, 402. 403.
may be killed by any one, if without a collar, 402.
if found worrying, &c. cattle, sheep or lambs, 402.
if they assault persons out of owner's enclosure, 402.
if found at large, after notice, &c. to owner, 403.
when to be confined or killed by owner, on penalty, 402.
damage done by, how recovered of the owner, 402. 403.
in action for injury by, how owner may plead, &c. 402.
DONATIONS, to churches, ministers, &c. See *Churches. Ministers, &c. Quakers.*
for support of schools. See *Schools*.
DOUGH-BIRDS. See *Birds*.
DOWER, in husband's land, after his death, unless lawfully barred, 409.
after divorce for his adultery, or imprisonment, &c. 483. 617.
what, in mortgaged estates, 409.
in lands taken in execution for husband's debts, 471.
held by husband under a demise for 100 years, &c. 411. 617.
in wood lot, &c. used with husband's farm or dwelling house, 410. 411. 617.
not in other lands that were wild when husband died or conveyed them, 410. 617.
title to, not affected by advancements, &c. 415.
in what cases, and in what manner, assigned by judge of probate, 409. 483.
how assigned on a writ of seizin, when recovered by action, 617.
commissioners appointed to assign, to be sworn, 409. 617.
how assigned, when estate is not divisible, 409. 617.
may be assigned and set out by guardian of the heir, &c. 491.
may be recovered by writ, when not assigned by judge, heir, &c. 410. 616.
must be demanded of tenant of the freehold, one month before action brought, 616.
may be enjoyed by widow, by joint occupation with heirs, without being assigned, 410.
barred by wife's release of claim to, in deed by husband and herself, 410. 617.
in deed by his guardian and herself, 410. 486.
by divorce for her adultery or imprisonment, &c. 483.
for impotency of either party, 480. 483.
by jointure settled by wife's assent, before marriage, 410.
by pecuniary provision in lieu of, by similar assent, 410.
by jointure, &c. without assent, or after marriage, unless waived, within six months, 410.
See *Jointure. Widow.*
by provision in husband's will, if widow elect to take it, 410.
not barred by divorce from bed and board, 483.
by alienage of wife, except in land conveyed, &c. by husband before February 23d, 1813, 411.
action for, to be brought against tenant of the freehold at time when commenced, 616.
damages for detention of, to be recovered in action for, 616.
only for time while tenant held the premises, 616.
action for, may be brought against prior tenant who aliened after widow demanded, 617.
tenant in, if evicted, or deprived of jointure or provision in lieu of, may be endowed anew, 411.
shall forfeit place wasted, and amount of damage, if she commit or suffer waste, 411. 617. 630.
to pay one third of rent to lessee, when endowed of demised estate, 411.
to contribute to redemption of mortgage, when endowed of mortgaged estate, 409.

EASEMENT, *(Continued)*.
notice to prevent, shall be deemed such a disturbance, as to entitle party to an action to try the right, 698. See *Costs*.
EASTERN POINT, land on, ceded to United States, 58.
EAST ROCK, of cat island, ceded to United States, 57.
EDGARTOWN, land at entrance of harbor, ceded to U. States, 58.
ELDERS, of churches, when a corporation, together with the minister or deacons, to take, &c. grants to their churches, 205.
ELECTIONS, all ought to be free, 21.
of town, county, state, and U. States' officers, not to be held on days when military duty is required by law, 64. 123.
meetings for choice of governor, &c. not to be opened before 11 o'clock, except in towns having more than 500 voters, 64.
to be presided at by selectmen, 28. 34. 38. 67.
in Boston, to be conducted according to city charter, &c. 65. 68. 71. 72.
presiding officers at, liable for wilful omission of duty, 65.
to have lists of qualified voters, 65.
lists of voters, how to be transmitted, 29. 34. 38. 66.
votes at, to be given by voters in person, 65.
of all persons on list of voters, to be received, 64.
of persons not on list, may be refused, 64.
result of, ascertained by finding who has majority of whole number of ballots, 65.
if more than are to be elected have such majority, those, who have most votes, to be declared elected, 66.
if two or more, in such case, have the same number of votes, neither to be deemed elected, 66.
voters at, qualifications of, &c. See *Voters*.
disorderly conduct at, how punishable, 65. 179.
giving more than one vote, penalty for, 65.
wilful voting, by persons not qualified, or aiding such persons to vote, penalty for, 65.
wilfully giving false answers to presiding officers, how punished, 65.
of *electors of president*, &c. of U. States. See *Electors*.
of *representatives in Congress* of U. States, when and how often, 70.
meetings for choice of, to be presided at by selectmen, 70.
votes for, how to be received, &c. how declared; how lists of to be formed, sealed, certified and transmitted to secretary's office, 70. 71.
lists of votes for, to be transmitted by selectmen, to sheriff, within three days, 70.
or by themselves, to secretary's office, within ten days, 71.
to be transmitted, by sheriff, to said office, within seven days, 71.
if there be no sheriff, selectmen shall transmit within ten days, 71.
returns of votes for, to be laid, by secretary, before governor and council, 71.
certificate of choice of, to be transmitted to persons chosen, 71.
if no choice of, precept for new election to be issued by governor, 71.
such precept to contain names of, and number of votes given for, all persons who received fifty votes or more, at former balloting, 71.
vacancies in, to be filled by new election, 71.
precepts for choice of, to be distributed by sheriffs to selectmen, 71.
penalty for sheriff's and selectmen's neglect of duty, as to elections, 71. 72.
of *representatives in general court*, qualification of voters on question of sending, same as for voting in choice of, 67.
meetings for choice of, how notified; to be presided at by selectmen, 67.
elections of, to be recorded in town records, with number of votes, and names of all voted for, 67.
notice of choice of, to be given to the elected within three days, 67.
form of such notice, and of the return of service thereof, 68.
certificate of choice of, by selectmen, how made, and when transmitted, 67. 68.
if town choose and return, when not entitled, or choose and return more than it is entitled to—penalty therefor, and how and to whose use recoverable, 67. 68.
of *military officers*. See *Militia*, 3.

ENGINEMEN, *(Continued).*
who perform duty for a year, entitled to receive sum equal to certain poll taxes, 194.
list of, who have thus performed duty, to be certified to assessors, by chief engineer, or foreman, &c., 194. 195.
to be examined by assessors and certified to town treasurer, with amount to be paid to each person, 195.
may sue town for amount of poll tax, if treasurer refuse to pay, on assessors' certificate, 195.
penalty on chief engineer, foreman, &c., of, to use of town, for wilful refusal to certify list of to assessors, 195.
for making false certificate, 195.
provisions respecting payment to, as above, to be adopted by town, or city council, before they take effect, 195.
though town, &c., so approved, shall cease to have effect after approval is revoked, 195.
ENGINES *for fire*, different kinds of, provided *in towns*, with what number of persons to be manned, 193.
of proprietors, to be kept where selectmen direct, if owners shall not agree on place, 194.
stations and operations of, at fires, to be directed by firewards, &c., 192.
punishment for maliciously breaking or injuring, 195.
on rail roads. See *Rail Road.*
ENSIGN, one to each company of infantry, light infantry and riflemen, 106.
how chosen, or appointed, and commissioned, 36. 50. 111. 112. 113.
oath of, by whom administered and certified, 114.
how uniformed and equipped, 109. 110.
ENTRENCHING TOOLS, &c. See *Public Property. Adjutant General.*
penalty for having them in possession, without right; and how recovered, 123. 124.
ENTRY, *writs of*, except on demandant's own seizin, abolished after 31st December, 1839, 616.
exception in favor of persons absent, or under disability, on that day, 616.
See *Real Actions. Limitation, &c.*
of actions and appeals, when may be made, &c. See *Actions. Appeal.*
fee of clerk for, 708. 709.
fee for, before a justice, or police court, 707. 708. 713.
EPISCOPAL CHURCHES, not, like others, to choose committees to settle accounts of, and prosecute suits against, church officers, 206.
wardens of, a corporation to take grants, &c., 205.
See *Church Wardens. Ministers of the Gospel. Churches.*
EQUIPMENTS, of soldiers and officers. See *Militia*, 6.
exempted from seizure and sale for taxes or debts, 110. 589.
owned by Commonwealth, not to be bought, possessed or detained without right, 123.
EQUITY *jurisdiction of supreme court, where parties have not a plain and adequate remedy at common law.*
in all suits for redemption or foreclosing of mortgages, 500.
for enforcing or regulating the execution of trusts, 500. 445.
for specific performance of written contracts, 500.
to compel redelivery of goods taken, detained or secreted, that cannot be replevied, 500.
for contribution by or between different persons respectively liable, &c., 500.
between partners, joint tenants, &c., joint trustees, co-executors, &c., 500. 451.
concerning waste and nuisance, 500. 631. 633.
in all cases where more than two parties have distinct rights, &c., that cannot be decided, &c., in one action at law, 500.
in all bills for discovery, where discovery may be required according to course of proceedings in chancery, 500.
in applications, by creditors of corporations, whose charters have expired, &c., for appointment of trustees, &c., 364.
by a married woman for investment for her use, &c., of money received for damage to her lands by public works, roads, &c., 486. 487.
in bill for redemption by debtor, of land set off on execution. See *Redemption.*
in bill against heirs, executors, &c., for specific performance of contract by the deceased, for conveyance of land. See *Specific Performance.*
in sundry other cases. See *Bill in Equity. Limited Partnerships.*

EVIDENCE, *(Continued).*
averments, confessions, &c., in one of several pleas, not to be taken as evidence on trial of issue on the others, 608.
of consideration of a promise required to be in writing, may be by parol, 472.
See *Auditors. Fence. Real Actions. Lotteries. Libel. Conviction. Forgery. Timber.*
EXAMINERS, board of, to count votes, &c., for county commissioners, 161.
when to meet for this purpose, 161—of whom to consist of, 164.
to furnish selectmen, when there is a failure to choose commissioners, with list, &c., of persons voted for, 161.
to examine accounts of commissioners for services, 164.
to certify such accounts, if found right, &c., 164.
compensation of, 164.
accounts of, to be audited, &c., by county treasurer, 164.
penalty on, for wilful neglect of duty, 162. See *County Commissioners.*
EXCEPTIONS *in civil cases.*
may be taken to the opinion, direction, or order of a judge of the supreme court in matter of law, if he decline to reserve the question, 502. See *Equity.*
to the opinion, direction or judgment of the court of common pleas, 509.
to be reduced to writing, in a summary mode, and allowed and signed by the presiding judge, 502. 509.
in the common pleas, may be in all civil suits and proceedings, though not according to course of common law, 509.
in questions on appeal from commissioners for improving meadows, &c., 675.
when deemed frivolous, &c., by supreme court, double costs and interest may be awarded, 502. 503. 510.
in supreme court, truth of may be established before full bench, if a judge refuse to allow and sign them, 502.
may thereupon be allowed by full bench, 502.
if deemed frivolous, &c., by judge, who allows them, he may enter judgment, and award or stay execution, on terms, 502.
when allowed, question arising on to be heard by full bench in same county, 502.
how judgment may be vacated, if rendered after allowance of, 503.
shall not prevent or delay trial of the case by jury; verdict to be subject to order of full court, 503.
in common pleas, trial not prevented or delayed by; judgment to be entered. notwithstanding, 509.
allowance of, stays execution, 509.
when allowed, case to be taken to supreme court, as on appeal, 509.
not to discharge bail or attachments, 510.
if not entered in supreme court, judgment may be affirmed there, on complaint of adverse party, 509. 510.
to be determined on by full court in county where judgment was rendered, 510.
all questions of law raised thereon, to be decided by supreme court, 510.
after decision thereon, case may be remitted, or new trial ordered in supreme court, &c., 510.
full costs to be allowed to prevailing party, though recovery be less than $100, 510.
in criminal cases, in common pleas and municipal court, may be taken by prisoner, as in civil cases, though he have a right of appeal, 764. 511. 532.
stay proceedings of court where taken, unless clearly frivolous, &c., 764.
if clearly frivolous, judgment, &c., may be entered, though they are allowed, 764.
party who files, may recognize for his appearance at next supreme court, to prosecute them, abide sentence, &c., 765.
if such party do not recognize, he shall be committed to await decision of the supreme court, 765.
to be decided on by supreme court, like questions reserved by one of its judges, 765.
after decision thereon, case may be remanded, &c., or new trial ordered in supreme court, 765.
proceedings on, not to bar writ of error for errors, &c., apparent on the record, 765.
in supreme court, may be taken, as in civil cases, to opinions, &c., of a judge, 502.
EXCHANGE, current rate of, to be paid on certain protested bills of exchange, 302.
may be charged by banks, on discounting bills and drafts, 316.
bills of. See *Bills of Exchange.*

FENCE VIEWERS, *(Continued)*.
may determine what one occupant shall pay another for fence, in certain cases, 198.
when to be taken from different towns, to decide concerning fences, 198.
powers and duties of, as to fences in general fields, 359. 360.
FERRY, not already established by law, not to be kept, and pay taken, without license from county commissioners, 250.
license for, may be revoked by county commissioners, 250.
tolls at, to be established by commissioners, 250.
liability and penalty for keeping and taking toll for, without authority, 250.
may be established by commissioners, where they judge necessary, 25.
when so established, town or towns to bear expense of, if tolls are insufficient, 250.
to maintain them, and how, 250.
penalty on towns for neglect to maintain, 250.
FERRYMEN, what exempted from military duty, and from serving as jurors, 100. 578.
to be licensed by county commissioners, 250.
to keep safe boats, adapted to the waters, 250.
to give ready attendance on passengers. 250.
penalty on, for want of such boats and attendance, 250.
at ferries not already established, to give bond, 250.
liable on bond for injuries caused by negligence, 250.
action against, on bond, how brought, 250.
FICTITIOUS NAME may be inserted in writ against person unknown, 553. See *Search Warrant*.
FIDDLERS and PIPERS, common, how to be arrested, secured and punished, 779. 780.
FIELD. See *General Fields*.
FIELD DRIVERS, to be chosen by towns, and sworn, 180.
may be chosen by proprietors of general fields, 360.
to take up neat cattle, sheep, swine, &c., going at large contrary to law, 199. 664.
may retake, within seven days, beasts that escape or are rescued, 666.
to restrain such cattle, &c., in town pound, 199. 664.
entitled to recover, by action, if such cattle, &c., are at large in highways, &c., on Sunday, 199.
fees of, for distraining different beasts, 664.
FIELD PIECES. See *Militia*, 6. *Captain*.
FIFE. See *Militia*, 6.
FIFE MAJOR, one to each regiment, 106—how appointed, 112.
FIFERS, or buglers, one or more to every foot company, 106—how appointed, 112.
FINAL JUDGMENT, what intended, when attachment is affected thereby, 549. 550.
FINES, excessive, not to be imposed, 14.
how recoverable, 695. See *Forfeitures*.
imposed by, and paid to justices or police courts, (except in Boston,) to be paid over to treasurer of county, &c., 530. 711.
police court in Boston, and paid to the clerk, to be paid by him to city treasurer, 536. 771.
certificates of, imposed by courts, to be certified by clerks to treasurers, 772.
received by any officers, to be paid by them to county treasurer, 532.
liability of officers, for not so paying, 772.
to be paid by officers who suffer party liable therefor to escape, 772.
how and when poor convict shall be discharged, if imprisoned for not paying, 779.
FIRE, power and duty of firewards in extinguishing, 192. 193.
authority, &c., of selectmen and others, when no firewards are appointed, 192. 193.
See *Firewards*. *Embezzlement*. *Buildings*. *Enginemen*.
FIRE ARMS, provers of, may appointed by governor, 264. 265—to be sworn, 265.
how musket and pistol barrels shall be proved, 265.
how stamped by the prover, when proved, 265—fees of prover, 265.
penalty for making, selling or buying musket or pistol, without proof and stamp, 265.
not to extend to muskets, &c., made in U. States armory, or on contract with U. States, 265.
for forging or altering prover's stamp, 265.
FIRE ENGINES. See *Engines*.
FIRELOCKS. See *Muskets*. *Rifles*.
FIRE-PROOF offices to be provided by counties, 160. 172.

FOREMEN, of juries, and of enginemen. See *Grand Jurors. Jurors. Enginemen.*

FORFEITED GOODS, may be seized by persons entitled to recover them, when no special provision is made, 692.
- person seizing, to apply immediately (unless a claimant applies) to a justice for appointment of appraisers, 694.
- appraisers to be appointed by such justice; to be sworn, and return an inventory and appraisement, 694.
- if appraisers, appointed on application of person seizing, certify that the goods are perishable, &c., any justice may order sale thereof, 695.
- such appraisement to be conclusive as to jurisdiction of the court, before which suit is to be brought, unless, &c., 694.
- if claimant applies, before libel is filed, for appraisers, their appraisal to be conclusive, &c., 694.
- person seizing, to file a libel within 14 days, stating the cause of seizure, and praying for a decree of forfeiture, 692.
- libel of, may be general; form of, 692.
  - to be filed in clerk's office of common pleas, when value of goods is more than $20, 692.
    - before a justice or police court, if goods are of less value, 692. 693. 694.
- how notice of libel shall be given, when filed in clerk's office, 693.
  - when filed before a justice or police court, 693. 694.
- if no claimant appears, court shall hear and determine the cause, &c., 693.
- if claimant appears, he may plead any proper matter of defence, 693.
  - proceedings to be according to course of the civil law, except that questions of fact shall be tried by a jury, 693.
- depositions may be used, as in trials of actions at common law, 694.
- if libellant maintain his suit, court shall order sale of the goods and legal disposition of proceeds, 693.
  - discontinue or fail to maintain his suit, claimant to have restitution, 693.
- costs, charges of keeping, &c., processes, &c., to be within the power and control of the court, 693.
- court may order sale of the goods, for sufficient cause, during pendency of suit, 695.
- appeal from common pleas, or from a justice, &c., may be taken by either party, 693. 694.
- claimant shall have damages and costs, if jury find that the seizure was groundless, &c., 693.
  - entitled to a delivery of the goods, on giving bond to restore, pay appraised value, if, &c., and perform final decree, 694.
- value of the goods in such case, to be determined by 3 sworn appraisers; how appraisers appointed, 694.

FORFEITURES, pecuniary, may be recovered, in all cases, by action of debt or trespass on the case, 695.
- shall be so recovered, if no other mode be prescribed, 695.
- actions for, where to be brought, 549. See *Actions.*
- limitation of actions, &c., for by individuals and by the state, when no shorter time is expressly prescribed, 701.
- for violating health laws, &c., how recovered, and to whose use, 214.
- to the use of Commonwealth, imposed by courts, to be certified to state treasurer, 772.
- imposed as a punishment, &c., deemed to be appropriated to Commonwealth unless other appropriation is expressly made, 747.
  - may be recovered by indictment, and in what courts, or by complaint before a justice, &c., if not more than $20, 747. 748.
- incurred under acts hereby repealed, not affected by the repeal, except where mitigated by new provisions, 800.
- accruing to individuals by reason of offences committed, may be awarded to them by court, when offender forfeits his recognizance to appeal, &c., 764. See *Fines.*
- of *estates*, not caused by deed of tenants for life, &c., purporting to convey more than they legally may, 405.
- of precedent estates, not to defeat, &c., estates expectant, 405.

FORGERY, of records, deeds, wills, notes, and other instruments, how punished, 728.
- punishment for uttering forged papers as true, with intent to defraud, 728. 729.
- of note, bill of credit, &c. issued by state treasurer, &c. for debt of the Commonwealth, how punished, 729.
- of bills of banks in this state, 729.
- punishment for having in possession ten or more forged bank bills, &c. with intent to utter as true, 729.
  - for passing forged notes, bills of credit, bank bills, &c., 729.
  - on second conviction, or three convictions at the same term, for passing forged papers, 729.
  - for bringing into the state, or having any forged papers with intent to pass as true, 729. 809.

GAY HEAD, land at, ceded to U. States, 57.
GENERAL FIELDS, are distinct lots enclosed in one, 359.
writs, &c. against proprietors of, how to be served, and how long before return day, 551. 549.
meetings of proprietors of, how called and warned, 359.
how votes are to be given, 359.
how fences of, to be apportioned, 359.
assigned and repaired, 359. 360.
assignment of fences of, to be recorded, and where, 360.
liability of proprietor, who neglects to repair fence, 360.
expense of apportioning and making fence, how borne, 360.
proprietor not liable to maintain, &c. fence, if he do not cultivate, &c. 360.
a trespasser, if he surcharge, or violate rules, &c. 360.
may enclose his own land, &c. 361.
entitled to remedy for trespasses by strangers' cattle, 361.
shall run lines, if requested, and keep up boundaries, 361.
when proprietors may be ordered, by common pleas, to enclose their lands, 361.
rights and proceedings of proprietors, after such order, 361.
how proprietors may discontinue their fields, 361.
how division of, may be made, 361. 362.
proprietors of, may choose clerk, assessors, collector and field drivers, 359. 360.
may adopt rules as to pasturing, &c. 359.
may raise money, by assessment, for common charges, &c. 359.
clerk of, to be sworn, 359.
to issue warrant requiring collector to collect assessments, 359.
assessors of, to be sworn, and to assess money raised, 359. See *Taxes*, 3.
collector of, to have authority, &c. of town collectors, 359.
field drivers of, to have powers of town field drivers, 360.
GENERAL ISSUE, in replevin, audita querela, and bastardy process, to be not guilty, 668. 661. 384.
may be pleaded orally, before justices, 527.
may be tried, on such oral plea, upon appeal, unless court order plea to be made in the usual manner, 528.
may be pleaded, in all actions against justices, sheriffs, &c. town officers, and all other public officers, for acts done by virtue of office, 609.
in actions against others, for acts done by command, or in aid of such officers, 609.
evidence of special matter may be given on, in such cases, on filing a brief statement of such matter, 609.
may be pleaded, and matter in bar proved on, in all suits to recover forfeitures, 609.
in actions for a nuisance, 214.
in actions for killing dogs, 403.
in actions before justices, 527. 528.
on writs of audita querela, 661. See *Insurance Companies*.
GIRDLING trees, wantonly or wilfully, how punished, 727.—damages recoverable for, 631.
GLASS in buildings, punishment for wantonly breaking, 727.
GLOUCESTER, three tracts of land in, ceded to United States, 57. 58.
GOATS, to be impounded, if found at large, contrary to law, 199. 664.
for doing damage, 665.
See *Rams, &c. Field Drivers. Distraining. Replevin. Pound Keepers.*
GOLD, when tendered by banks, how to be weighed, 314. See *Coin*.
GOVERNOR, title, powers, qualifications and oath of, &c. 33. 37. 50—to be president of the council, 38.
salary of, 38. 147—to hold no other office, except, &c. 46. 51. See *Commander in Chief*.
when and how elected, 34. 52.
votes for, how lists of, to be made, and transmitted to secretary's office, 34. 66.
to be kept by secretary unopened, and delivered to legislature, 34. 66. See *Elections*.
to have no fees or perquisites of office, 148.
exempted from serving as juror, 578.
authority, &c. of, as to fugitives from justice, and offering &c. rewards for apprehending them, 775. 810.
as to the state prison, 798.
as to conditional pardons, and commutation of punishment, 776.
as to bills and resolves of the general court, 25. 26. 48. 49.
GOVERNOR'S ISLAND, ceded to United States, 57.

GRACE, on bills of exchange and notes, 303. See *Notes*. *Bills of Exchange*.
GRAIN, not to be sold, unless first weighed, 279. 284.
mean weight of, how ascertained, 284.
bushel of, how many pounds to be deemed standard weight and measure of different kinds of, 284.
penalty for selling otherwise, 284.
for selling by weights or measures not sealed, 292.
how recovered, and to whose use, 284. 292.
exception, when parties agree on different mode of ascertaining weight, &c. 284.
when not more than ten bushels are sold, 284.
punishment for wilfully cutting, &c. or entering lands with intent to cut, &c. 727.
GRANDCHILDREN, by consanguinity, how to maintain their poor grandparents, 370.
or affinity, not punishable as accessories, after the fact, to felony, &c. committed by grandparents, 746.
GRAND JURORS, qualifications, approval, drawing and fees of. See *Jurors*.
how often liable to serve, and penalty for neglecting to attend. See *Jurors*.
venires for 23 shall be issued by clerk of common pleas, except in Suffolk, before commencement of first term in every year, 756. 512.
shall be issued in Suffolk, by clerk of supreme court, before commencement of each term, 756. 501. 532.
shall be issued 7 days at least, and not more than 14, before term commences, 756.
shall not attend supreme court in any county, except Suffolk, 501.
in Suffolk, shall serve in supreme court, and at each term of municipal court, till others are empannelled, 756. 532. See *Chelsea*.
in other counties, shall serve at each term of common pleas through the year, 756.
in Worcester, not required to attend, except at terms established for criminal business, 514.
shall be drawn, summoned and returned, like jurors for trials, 756. See *Jurors*.
when drawn at same time with jurors for trials, shall be those who are first drawn, 756. 757.
when sufficient number do not attend, court may issue venires for others forthwith, 757.
alphabetical list of, shall be prepared by clerks, and the first two thereon shall be first called and sworn, 757.
form of oath to be administered to first two, 757.
to be administered to the others, 757.
scrupulous of taking oath, may make affirmation, 757.
after being empannelled, and receiving charge of the court, shall elect their foreman by ballot, 757.
choice of foreman to be notified by them to court, and record thereof to be made by clerk, 757.
foreman of, elected at first term, to continue such during term of service, 757.
new foreman shall be elected, if the first decease or be absent, 757.
foreman may swear witnesses who come before the jury, 757.
See *Attorney General*. *District Attorneys*.
shall return a list of all witnesses sworn before the jury during the term, 757. See *List*.
may appoint one of their number as clerk, to preserve minutes of their proceedings, &c. 758.
if dismissed while court remains in session, may be summoned, if necessary, to attend again at same term, 758.
shall cause the law for observance of Lord's day to be carried into effect, 386.
shall not disclose the finding of an indictment for felony, if party be not in custody nor under recognizance, 758.
not allowed to state, nor to testify in court, as to any votes or opinions on questions before them, 758.
to be reminded, by charge of court, of their obligation to secrecy, 758.
duty of, when they find no bill because of prisoner's insanity. See *Insane Person*.
GRANDPARENTS, by consanguinity, how to maintain their poor grandchildren, 370.
or affinity, not punishable as accessories after the fact, to felony, &c. committed by grandchildren, 746.
GRANT or *assignment* of any interest in lands, must be in writing, or by operation of law, 408.
void, if made on gaming consideration, 387. See *Heirs*. *Gaming*.
GRANTEE AND GRANTOR, words how construed, 60. 413.
GRASS, punishment for wilful cutting without license, 727.
for wilfully entering orchards, &c. with intent to cut, &c. 727.
GRATUITIES, to jurors, when a cause for new trial, 582. See *Bribery*.
GRAVEL, punishment for wilfully digging up, &c. without license, 727.

GUARDIAN, *(Continued).*
may appoint appraiser of real estate on execution against or in favor of ward, 491.
of person under age of consent to a marriage, may sign libel for his divorce, 480. See *Next Friend.*
shall account for and dispose of personal estate, in manner required of executors, &c. 491. 492.
See *Estates of persons deceased.*
may complain (or any other person interested) of supposed embezzlement of ward's property, 492. 493.
proceedings of judge of probate, on such complaint, to be as in cases of deceased persons' estates, 493. See *Embezzlement. Estates of persons deceased.*
shall render account, on oath, of ward's property, &c. within a year, and at other times, as judge shall direct, 489. 490. 491.
how to settle his accounts, &c. at expiration of his trust, 489. 490. 491.
shall be allowed for reasonable expenses, and have reasonable compensation for services, 493.
money decreed to be paid over by, and not claimed for 6 months, may be invested or deposited in name of judge of probate, 451.
shall be transferred, by the judge, to persons entitled, on their claim and proof of right thereto, 451.
account of two or more joint, may be allowed on oath of any one, 493.
may be discharged by judge, for insanity, incapacity, or unfitness, 492.
may resign, by allowance of judge of probate, 492.
new may be appointed, on removal or resignation of a former, 492.
bond of, how may be put in suit, 492. See *Bond, of executors, &c.*
may be required, by supreme or probate court, to give new bond, 492.
sureties of, may be discharged, and on what terms, 492.
not liable after 4 years, unless, &c. 492. See *Bond, given to judge of probate, &c.*
powers, &c. of, as to ward's stock in manufacturing corporation, 333.
may release damages caused to ward by taking his property for use of turnpike, canal or rail road, 350.
mortgages to ward, on receiving payment, &c. 638.
where to be taxed for ward's property. See *Taxes*, 1.
may act for ward in calling and voting at meeting of proprietors of mills, 683.
See *Married Woman.*
Testamentary.
of children, may be appointed by their father, by his last will, to continue during their minority, or for a less time, 489. 487. See *Posthumous Child.*
duties and powers of, the same as if he were appointed by judge of probate, 489.
shall give bond, unless the will directs otherwise, 490.
on change of his circumstances, judge of probate may require bond, notwithstanding the will, 490.
may be removed by judge of probate, after notice, &c. if he become incapable, &c. 492.
For a suit.
may be appointed for minors, by any court in which they are impleaded, 490. See *Next Friend.*
for insane persons and minors, on process for partition of estates in which they are interested, 620. 625.
for all wards, in all legal suits and proceedings, 491. 569.
to answer for insane persons to a libel against him for a divorce, 481.
GUIDE POSTS AND BOARDS, to be erected and maintained by towns, on roads, 247.
places for, to be reported to towns, yearly, by selectmen, 247.
to be determined by town, and recorded, 247.
form of, and inscription on, 247.
penalty for injuring or defacing, 247.
on selectmen, for not reporting places for, 247.
on towns, for not determining places for, &c. 247.
for not erecting and maintaining, 247.
in suits, &c. for not erecting, when towns to be estopped to deny necessity, &c. of, 247.
punishment for breaking, removing, injuring, &c. 727.
GUNPOWDER, towns may order how it shall be kept, 401.
justices may issue warrants to search for it, when suspected to be kept unlawfully, 401. 402.
warrant, to whom directed, and precept thereof, 401. 402.
penalty for unlawfully keeping, 402.
provisions not to extend to manufactories of, &c. 402.

JUDGE ADVOCATE, *(Continued.)*
to record and transmit proceedings of courts, 133. 135.
a certifying officer, and may authenticate certain papers, 132. 133. 135.
may issue subpœnas for witnesses, 132. 135.
capias against witnesses who neglect to appear, 132.
mittimus, when fines for contempt, &c. are not paid, 133.
to sum up evidence, and give written opinion on the law, to court, 133.
to receive votes of members, 133.
to make, certify and transmit pay roll, 133.
compensation of, 135.
to sue for fines inflicted by courts martial, 124,
of court martial *in actual service*, who and how appointed, 145.
to be sworn; form of oath, 145.
to swear the members, 145.
JUDGE OF PROBATE. See *Probate Court.*
JUDGES. See *Judicial Officers; and the several courts.*
JUDICIAL OFFICERS, qualifications of, how appointed, and tenure of their offices, 24. 36. 41.
shall never exercise executive or legislative powers, 25.
not to be counsel, &c., in cases previously determined by them as judges, 545.
See *the several courts.*
JUDGMENT, to be entered as of last day of term, unless otherwise expressly ordered by court, 587.
day of entry of, to be noted by clerk, when rendered before last day of term, 587.
in actions continued nisi, and determined before next law term, may be entered as of the last term, by order of court, 506.
when so entered, time of order for to be noted on docket, 506.
to be considered *final*, at time of entry, as to bail and attachments, 506.
See *Attachment. Bail.*
to be considered as rendered on the day when costs are finally taxed and allowed, in case of appeal from taxation, unless, &c. 706.
how to be entered, &c. on default of defendant. See *Default.*
final, of common pleas, may be re-examined by supreme court, on writ of error, 510. 512.
in civil actions, when reversed on error, supreme court shall render such as common pleas should, 510.
in criminal cases, may be reversed or affirmed, 512.
what deemed final, as to effect on attachments and bail, 549. 550. 506. 503. 511.
of deceased justices, when unsatisfied, how may be proceeded with. See *Justices of the Peace.*
presumed to be paid, after twenty years from rendition of, 701.
not to be reversed for any defect of form that might have been amended, 608.
arrest of, not for circumstantial errors, &c., 608.
on recognizances, not for defect in their form, nor for omission to record default of defts., 755.
not to bar new suit within a year, though original claim be then within terms of limitation law, 700. 698.
See *Execution. Set-off. Review. Scire Facias. Debt.*
JUNIPER BOARDS, &c. See *Lumber.*
JURISDICTION of the *Commonwealth*, extends to all places within its boundaries, 56.
subject to rights of concurrent jurisdiction of United States in certain places, 58.
of *Suffolk* and *Middlesex*, concurrent on Charles river, 159.
given to courts in Norfolk, &c., over certain cases transferred from Suffolk, 808.
concurrent, of common pleas, municipal court, justices of peace and police courts, of certain trespasses, larcenies, fines and forfeitures, 727. 728. 723. 747. 748.
of offences committed within 100 rods of boundaries of counties, conferred on courts in either county, 746. See *Murder.*
of different courts, and of justices of the peace. See *Supreme Judicial Court, &c. &c. Equity.*
JURORS, who liable to be drawn and who exempted, 578. 579.
lists of, to be prepared by selectmen, or mayor and aldermen, once in three years at least, and laid before towns, 579. 582.
may be altered by towns, 579.
to include not less than one for every 100 inhabitants, nor more than one for every 60, except in Duke's County, 579. 582.

JUSTICES' COURT FOR THE COUNTY OF SUFFOLK, for the trial of civil actions, to be held by one or more of justices of police court, 534.
seal of, to be distinct from that of police court, 535.
clerk of, to be the clerk of police court, 535. See *Clerk of Courts.*
senior justice to be first justice of, and of police court, 535.
to have exclusive jurisdiction, in Suffolk, of all civil actions cognizable by justices of peace in other counties, 535.
writs, &c., issued by, to bear teste of either justice who is not a party, 535.
to be signed by clerk of, and like those issued by justices of the peace, 535.
proceedings of, to be like those of justices of peace in civil actions, 535.
to be held in Boston on two days in each week, at least, 535.
may be adjourned, and actions therein may be continued to future day, &c., 535.
appeals from may be taken to common pleas, as from justices of the peace, 535.
See *Appeal*, 1. 4. *Police Court of Boston*
JUSTICES OF THE PEACE, how appointed, and tenure of office, 36. 41.
have exclusive original jurisdiction of civil actions, where the demand is not more than $20, except, &c. 526.
exception of real actions, and others wherein title to real estate may be concerned, 526.
have jurisdiction concurrent with common pleas, in personal actions in which title to real estate, &c. 526. 527.
how actions concerning title to real estate may be taken from, and removed to common pleas, 527. 628. 668. See *Forcible Entry, &c. Replevin of Cattle.*
party recognizing so to remove such cause, shall proceed as in case of appeal, 527.
may issue writs of scire facias against bail, and against administrators in certain cases, though debt and costs of original judgment exceed $20, 528. 563.
such writs may run into any county where defendant may be, 528.
when commissioned and qualified anew, may complete business commenced under former authority, 529.
may issue execution, after commissions expire, on judgments rendered before, 529.
on judgments rendered by deceased justices, and which are unsatisfied 529.
how may proceed to obtain records of judgments of justices deceased, 528. 529.
shall transcribe such judgments upon their own books of records, 528.
may commit administrator, &c. of such justices as for a contempt, on their refusal to produce such judgments, or to answer concerning them, 529.
may issue all writs, warrants, &c. necessary to carry their powers into effect, 530.
may frame new writs, when necessary, conformable to law, &c. &c., 530.
may hear, &c. all actions and suits at their dwelling houses or other convenient places, 530.
may adjourn their courts, in all cases, 530.
how may punish disorderly conduct that interrupts their judicial proceedings, or is a contempt, 530.
shall not act as attorneys, &c. in any suit previously decided by them, 530.
shall not try actions commenced by themselves or by their direction, 530.
actions so commenced by, shall be dismissed with costs, 530.
shall keep records of all their judicial proceedings, 530.
may administer all required oaths, unless other express legal provision is made, 530.
may issue summonses for witnesses, in all civil cases pending before any court, &c. authorized to examine them, 530.
may grant such summonses, in criminal cases, when requested by attorney general, &c. or by the party prosecuted, 531.
shall express in the summons, requested by such party, that it is granted at his request, 531.
shall account, twice a year, with treasurers, and pay over all fines and costs, &c. payable to them, 530.
liability of, for not so paying, 772.
judgments of, except for militia fines under $10, may be appealed from to common pleas, 528. 530. 129.
See *Appeal*, 1. 2. 4.
appeal from judgments of, in civil cases, to be made within 24 hours, 528.
may try actions, either on oral or written plea, as defendant elects, 527. See *General Issue.*
may punish by fine, not exceeding $10, certain assaults, &c. and other breaches of the peace, 529.
may cause affrayers, and other disturbers of the peace, to be stayed and arrested, 529. 530.
See *Arrest. Aid.*
may require sureties of the peace, and how to proceed, 529. 749. 750. See *Sureties of the Peace.*

LARCENY, *(Continued)*.
from the person of another, how punished, 722.
in buildings on fire, or of property removed in consequence of fire, 722.
in dwelling house, office, bank, shop, warehouse or vessel, in the day time, 722.
in churches, colleges, town houses, or other public buildings, after breaking and entering in the night, 722.
punishment of, on second conviction upon indictment, either of principal or accessory before the fact, 723.
on three convictions, as principal or accessory before the fact, at the same term of court, 723.
on conviction of, property stolen to be restored to owner, 724.
court may order recompense to prosecutor, and to officer who has secured and kept the property stolen, 724.
how and within what time, such recompense shall be paid, 724. 773.
property stolen, to be secured by officer who arrests the person charged, 724.
schedule of, to be annexed to officer's return, and he to be answerable for it, 724.
See *Embezzlement. Robbery. Receiving.*
LARD. See *Butter and Lard.*
LARKS. See *Birds.*
LASCIVIOUS BEHAVIOR, open and gross, how punished, 739. See *Lewd, &c. persons.*
LASCIVIOUS COHABITATION, how punished, 739.
LEASE, for more than 7 years from the making of, not valid, except against lessor, &c. unless by deed recorded, 407. 408.
contracts for, by auction. See *Auction.*
for more than 100 years, while 50 are unexpired, have incidents of conveyances of the freehold, 591.
See *Houses. Terms. Freeholder.*
LEATHER, manufacturer of, to have exclusive right to stamp, 274.
stamp of, how made; and to be deemed a warranty, 274.
not deemed merchantable, unless so stamped, 274.
penalty for fraudulent stamping with others' names, 274. See *Sole Leather.*
sealers of, to be chosen by towns, and to be sworn, 180.
LEGACIES, may be recovered by action at law, 433. 434.
to a subscribing witness to a will, void, unless there be 3 other competent witnesses, 417.
to children or their relations, do not lapse, by their death before that of testator, if they leave issue. who survive him, 419.
such issue shall take the legacies, 419.
due from executor, &c. may be attached by trustee process, 651.
LEGATEES, when, how far, and in what manner, liable to pay testator's debts, 420. 448.
proceedings against, for such debts, and their claim on others for contribution, &c. 420. 421. 448. 449.
See *Heirs. Devisees. Posthumous Children.*
may be required to give bond to refund, if necessary, when they demand payment within 4 years after administration is taken, 433.
how liable to contribute to posthumous or other child omitted in testator's will, 419.
LEVY of executions, on different kinds of property, how made, &c. See *Execution.*
of warrants of distress. See *Franchise. Taxes*, 4.
LEWD, wanton, and lascivious persons, how to be arrested, secured and punished, 779. 780.
LEWDNESS, open and gross, how punished, 739.
LIBEL, those convicted of, in common pleas, or municipal court, may appeal to supreme court, 511. 532.
in action for, plea that the words were true, though not supported, shall not be proof of the malice alleged, 608.
action for, to be brought within 2 years, 699.
in prosecution for, defendant may give the truth in evidence, 746.
truth not a justification, unless defts. motives were good, and his ends justifiable, 746.
for a divorce, and of forfeited goods. See *Divorce. Forfeited Goods.*
LIBRARY, *of the state*, to be kept in state house, 94.
to be kept by land agent, in land office, 94.
books, maps, &c. owned by the Commonwealth, to be deposited in it, 94.
committee of legislature, appointed yearly, to superintend it, 94.
to purchase books, &c. and enforce regulations, 94.

LIEN, *(Continued).*
on real estate of testator, for payment of his debts, not discharged by bond of executor, who is residuary legatee, to pay debts and legacies, except, &c. 422.
of proprietor of a mill, on rents and profits thereof, for money advanced to rebuild or repair it, 682.
on mill and its appurtenances, for payment of damages caused by flowing lands, 679.
of mechanics, &c. on buildings, &c. erected by them. See *Mechanics' Lien.*
of policies made by mutual fire insurance companies, on assured's interest in premises insured, 325.
on real estate, constituted by taxes assessed thereon, 85.
of demandant in action to recover an estate for life, on estate of reversioner, &c. for money paid to tenant, for improvements, 615.
LIEUTENANT, one to each company, of infantry, light infantry or riflemen, 106.
two to each company of artillery and cavalry, 106.
how chosen, or appointed and commissioned, 36. 50. 111. 112. 113.
oath of, and by whom administered and certified, 114.
how equipped and uniformed, 109 110.
LIEUTENANT COLONEL, one to each regiment, 105.
how elected or appointed, and commissioned, 36. 111.
LIEUTENANT GOVERNOR, title, powers and qualifications of, 38. 39. 50.
to hold no other office, except, &c. 46. 51.
salary of, 148—to be a member of the council, 38.
when and how elected, 38. 52.
votes for, how lists of, to be made, transmitted, kept and delivered, 38. 66.
exempted from serving as juror, 578.
LIGHT, right to enjoyment of, through or over another's land, not acquired by adverse use, unless uninterrupted for 20 years, 412.
acquiring of, may be prevented by notice, &c. 412. See *Easement.*
LIGHTERS, weighing of, &c. See *Vessels.*
LIGHTHOUSE ISLAND, lighthouse on, ceded to U. States, 56.
LIGHT-HOUSES, &c., ceded to United States, 56. 57.
LIME, inspectors of, may be chosen by towns, 275.
to be sworn, and duties of, 275.
fees of, and by whom paid, 275.
casks, quality and dimensions of, 275.
how to be branded, after inspection, 275.
and contents, forfeited, if offered, sold or shipped contrary to law, 275.
not to be sold, &c., nor shipped, in casks, unless well burnt, &c., 275.
penalty for selling, &c., or shipping, &c., in casks not according to law, and not branded, 275.
for shifting contents, &c., of casks, after they are branded by inspector, 275.
liable to be seized and libelled by inspector, if sold or shipped contrary to law, 275.
how penalties and forfeitures may be recovered, 275.
LIMITATION OF PERSONAL ACTIONS.
What limited to six years.
assumpsit on any contract or liability, 699. See *Set-Off.*
debt on contracts and liabilities not under seal, except on judgment of court of record in U. States, 699.
actions on judgments of courts not of record; and for arrears of rent, 699.
for waste and trespass on land, 699.
of replevin, and for taking, detaining or injuring goods and chattels, 699.
on the case, except for libel and slander, 699.
writs of error, 663.
What limited to four years.
actions against sheriffs for neglect or misconduct of their deputies, 699.
against executors and administrators, from time of taking administration, if they give notice of their appointment, 431. 426.
against administrators de bonis non, if former executor, &c. did not give notice, 435.
against sureties on guardians' bonds, 492.
What limited to two years.
actions for assault and battery, and for false imprisonment, 699.
for libel and for slander, 699.
by the Commonwealth for penalties and forfeitures, 701.

LUNATIC HOSPITAL, *(Continued.)*
trustees of, shall make yearly statement to governor and council, of the condition of, &c. 380.
treasurer of, shall give bond, 380.
shall make yearly report, on the finances of, to governor and council, 380.
what visitations of, shall be made by trustees, 380.
courts may commit dangerous lunatics, who are acquitted, or against whom no bill is found, 758. 762.
judges of probate, except in Suffolk, and judge of municipal court in Boston, may also commit, on complaint, 380. 381.
what certificates shall be made by judges, and effect thereof, as to lunatic's residence, &c. 381.
proceedings and notice, on complaint for commitment, 381.
on what terms lunatic town paupers and other poor persons, may be received into hospital, 381.
expenses of supporting lunatics committed by courts, judges, &c. to be paid by towns where they are legally settled, 381.
towns, that pay for such support, entitled to reimbursement, as for support supplied by them elsewhere, 381.
lunatics, having no settlement in the state, personally liable for support in hospital, 381. 382.
not to be discharged without suitable clothing, 382.
may be furnished with money, not more than $20, by trustees, on being discharged, 382.
how may be discharged and removed, when cause of commitment has ceased, &c. 382.
how part of, may be removed, and on what principles of selection, when hospital is crowded, 382.
provisions for Nantucket and Boston, as to obtaining reimbursement of expenses incurred in support of lunatics removed from hospital, 382. 383.
LYCEUMS, how members of may become a corporate body, 353—purposes of, 353.
for counties, or for towns, 353—names of, 353.
to have the same rights, powers, &c., as proprietors of libraries, 353. 354.
may hold property to a limited amount, 354.

MACHINERY of mills, wilful injury to, how punished, 726.
value of to be deducted, in taxing shares of manufacturing companies, 77. 222.
MACKEREL. See *Pickled Fish.*
MAGAZINES, &c. See *Public Property.*
MAHOGANY. See *Lumber.*
MAIMING persons, by cutting tongue, putting out eye, cutting off or disabling a limb, &c. how punished, 717.
horses, and other animals, how punished, 726.
MAINTENANCE, of bastard children. See *Bastard.*
MAJOR, to each regiment and battalion, 105. 106—how chosen or appointed, and commissioned, 36. 111.
of battalion, to return state of, to brigadier general, yearly, 108.
to be responsible for safe keeping of colors, &c. 110.
MAJOR GENERAL, to each division, 105—how appointed and commissioned, 36. 111.
to be taken to have refused office, if he do not signify acceptance, &c. 113.
aids of, how appointed, 37. 112.
to order elections to fill vacancies in certain offices, 113.
to certify, and return to adjutant general, refusal of officers to accept commissions, 114.
power and duty of, in case of insurrection, &c. 137.
as to companies attached to division and not to regiments, 104.
to transmit all commissions, 114.
to order inspection and review of troops, 116. 117.
to appoint president and marshal of division courts martial, 130.
to transmit, to judge advocate, returns of members of such courts, 131.
MALICIOUS destruction or injury of another's personal property, how punished, 726.
trespasses on gardens, orchards, improved lands, trees, &c. 727.
MANDAMUS, writs of, may be issued by supreme court, 499.
MANSLAUGHTER, how punishable, 717.
MANUFACTURING CORPORATIONS, to enjoy existing powers, &c., according to their charters, 333.
to continue subject to existing liabilities, 333.
rights of vested, and liabilities incurred by, and by stockholders and officers, not affected by repeal of former laws concerning, 333.

MANUFACTURING CORPORATIONS, *(Continued.)*
these provisions extended to the same companies, when they increase their capital, 330.
officers jointly and severally liable for certain company debts if they omit the above duties, 330.
who so pay, may recover the amount from the company, 333.
liability of, if they make a loan of money to a stockholder, 331.
directors liable, jointly and severally, for certain debts of company, if vote to reduce capital be not recorded in registry of deeds, 330. 331.
and other officers may be sued, when liable for company debts, in an action on the case, or by bill in equity, 332. 333.
such action against, may be brought, and prosecuted, though action for the same cause, be pending and pursued against the company, 332.
liable for debts of company, if they declare and pay a dividend when it is insolvent, &c. 331.
for excess of debts, beyond capital stock, incurred under their administration, 331.
saving of such directors as object, &c., to incurring excess of debts, if they give notice to stockholders, 331.
provision for extending foregoing provisions to companies incorporated before 23d February, 1830, 332.
for amendment or repeal of foregoing provisions, 334.
MAPLE BOARDS, &c. See *Lumber*.
MARBLEHEAD, lands in, ceded to U. States, 57. 58.
MARBLEHEAD ROCK, ceded to U. States, 57.
MARINERS, what, exempted from military duty, 100.
at sea, not prevented from making nuncupative will, 417.
how far ship-owner liable for their embezzlement, &c. 295.
liability of, to freighters and owners, not affected by statute, 295.
See *Quarantine. Board of Health. Shipmaster.*
MARKS, on logs or timber put into streams, &c. penalty for cutting out, altering, &c. 390.
of boundary lines of towns. See *Boundary Lines.*
of inspectors, on bags of hops, penalty for altering, &c., 272.
MARRIAGE, void, if between certain relations, 475. 479.
if either party be an idiot, insane, or under obligations of former marriage, 475. 479.
be divorced for his or her adultery, 475.
when parties separate before the age of consent, 479.
between white persons and Indians, negroes or mulattos, 475. 479.
in this state, if solemnized out of the state, to evade legal prohibitions, 476.
intention of, to be entered with town clerk, and published by him, 476.
how to be published by clerk, 476.
certificate of publication, to be delivered to the parties, 476.
to be withheld, if banns are forbidden, until, &c. 476.
when banns of are forbidden, what proceedings shall be had, 476.
if objections are sustained, parties may appeal to court, 477.
persons forbidding banns, to pay costs, if their objections are overruled, 477.
of persons under certain ages, not without consent of parent or guardian, 477.
may be solemnized by a justice in his county, if either party resides there, 477.
by any ordained minister, who resides in the state, and preaches, &c. 477.
must be in the town where one or both of the parties, or the justice or minister, resides, 477.
record of, to be kept by justice or minister, 477.
certificate of, to be returned to town clerks, by ministers, justices, and clerks of Quaker meetings, 477. 478. See *Minister, &c.*
to be recorded, by town clerk, when certified, 477.
penalty on persons solemnizing, for not returning certificate of, 477.
to whose use recovered, 477.
for solemnizing unauthorized marriage, 477. 478.—to whose use recovered, 478.
for undertaking to solemnize, without authority, 478.
for pulling down or defacing written notice of intention of, 478.
record or copy of record of, by town clerk or persons solemnizing, presumptive evidence of, in all places, 478.
not invalid, for omission, &c. to enter or publish intention of, 478.
for want of authority in persons solemnizing, if either party believes it lawful, 478.
of Quakers. See *Quakers.*

MILITIA, *(Continued.)*
penalty for so loading on parade, and discharging musket, &c., without orders, 118. 121.
how recovered, 124. 125.
officers not to treat with ardent spirits, 118.
no one obliged to do duty on days of certain town meetings, 118.
penalty on officers for ordering parade on such days, 118. 122.
how recovered, 124.
troops may be called, by governor, to do escort duty, &c., 118.
voluntary parades, and such as are prescribed by the constitutions of companies, allowed, 118.
remedy for breach of articles of agreement, and how recovered, 118. 125.
5. *Notifications and excuses.*
notifications to attend company trainings, &c., how and by whom to be given, 107. 118. 119. 120.
how proved, 119. 128.
blank forms of to be furnished by adjutant general, 119.
how long before time appointed, 118. 119.
to do duty, to be notice of enrolment, 102. 119.
exception, in case of insurrection, &c., 119.
penalty for not notifying according to order, 119. 121.
how recovered, 124. 125.
to be recorded in orderly book, 119.
excuses for non-appearance, how soon and to whom to be made, 119.
not to be received after twenty days, 119.
not to avail, on trial, if not made within twenty days, unless, &c. 119.
to be notified to clerks, by captains, 119.
for deficient equipments, not to be received, 119.
of conditional exempts, to be made like those of others, 120.
penalty on captain for illegal allowance of excuses, 120. 134.
6. *Equipments, and articles furnished.*
how officers and soldiers shall be equipped, 109. 110.
soldiers to be equipped within six months after enrolment, 109.
to keep themselves equipped, 109.
of poor soldiers, to be furnished by selectmen, 109.
how soldiers to prove inability to equip themselves, 109. See *Captain.*
penalties for deficient equipments, &c., 110. 120. 121—how recovered, 124. 125.
to be furnished to minors, by parents, masters and guardians, 109.
penalty for not so furnishing, if of ability, 109. 120. 122.
how recovered, 124. 125.
how parents', &c., inability to be proved, 109.
uniform of officers and soldiers of uniformed companies, 109.
penalty for soldier's deficiency in uniform, 110. 121.
how recovered, 124. 125.
equipments, &c., exempted from seizure and sale for debt, taxes, &c., 110. 589.
of officers and privates, in cavalry, 110.
in artillery, 110.
return of state of, to be made yearly, 108.
penalty for having, without right, if they are owned by Commonwealth, 123.
colors to be furnished by Commonwealth to each regiment and battalion, 110.
drum and *fife*, or *bugle horn*, to each foot company, 110.
trumpet to each company of cavalry, 110.
other instruments of music, as governor shall order, 110.
blank rolls, &c. &c., to be furnished by adjutant general, 108. 110.
brass field pieces, with carriages, &c., and ammunition, to each company of artillery, 110.
powder, when to be provided and kept by towns, 111.
balls, *flints* and *camp kettles* to be always kept by towns, 111.
penalty on towns, for neglect, and how recovered, 111. 123. 124. See *Selectmen.*
7. *Fines and penalties, and how prosecuted for.*
fines for soldiers' deficiency of equipments, 120. 121. 123.
for not appearing at company inspection and trainings, 120. 123.
at election of company officers, 120.

MILLS, *(Continued)*.
complainant may accept past damages, and proceed to trial for the future; and vice versa, 681.
what may be pleaded in bar of such complaint, 677.
respondent shall not plead that the land is not injured by mill dam, 677.
pleadings, trial and costs, on such complaint, to be as in actions at common law, 677.
if the complaint be supported, &c., court shall issue warrant for a jury to determine matter thereof, 677.
either party may appeal to supreme court from decision on plea in bar, 677.
if supreme court decide for complainant, case shall be remitted, and common pleas shall issue warrant, as above, 677.
proceedings on such warrant to be, in all things, like those on complaint for damages caused by laying out, &c., roads, highways, 678. See *Highway*, 1. *Presiding Officer*.
complainant to advance jurors' pay, &c., 680.
jury to consider damage to complainant's land not flowed, as well as to that flowed, 678.
to allow, by way of set-off, benefit caused to complainant, by the dam, 678.
may return verdict that complainant is entitled to no damages, 678.
such verdict of, not a bar to new complaint for subsequent damages, 681.
to assess damages for 3 years only prior to complaint filed, and to the time of verdict, 678.
when shall decide how high, and for what periods, dam may be kept up, 678.
shall assess yearly damages, and also a sum in gross, 678.
complainant may elect, within 3 months, to take sum in gross, 678.
shall enter such election in clerk's office, 678.
mill owner shall, within 3 months after such entry, pay or secure such sum, &c., or lose benefits of statute till he pay, 679.
complainant, and his assignees, (if he do not elect to take gross sum,) entitled to receive yearly damages from all future owners, &c., of mill, 679.
damages and gross sum, a lien on mill, &c., and how long, 679.
may be recovered by action, 679. See *Debt*. *Costs, full*.
execution on judgment for damages, &c., may be levied on mill, &c., and the premises sold like an equity of redemption, 679. See *Execution, levy of, on real estate*. *Redemption*.
such sale of, how far valid against assignees of mill owner, 679.
verdict for damages, &c., subject to control of court, like verdicts in common law trials, 679. 680.
may be set aside, and new trial ordered, 680.
if complaint be abated, or judgment on verdict be reversed, new complaint for same cause may be brought within one year, 681. 682.
either party or his assignees may apply, and within what time, for a new assessment of damages, &c., 680.
provisions for an offer of increased compensation, or to accept a smaller, and the effect thereof on costs, if new jury do not award more nor less, 680. 681.
if such offer be accepted, and memorandum thereof recorded, &c in clerk's office, it shall establish the future yearly damages, 681.
2. *Repair, rebuilding, &c., of*.
when joint owners of, do not all agree to repair, &c., majority may do it at expense of the whole, 682.
manner of calling and warning meeting of proprietors, to consult respecting repairs, &c., 682.
at such meeting, majority in interest may take measures for repairing, &c., 682.
if a wife or ward be a proprietor, the husband or guardian may act at such meeting, and in calling it, 683.
each proprietor shall pay his proportion of expenses of repair to those who advance them, 682.
proprietors, thus making advances, shall have lien therefor on rents and profits, or may sue, &c. 682. 683.
provision for apportioning expenses of repairs, &c., on tenants and reversioners, &c., 683.
for lien on rents, &c., after reversioner comes into possession, 683.
tenant in tail, and mortgagee in possession, regarded as proprietors, for above purposes, 683.
mortgagee liable for what is not recovered of mortgagor, 683.
sums paid for repairs by mortgagee, to be allowed by mortgagor, 683.
sums due from one proprietor to another for advances, may be recovered by action at law or by bill in equity, 683.
such bill in equity may be brought in supreme court; or in common pleas, subject to appeal, 683.
foregoing provisions not to affect agreements respecting repairs, 683. 684.

MUNICIPAL COURT, *(Continued.)*
may grant new trials, for legal cause, like court of common pleas, 532. 764.
exceptions to opinion, judgment, &c. of, may be taken, 532. See *Exceptions, in criminal cases.*
fees in, to be as in common pleas for same services, 713.
clerk of. See *Clerk of Courts.*
MURDER, punished with death, 716. See *Duel. Bastard.*
body of person executed for, may be delivered up for dissection, 716. See *Dead Bodies.*
attempt to commit, by drowning, poisoning, &c. without assault, how punished, 718.
indictment for, may be found at any period after the death, &c. 758.
if mortal wound, poison, or other injury, be given in one county, whereof death ensues in another, the offence may be tried in either, 746.
be given on high sea, or on land out of the state, offence may be prosecuted in county where death may happen, 746.
See *Inquest. Indictment. Petit Treason.*
MUSIC, brigade band of. See *Militia*, 2.
MUSICIANS, in militia, on duty with company, subject, &c. like soldiers, 122.
pay of, when called into actual service, 136.
MUSKETS, to be provided by soldiers, 109. See *Militia*, 6.
penalty for deficiency of, 120.—how recovered, 124. 125. See *Fire Arms.*
MUTUAL ACCOUNTS, open, how affected by statute of limitations, 699.
MUTUAL FIRE INSURANCE COMPANIES, liable to be taxed by any general law, 326.
hereafter incorporated, &c., to elect, yearly, not less than five directors, citizens of the state, 324.
all elections by, shall be by ballot, and according to by-laws, 324.
absent members may vote by proxy authorized in writing, 324.
directors shall choose one of their number to be president, 324.
a secretary and treasurer, 324.
treasurer to give bond, and secretary to be sworn, 324.
secretary to keep a record of votes of corporation and of directors, and of all policies issued, and assignments thereof assented to by directors, 324.
after $50,000 are subscribed, for what time and to what amount may insure buildings in the state, 324.
every person insured by, a member of, 324.
policies made by, how signed and countersigned, 324.
record of and of assignments of, may be inspected by persons interested, 324.
create a lien; on what conditions, for what purpose, and to what extent, 325.
funds of, to be invested in stocks, or lent on security, 324.
to be applied to pay expenses, and losses on policies, 324.
how directors may assess members, when funds will not pay losses, 324.
liable personally, when corporate property cannot be found to satisfy execution, if they do not assess, &c., 325.
shall lay statement of company affairs before general court, when thereto required, 326.
extent of members' liability to assesments, 324.
liability of treasurer for neglect, &c., to collect assessments and apply proceeds thereof, 325.
creditors of, may have action of debt, or bill in equity, against directors, when they are personally liable, 325.
directors, who pay corporate debt, entitled to action, or bill in equity, against corporation or other directors, 325.
may levy execution on, and sell, land on which they have a lien, as on an equity of redemption, 325. 326.
what proceedings must precede such levy and sale, 325.
members, when their policies expire, entitled to their share of funds remaining, 326.
competent witnesses in suits by and against corporation, 577.
all officers of, to hold office till others are chosen and qualified, 324.
vacancies in offices of, may be filled by special election, 324.

NAILS, wrought, cut, and brads, how to be packed and branded, 279.
casks for, quality, and weight of contents of, 279.
cut and brads, to be packed free from waste iron, &c., 279.
forfeited, if offered for sale, or put on board of vessel for exportation, when not branded, &c., 279.

ORCHARDS, punishment for wilful trespasses in, 727.
ORDERLY BOOK, for record of orders, to be kept by aids, brigade majors, &c., 107.
to be kept in every company, by clerk, 107.
contents of, 107. 108. 119.
of companies, to be open to officers' inspection, 108.
to be produced at elections, 113.
ORDERS, what not to be issued or passed as currency, 303. 318.
grace on, when payable in the state, at a future day certain, 303.
not when payable on demand, 303.
military, by whom issued, distributed and transmitted. See *Commander in Chief. Adjutant General. Brigade Major. Adjutant, &c.*
ORE, punishment for wilfully digging up or carrying away, without license, 727.
ORNAMENTS, of widows, to be allowed to them, and not liable for husband's debts, 424. 429.
of any memorial of the dead, punishment for destroying, defacing, &c. 742. See *Trees.*
OUSTER, of devisor not to affect devisee's right to land devised, 416.
OUTHOUSES, breaking and entering, with intent to commit felony therein, how punished in different cases, 722. See *Breaking.*
OVERSEERS, *of the poor*, to be chosen by towns, 180—need not be sworn, 180.
selectmen to be, if others are not specially chosen, 182.
may bind minor children of poor persons, as apprentices, &c. 495. 497. 372.
how, and for what time, to bind such children, 495.
to protect and defend such children, when bound, 495. 497. See *Apprentices.*
may surrender certain dead bodies to physicians, &c. 216.
to give or withhold approbation of sale of real estate of spendthrifts, &c. under guardianship, 456.
powers, &c. of, as to paupers. See *Paupers.*
of houses of correction and of work houses. See *Houses of Correction. Work Houses.*
OYSTERS, not to be destroyed, nor growth of obstructed, except, &c. 394.
penalty for destroying, &c. and how and to whose use recovered, 394. 395.
taking of, may be regulated by selectmen, 394.
when may be taken by inhabitants of town, for family use, without selectmen's permission, 394.
vessels, boats, &c. having them illegally on board, may be seized, &c. 395.
to be discharged, if owner, &c. pay penalty, &c. 395.
See *Shell Fish. Indians.*
PAGE, when the measure of computation for fees, &c., means 224 words, 713.
PAPER, wholly of linen, firm, well sized and finished, to be used for public and county records, 173. 174.
American to be preferred, if marked *linen*, and with maker's name, 174.
to be packed in reams or half reams, 280.
number of quires in each ream, &c. 280. 281.
number of sheets in each quire, 281.
each parcel of, how to be stamped, 281
printing, may be packed in parcels of two reams, 281.
how to be stamped or marked, 281.
penalty for selling or offering to sell, contrary to the above provisions, 281.
for transporting out of the state, or attempting so to transport, contrary, &c. 281.
to whose use to be applied, 281.
not packed, &c. as above, liable to be seized, libelled, &c. 281.
foreign, press, bonnet, and other that is sold by weight, not within the law, 280.
designed for forging notes, &c. punishment for making, &c. 730. 809.
PARDON, power of, in governor, by advice of council, 36.
not to be granted before conviction, 36.
to persons convicted by impeachment, 36.
conditional, may be granted by governor, and punishment commuted, 776.
not to restore to office, any one who has been sentenced to state prison, unless by express terms, 795.
PARENTS, may bind their minor children, as apprentices or servants; and in what manner, 488. 494. 497.
See *Servants. Apprentices*
to furnish military equipments to minor children, under a penalty, 109.
to maintain their poor children and grandchildren, 370. 487. 782.
liable for minor children's taking, &c. fish illegally, 393.
not punishable as accessories, after the fact, to felony, &c. committed by children, 746.

PARTITION, *(Continued.)*
petition not to abate by death of any party, 624. 569.
cannot be maintained against tenant of the freehold, by tenant for less than 20 years unexpired, 618.
may be maintained by one tenant for years against another; but partition not to affect the reversioner, 618. 619.
shall be continued, if any person interested, has not had opportunity to appear, 620.
what shall be alleged, &c., in petition, how it may be filed, &c., and what notice shall be given thereof, and to whom in different cases, 619.
See *Absent Defendant.*
guardian for the suit, may be appointed by court, for insane or infant respondents, 620.
all persons, interested in premises to be divided, may appear and answer, 620.
may plead separately, or jointly with any other respondents, 620.
pleadings to be conducted as in actions at law, 620.
if person, not named in petition, appears and pleads, petitioner may reply that he ought not to be admitted, and may also plead over, 620.
if, in such case, it appear that respondent has no interest, the matter of his plea shall not be inquired of, 620.
provision as to costs, 620. 624.
petitioner to have interlocutory judgment for partition for such share as he is entitled to, though for less than he demands, 620.
either party may appeal from common pleas to supreme court, 620.
three or five commissioners to be appointed by court, to set off shares to petitioners, 620.
warrant to commissioners shall express the shares to be set off, 620.
shares of several petitioners may be set off together, or in severalty, at their election, 620. 621.
commissioners to be sworn, and certificate of oath made on their warrant, 621.
shall all meet, but acts of majority shall be valid, 621.
shall give notice to all known persons interested, who are in the state, 621.
expenses and charges of, to be determined and allowed by the court; how paid, 624.
when premises consist of mill, &c., not divisible without injury, the whole may be set to one, he paying the other what commissioners shall award, 621.
so of any specific part of estate, greater than petitioner's share, 621.
sums so awarded to be paid or secured, before court shall establish the partition, 621.
instead of foregoing proceedings, where estate is not divisible, commissioners may assign the parties alternate exclusive occupancy, 621.
in such case, how far tenants liable to each other for injury to premises during their occupancy, 621.
how far tenants, while occupying, entitled to redress against wrong doers, 621.
how far all the tenants entitled to recover damages against wrong doer, and how such damages shall be divided, 621.
return of commissioners' doings, with their warrant, to be made to court, 622.
when confirmed by court, judgment that partition be firm, &c., to be rendered, 622.
to be thereupon recorded in clerk's office and registry of deeds, 622.
may be set aside, and committed to same or other commissioners, who shall proceed as when first appointed, 622.
judgment on, in common pleas, may be appealed from; interlocutory judgment not thereby to be questioned, 622.
on writ of partition, appeals regulated as on petition, 622.
final judgment conclusive. as to rights of possession and property of all parties and privies thereto, 622.
on all who might have appeared, except, &c., 622.
when part owner, for whom a share is left, is out of the state, &c., he may within three years, apply for new partition, 622.
court may grant such application, if it appear that share left for such owner was not equal, 622.
in such case, new division of whole of premises shall not be required, 622.
how commissioners may equalize shares, 622.
improvements made after first partition, to be paid for, if taken from share of party who made them, 622. 623.
person claiming in severalty, who did not appear, &c., to the petition, not concluded by judgment, but may bring action for land claimed by him, 623.

PAUPERS, *(Continued.)*
overseers of, shall have same authority over, as masters of workhouses, 370. See *Work Houses*.
what kindred of, if able, bound to support them, 370. 487.
kindred of, liable to support, how answerable therefor to masters, &c., of houses of correction, 782.
to be assessed by common pleas, on complaint of town that has incurred expense for relief of, 370.
not liable, on complaint of towns, for more than six months' previous expenses, 370.
may be assessed in a weekly sum, payable quarterly, for future support of, 370.
how complaint against shall be filed, and notice thereof served, 371.
provision for adding other kindred, not originally named in complaint, 371.
how costs against shall be taxed, when two or more are joined in a complaint, 370.
execution against may be issued for assessment for past expense, and for arrears of quarterly charges, 370.
court may order with which of the kindred who desire it, and how long with each, the pauper shall live, &c., 370.
may alter assessments on, according to circumstances, 371.
falling into distress in towns where they have no settlement, to be relieved there by overseers, 371.
expenses of their support, &c., in such case, may be recovered by town incurring them, against the town that is liable therefor, 371.
to be sued for within two years, and not recoverable for more than three months previous to notice, 371.
recovery of, in such case, bars defts. from disputing settlement of the pauper, in future actions. 371.
towns liable for support of, not required to pay more than $1 a week to another town, if they remove the pauper within thirty days after notice, 371.
towns liable to individuals for support furnished to paupers, after notice, &c., till overseers provide, 372.
provisions for written notice to towns where paupers have a settlement, that they are supported in other towns, 372.
for removal of paupers to the town where they have a settlement, 372.
may be removed to town of supposed settlement, if overseers of such town do not, within two months after notice, return written objections to a removal, &c., 372.
towns barred from contesting settlement, if their overseers do not reply to notice within 2 months, 372.
notifications and answers from overseers of one town to another, if sent by mail, (post paid) shall be deemed to be delivered to overseers, &c., 372.
penalty for bringing into and leaving in town, where they have not a settlement, knowingly and with intent, &c., 373. See *Shipmaster*.
to be sued for, &c., by overseers, or any person by them authorized in writing, 373.
support and employment of, in work houses. See *Work Houses*.
state paupers, to be relieved, &c., by overseers, in towns where they are found, 371.
may be sent, at expense of the state, on complaint of overseers, by a justice's warrant, to the place where they belong, 371. 372.
if not so removed, may be sent to work house, or house of correction, to be relieved and employed at public expense, 372.
expense of relief, and of burial of, recoverable of their kindred, or to be paid by the state, 371.
no male, over 12 years of age, and able to labor, entitled to support, 374.
how much to be allowed to towns and city, for support and burial of, 374.
accounts for support, &c., how to be made out, when to be presented, and in what manner, and by whom to be certified, 374. 375.
foreign passengers, who may become paupers, not to be landed until shipmaster give list of their names, &c., to selectmen, or mayor, &c., 373.
bond to indemnify Commonwealth, &c., against charge for support of, to be given by shipmaster, owner, &c., if required, 373.
penalty on shipmaster, owner, &c., for landing, without giving bond, &c., 373. 374.
PAYMASTER, one to each regiment, 105. 106—rank of, 106—how appointed, 112.
PAYMENT, in part, for goods of more than $50, bargained for, &c., renders written contract unnecessary, 473.
of interest, or any part of principal, effect of not altered by provisions for limitation of personal actions, 701.

PICKLED FISH, *(Continued.)*
inspector general of, to make return, yearly, of quantity inspected by him, and deputies, 266.
and deputies, to see that fish for exportation, are well salted, packed, preserved, &c., 266.
sorts and denominations of, and how branded, 266.
different qualities of mackerel, salmon and shad, 266.
of one kind only to be put into casks, 266.
penalty for intermixing or shifting contents of inspected casks, 266. 267.
casks of, how branded with inspector's name, &c.; quality and size of, 267.
to be examined strictly by inspectors, 267.
if inspected in state where packed, need not be reinspected, 267.
small, how packed, branded, &c., 267.
fees for inspecting, &c., and by whom paid, 267. 268.
alewives and herrings, how prepared and packed, 268.
how assorted and denominated, 268.
of what the different sorts shall consist, 268.
boxes for, quality and size of, and how branded, 268.
penalty for exporting, if not inspected, &c., 268.
for fraudulent change of contents of boxes, 268.
may be exported without reinspection, when inspected in other states, 268.
smoked, may be seized and libelled, if put on board vessels, &c., before inspection, &c., 268. 269.
penalty for lading fish on board vessel, when not inspected, &c., 269.
for selling or exporting tainted fish for food, 269.
on inspector, for branding without inspection, 269
for permitting others to use his brand, 269.
PILFERERS, common, how to be arrested, secured and punished, 779. 780.
PILOTAGE, through Vineyard sound, &c. how compensated, 302.
rates of, at different seasons, &c. 302.
in different places, how regulated. See *Pilots*.
PILOTS, for harbors and coasts, generally, how appointed and removed, 295. 297.
to appoint deputies, and report them to governor, 296.
fees of, to be determined by governor, 296—when not entitled to fees, 297.
to give bond to state treasurer, 296.
to take charge of certain vessels, 296.
districts of, to be assigned, 296.
to keep boats, and where to be stationed, and cruize, 296.
liable for negligence, &c. 296.
complaints against, to be heard, &c. by governor, 297.
when to have fees, though vessels are piloted by masters thereof, 296. 297.
when master of vessel may pilot it, 296.
exempted from military duty, 100.
commissioners of, for Boston harbor, how appointed, 297.
to be recommended by Boston Marine Society, 297.
to grant and revoke commissions of pilots, 297.
to keep an office, and attend to complaints, &c. 298.
to inform state treasurer of pilots' breach of bond, 298.
may make regulations for pilotage, 298.
regulations of, how to be approved and published, 298.
to keep and exhibit records of their proceedings, 298.
compensation of, 298.
for *Boston harbor*, to be appointed and removed by commissioners, 297.
to give bond to state treasurer, 297.
how bond of, may be put in suit, 298.
how sureties of, may end their liability, 297.
when to surrender their commissions, on penalty, 298.
to render quarterly accounts to commissioners, 298.
penalty on, for false account of receipts, 298.
fees of, 298—to pay 5 per cent. to commissioners, 298.
penalty for piloting without a commission, &c 298.

POLICE COURT OF BOSTON, *(Continued)*.
clerk of. See *Clerk of Courts*.
witnesses in, not to attend from day to day, when a case is adjourned to a future day, 534.
to recognize to appear at time to which case is adjourned, 534.
See *Justices' Court for county of Suffolk*. *Police Courts*.
POLICE COURTS, to be continued in Salem, Lowell, Newburyport and New Bedford, 536. 537.
shall be one standing justice of, and two special justices, 537.
justice of, appointed by governor, and hold office for same term as justices of peace, 36. 537.
to be held by standing justices, unless he is interested, unable, &c. 537.
by a special justice, when standing justice is absent, &c. 537.
in court house, if there be one in district, 538.
on two fixed days in each week, at least, for criminal cases, 538.
on one fixed day, in each fortnight, at least, for civil cases, 538.
may be held in Newburyport, one day only in each week, 538.
have same jurisdiction of crimes, in their counties, as justices of the peace, 537.
warrants issued by, and by justices in their districts, to be returnable before said courts, 537.
shall not allow fees on a justice's warrant, unless there was just cause for issuing it, 537.
civil jurisdiction of, exclusive, when all the plaintiffs or defendants reside in their district, 557.
concurrent with justices of peace, in other instances, 357.
appeal may be taken from to common pleas, 357.
may commit vagabonds, &c. to house of correction, &c. or workhouse, 779. 538.
may discharge vagabonds, &c. committed by them, on their reforming, &c. 781.
justice of, who holds the court, to do duties of clerk, and receive all fees, 357. 358.
may issue warrants in vacation, to apprehend offenders, 751.
to account for and pay over fines and costs received by, to county treasurer, 538. 530. 772.
to tax, and certify costs in criminal cases, like justices of peace, 538.
compensation of, to be taxable fees received by; liable to be diminished by general court, 538.
special justices to receive and retain fees of cases tried by them, 538.
POLL TAX, on all males between 16 and 70 years old, including aliens, 75.
not on Indians, or persons unable to pay, from age, infirmity, or poverty, 76.
assessed where person is inhabitant on 1st of May, 76.
of minors, to be assessed where parents, masters, &c. reside, 76.
without parents, &c. in the state, as if of age, 76.
of adults under guardianship, assessed to guardians in place where taxed for their own polls, 76.
to be one sixth part of sum to be raised, 79.
not to exceed $1 50 yearly, on one person, exclusive of highway tax, 79.
amount of, to be inserted in tax and valuation lists, 78. 80.
of enginemen, when to be refunded, 194.
POLYGAMY, forbidden, and how punishable, 475. 739.
not punishable, if husband or wife be absent 7 years, and not known to be alive, 739.
POOR. See *Paupers*. *Poor Debtors*. *Work Houses*.
POOR DEBTORS, *imprisonment of*.
shall not be imprisoned on mesne process or execution for any debt less than $5, 592.
nor for any debt less than $10, contracted since 1st July, 1831, 592. See *Arrest*.
these provisions extended to execution on judgment rendered in action on former judgment for less than $5 or $10, 592.
to be kept separate from convicts and prisoners confined on criminal charges, 786.
not to have spiritous liquor, wine, cider or strong beer, unless prescribed by physician, 785. 786.
in close prison, if they claim support as paupers, to be supported by jailer at creditor's expense, at $1,25 a week, 560. 592.
may be discharged by jailer, if creditor does not pay or secure such support within 24 hours after commitment, 592.
when money advanced by creditor has been expended, 592.
on whom and when, demand of support of may be made by jailer, 592. 593.
such demand not to be made, unless debtor first claims support as a pauper, 593.
not to be deemed paupers, while at large on jail limits, 593. See *Paupers*.
foregoing provisions extended to close confinement on surrender of debtor by his bail, 593.
when creditor's liability to support commences, on such surrender, 593.
how long to remain in jail, on mesne process, if not bailed, and how long to be supported by bail, &c. See *Imprisonment*. *Bail*. *Jailer*.

POOR DEBTORS, *(Continued.)*
specific charges, punishment of debtor if he make default after notice of such charges, or is found, guilty on trial thereof, 601.
not to prevent examination of debtor in same manner as if they had not been made 601.
PORK, inspector general of, and of beef, duties of. See *Beef.*
salted, not to be exported, except in certain casks, and inspected, branded, &c. 258.
penalty for exporting without inspection, &c. 260.
sorts and denominations, and how branded, 258.
bone middlings, mess, navy mess, number one, prime and cargo, of what to consist, 258.
heads and feet of, how branded, 258—extra clear and clear, what and how branded, 259.
shoulders of, when and how many may be put into a barrel, 259.
how salted, 258.
when imported, not subject to inspection, if branded, &c. 257. 258.
if repacked and inspected, how to be branded, 258.
casks for, of what timber, size, &c. 259.
inspectors of, fees for inspecting and branding, 259.
for certificates, 259. 260.
compensation for packing, coopering, &c. 259.
penalty on, for neglect or fraud, 260.
deputy inspector, penalty on, for inspecting or branding out of his town, &c. 260.
penalty for branding without authority, 260.
for intermixing or shifting contents of casks, 260.
for selling, &c. casks not packed, &c. according to law, 260.
casks of, laden on board a vessel, may be seized, &c. if not legally inspected, &c. 260.
penalty on certain persons, for weighing, except by sealed scales, &c. 261.
POSTHUMOUS CHILDREN, considered as living at death of their parent, 415.
when not provided for by will, or otherwise, to inherit as if no will were made, 419.
portion of, to be taken from devisees, &c. proportionally, unless, &c. 419.
to contribute, with devisees, &c. when their bequests, &c. are taken to pay testator's debts, 420.
entitled to claim contribution from devisees, &c. 420.
guardian of, may be appointed by their father, by his last will, 489. See *Guardian.*
POSTMASTERS, POST OFFICERS and POST RIDERS, exempted from military duty, 100. See *United States.*
POSTS, on bridges, sidewalks, roads, &c. punishment for breaking, removing, &c. 727.
POT and PEARL ASHES, inspector general of, shall appoint deputies, and may swear them, 281.
to take bonds of, and be answerable for, deputies, 281.
not to take more than 7 1-2 per cent. of deputies' fees, 282.
penalty on, for neglect, &c. to inspect, 282.
to make return, yearly, of amount inspected by him and deputies, 282.
casks of, how to be branded by manufacturer, 281.
not to be removed from manufactory, until branded, under a penalty, 281.
quality and dimensions of, 282.
to be weighed by inspector, and weight to be marked by him on each head, 282.
not to be shipped for exportation, until inspected, 281. 282.
how to be inspected and sorted, 282.
sorts and denominations of, and how branded on casks, 282.
imported from other states, when may be exported without re-inspection, 282.
fees of inspectors, 282.
forfeiture of, if shipped without branding, 282.
inspectors of, to seize and libel casks of, if so shipped, 282.
penalty on shipmaster, for receiving casks of, not branded, 283.
on master and crew, for obstructing search by inspectors, 283.
for counterfeiting brands, or falsely branding, 283.
for shifting contents of inspected casks, 283.
POUND, one or more to be maintained by every town, 199.
penalty on towns for 3 months' neglect to provide; and to whose use recovered, 199.
on persons who wilfully injure, 199.

PRIVATE WAYS and BRIDGES, *(Continued.)*
gates, fences, &c., across, how may be removed, unless, &c., 249.
when may be replaced by commissioners, 249.
liability of proprietors for defects in, &c. 246. See *Highway*, 2.
PRIVILEGE from arrest on mesne process, secured to representatives in general court, 33.
on civil process, extended to officers and soldiers ordered to attend election of militia officers or other military duty, 114. See *Sheriffs*.
PROBATE COURT, to be held in each county, at times and in towns as established by law, 515.
may be adjourned by judge, and in his absence by register, 515.
shall not be held, by adjournment or otherwise, unless register be present, 517.
times and places of holding, in the several counties, 522. 523.
times of holding in Nantucket, to be appointed by judge, 523.
places for holding, in towns, to be appointed by judge, and public notice thereof given, 524.
salaries of judges of, in different counties, 520.
judge of, how appointed, and tenure of office, 36. 41. 515.
not to be counsel for or against any guardian, executor, &c. in any suit concerning their official conduct, 518.
in any matter relating to a decree, &c. made by him, 518.
to be sworn not to be interested in any fees, &c. in any matter pending in his court, 518.
such oath to be subscribed by him, and filed in probate office, 518.
exempted from military duty, and from serving as a juror, 100. 578.
member of board of examiners, as to county commissioners, 164.
may appoint a temporary register, 517.
cannot hold office after being elected, &c. to congress of U. States, 51.
cannot be also governor, lieutenant governor, senator, counsellor, or representative, 50. 51.
may commit lunatics (except in Suffolk), to lunatic hospital, 799. 380. 381.
all decrees and orders of, to be in writing, and recorded, 515.
may make rules for conducting business, where express provision therefor is not made by law, 515.
such rules to be submitted to, and may be controlled by, supreme court, 515. 516.
may issue, &c. all necessary processes; which shall be executed by sheriff, &c. 516.
authorized to keep order, and punish contempts, 517.
may, in vacation, make orders of notice, and do acts that require no previous notice to be given, 515.
may award costs at his discretion, in contested cases, and issue execution therefor, 520.
may issue execution for costs, &c. in cases of partition, 625. 626.
may revoke warrants, &c. for sufficient cause, and issue new ones, &c. 518.
shall examine all bonds, required to be given to him, and, if he approve them, write his approval thereon, 518. 519. See *Bond*.
may administer all oaths required to be taken by executors, &c. &c.
may swear accountants, out of court, if they are unable to attend; or may authorize a justice to do it, 518.
may allow, &c., wills, and grant administration of estates of those who were inhabitants, &c., of same county, at time of their decease, 515. 425.
of those who die out of the state, leaving property within such county, 515. 425.
may appoint guardians to minors and others, inhabitants, &c., of same county, or who have estate therein, 488. 515.
has jurisdiction of settlement of estates of such deceased persons and wards, 515.
See *Guardian*. *Estates of persons deceased*. *Executor*. *Administrator*. *Insolvent Estates*. *Wills*. *Administration*. *Trustees*.
jurisdiction assumed by, not to be questioned, as to residence of any person, except on appeal, unless, &c., 516.
may be denied, if want thereof appears on his record, 516.
decrees, &c., of, after 20 years, when to be presumed valid, unless the contrary appears on the record, 516.
who first commences proceedings, when two or more have jurisdiction, shall have exclusive authority, 516. 425.

QUAKERS, *(Continued.)*
allowed to affirm, instead of swearing, 50. 571.
overseers of monthly meeting of, a body corporate to hold donations, &c., 206.
income of such donations limited, 206.
marriages of, may be solemnized according to former usage, 478.
certificate of, to be returned to town clerk, by keeper of records of the meeting, 478.
penalty for neglect to make such return, 478.
to whose use recovered, 478.
QUALIFICATIONS, as to property, of certain officers, 30. 33. 38.
may be increased by general court, 47.
QUARANTINE, ground for, may be assigned by towns singly or jointly, 211. 212.
not to be assigned without consent of town where it is situated, 211. 212.
of vessels, and regulations of, may be established by board of health, 212.
to extend to all persons and effects on board, &c., 212.
notice of, how to be given, 208. 209. 212.
penalty for violating, 212.
vessels, when foul, &c., may be removed to, by board of health, 212.
to be cleansed at owners' &c., expense, 212.
penalty on seamen and passengers for refusal to answer, on oath, as to disease, &c., 212.
expenses of, by whom to be paid, 212.
forfeitures for violation of, how recovered, and to whose use, 214.
QUARTER MASTER, to each division, brigade, regiment and battalion, 105. 106—rank of each, 105. 106.
of division, brigade, regiment and battalion, how appointed, 112.
QUARTER MASTER GENERAL, how appointed, 112—rank of, 105.
duties of, when office is vacant, to be done by adjutant general, 106.
QUASHING, writs, indictment, &c. See *Abatement.*
QUITCLAIM. See *Deed.*
QUO WARRANTO, writs of, may be issued by supreme court, 499.

RACE POINT, land on, ceded to United States, 57.
RAILERS, common. See *Brawlers, &c.*
RAIL ROAD CORPORATIONS, petitions for to be accompanied by an engineer's report, &c., 342.
petition for, not to be acted on until notice, designating route, &c., has been published, 342.
acts incorporating, to confine road within limits mentioned in such notice, 342.
affairs of to be conducted by not less than five directors, of whom one shall be president, 342.
directors to choose a clerk, who shall be sworn, and a treasurer who shall give bond, 342.
each member of entitled to a vote for each share held by him, if not more than 1-10th of whole number, 343.
meetings of, to be called and warned according to by-laws, 343.
shares to be deemed personal estate; how transferred, &c., 343.
may be assessed by directors, as they deem necessary, &c., 343.
may be sold, if owner do not pay assessments in 30 days after notice, 343.
if sold for less than assessment, owner liable for the deficiency, 343.
may lay out road not more than 5 rods wide, 343.
penalty for constructing road through burial ground, without consent, 742.
may take land for embankments, procuring stones, gravel, &c., 343.
to take no materials, out of limits of road, without owner's leave, unless county commissioners first prescribe the places, 343.
shall file with county commissioners, within one year, the location of road, &c., 347.
shall pay damages caused by laying out, &c., road, and by taking land and materials, 344. 347.
when land, &c., of a married woman or ward is taken by, the husband or guardian may release the damages, 350.
damages caused by, to be estimated by county commissioners, (except in Boston,) as in case of highways, 344.
in Boston, to be estimated by mayor and aldermen, 345.
may be assessed by a jury, as in highway cases, if either party be dissatisfied with estimate of commissioners, &c., 344. 345.
within what time to be applied for, in different cases, 344. 346.
may be required to give land owner a plan of his land taken, and to secure payment of damages before further entry thereon, except for surveying, 344. 345.

REAL ACTIONS, *(Continued.)*
demandant shall set forth the estate he claims, but need not set forth the original gift, &c. by which he claims, 610.
not required to prove actual entry under his title, 610.
shall recover if he prove that he is entitled to such an estate as he claims, and that he has a right of entry, 610. 611. See *Discontinuance. Descent.*
entry of, to save limitation, not effectual, unless he retain possession for a year, or bring action within a year after he is ousted, &c., 697.
how executor, &c. may proceed and declare, in action to recover premises fraudulently conveyed by the deceased, 454.
mortgagee may declare on his own seizin, without mentioning his deed, or the condition, &c., thereof, 634.
who may be considered a disseizor, for purpose of trying the right, 611. 467.
joint tenants, &c. may all, or any two or more of them, join in the suit, or one may sue alone for his share, 611.
nontenure, disclaimer, sole tenancy and several tenancy, may be pleaded either in abatement or in bar, 611.
demandant may recover such part as he proves title to, though less than is demanded in the writ, 611.
entitled also to recover, in same action, damages for rents and profits, waste, &c. 611.
how damages to be assessed; rents and profits how estimated, and for what terms recoverable, 611. 612.
when tenant, &c. has held premises 6 years before action brought, if judgment be against him, he shall be compensated for *improvements* made, 612. 641.
so if he has held under the Commonwealth, or under other title that he had reason to believe good, though for less than 6 years, 642. 612.
tenants holding under partition made by a court, entitled to improvements as holding under an apparently good title, 627.
when and how tenant shall request that the value of improvements may be ascertained and allowed, 612.
when improvements shall be assessed by the jury, and when by the court, 612. 613.
improvements, and rents and profits, may always be assessed by persons appointed by court, with consent of parties, 613.
to what amount allowance for improvements shall be limited, 613.
sum allowed to tenant for improvements, to be set off against rents and profits, &c due from him to demandant, 613.
if, in such case, the balance be for the demandant, he shall have judgment, &c. therefor, as well as for his seizin, &c. 613.
if the balance be for tenant, demandant shall pay it, before taking out execution for seizin, 613.
demandant not entitled to recover subsequent rents, &c. before he pays such balance, 613.
if improvements exceed rents and profits accrued within 6 years, tenant chargeable for earlier rents, &c.; but so far only as to balance his claims, 613.
foregoing provisions not to affect demandant's right to rents and damages against third persons, 613.
when tenant makes claim for improvements demandant may require that value of his estate, without improvements, shall be determined, 613.
how such value shall be estimated, and by whom, 613.
if judgment be for demandant, he may offer, on record, to relinquish to tenant at such value, 613. 614.
if demandant relinquish, tenant shall hold his estate, on paying such estimated value, 614.
how such value shall be paid by tenant, and demandant's rights, if payment be not made, 614.
provisions for payment, &c., in case of death of either party after judgment, 615.
remedy and proceedings of tenant, and his assignees, &c., if subsequently evicted by force of title par amount to that of demandant, 614.
when demandant claims a life estate only, and pays for improvements, provision for adjustment thereof between him and reversioner, &c., 615. See *Remainders, &c.*
foregoing provisions, as to improvements, and recovery of rents and profits, not to extend to actions to recover mortgaged premises, 615. 616.
REAL ESTATE, words how construed, 60. 415. See *Pews.*
what included in the words, for purpose of taxation, 75.
how conveyed. See *Deed. Sale of lands, &c. Churches.*
subject to payment of owners' debts, 412. 413. 420. 429. 463.
how attached, and taken on execution. See *Attachment. Execution, levy of on real estate.*
mortgage and partition of. See *Mortgage of real estate. Partition.*

RECORDS of notaries public, how disposed of, after their death. See *Notaries Public.*
in office of secretary of Commonwealth, copies of, how authenticated so as to be evidence equivalent to originals, 148.
punishment for forging or stealing, 728. 722. 723.
See *Registers of Deeds. Registers of Probate. Clerk of Courts. Common Lands.*
REDEMPTION, of mortgages of real and of personal property. See *Mortgage.*
of lands set off on execution, may be made by debtor within a year after levy, 467.
what payments to be made or tendered by debtor, and what allowances to be made to him, &c. on redeeming, 467.
debtor may have amount due for redemption ascertained by three justices, whose certificate shall be conclusive, 467.
in what manner such justices shall be chosen, 467.
debtor may make valid tender of sum thus adjudged to be due, though he may have previously tendered a different sum, 466. 467.
creditor, on payment or tender, to give debtor a deed of release at debtor's expense, 467.
debtor may recover land from creditor, in a writ of entry, after tender of sum due, if deed be not given him, 467.
shall bring into court the money tendered, 467.
may bring bill in equity for redemption, within a year from levy, whether he has made a tender or not, 467.
shall offer, in such bill, to pay what shall be found due to creditor, 468.
court to require debtor to bring in amount due to creditor, as ascertained by them or by three justices, 468.
to enter judgment and issue execution, as at common law, for debtor's seizin, on his bringing in the money, 468.
how costs, on such bill, shall be awarded, according to different circumstances, 468.
of lands mortgaged, when *set off* on execution, may be made by debtor in same manner, as above, 468.
if creditor pay the mortgage, debtor may redeem from him as he might from mortgagee, if no levy had been made, 469.
if debtor do not redeem mortgage from creditor, the latter shall hold as assignee thereof, and free from right to redeem, 469.
if debtor do not redeem right taken in execution, creditor shall hold, though debtor has redeemed the mortgage, 469.
of estate for life, when costs and profits are levied on, debtor may redeem at any time before debt is satisfied, by paying what remains due, 468.
shall have same remedies, as in case of other real estate set off, 468.
of rights of redeeming a mortgage, when sold on execution, may be made by paying debt, &c. within a year, as of land set off, and with like remedies, 470.
creditor, on payment made, to release to debtor, 469.
if creditor pay mortgage, debtor may redeem it, and also the right of redemption, as when such right is set off, 470.
rights of redemption from a levy of second execution, may be made as in case of levy on right to redeem a mortgage, 470. 471.
of lands sold under provisions concerning mechanics' lien, may be made as in cases of sale of rights to redeem mortgages, 686.
for payment of damages for flowing, by mills, &c. may be made within a year, by paying the purchaser, &c. what he paid therefor, with 12 per cent. interest, 679.
executors, &c. heirs and assigns, of debtors and creditors have their rights, and are under their obligations, &c. as to redeeming lands set off, or rights of redeeming mortgages sold on execution, 470. 471. See *Execution, levy of.*
how to be made by reversioner, &c., when liable to tenant for proportion of improvements assessed in a real action, 615.
REFEREES and REFERENCE. See *Arbitration. Award.*
REGIMENTS to be numbered at formation of, and number recorded in adjutant general's office, 104.
to be arranged according to laws of United States, 104. 805.
See *Militia*, 2, 3. *Colonel.*
REGISTERS OF DEEDS, to be chosen in each county, at annual town meetings, in 1836, and in every fifth year thereafter, 172.
town clerks to record and transmit votes for, to county commissioners, who shall count them and give notice to persons elected, 805.

RESCUE, *(Continued.)*
of person arrested by order of senate, house of representatives, or governor and council, how punished, 32. 33.
RESERVOIR of water, punishment for maliciously destroying, injuring, &c. or drawing off, without color of right, 726.
RESIGNATION, of militia officers. See *Militia*, 3.
RESOLVE of legislature, copies of, printed by order of government, to be admitted as sufficient evidence thereof, 577. See *Bill or Resolve*.
RESTITUTION of lands, &c. in case of forcible entry or detainer. See *Forcible Entry, &c.*
RETAILERS of spiritous liquors. See *Licensed Houses. Selling.*
RETAINERS, to army, liable to rules, &c. for troops in actual service, 139.
RETURN, of writs and executions. See *Writs. Execution.*
of recognizances. See *Contempt. Recognizance.*
of warrants to arrest robbers, burglars and other thieves, when the stolen property is found, 724. See *Larceny.*
of warrant for inflicting capital punishment, how and where to be made, 767.
in actions of replevin, plf.'s bond to deft. to be returned with writ, 667. 668. See *Replevin.*
bail bonds, and bonds taken when goods attached are delivered to the party, to be returned with writ, 562. 554. 556.
RETURNS, of banks, 317. 319. See *Banks. Savings Banks. Secretary of Commonwealth.*
of schools. See *School Returns.*
REVIEW of final judgments, allowed *as of right*, only in case of default of a deft. who was out of the state, 565. 604.
writ of, may be sued out, in such case, at any time within a year after judgment, 565. 604.
may be granted, in such case, by supreme court, *on petition*, if filed within a year after deft. has notice of the judgment, 565. 604.
writs of, and petitions for, to be indorsed like original writs, 605.
may be granted by supreme court, of all its own judgments, and those of common pleas, on such terms as may be deemed reasonable, 604.
by common pleas, of its own judgments, and those of justices of the peace, 605.
within what time, petition for shall be filed in different cases, 604.
where petition for may be filed, and notice thereof made returnable, 604.
if petition for, be not granted, costs may be awarded to respondent, 605.
of judgment of common pleas, to be tried in supreme court, when granted by that court, 605.
in what county to be tried, 604.
on petition for, or when sued as of right, court may stay or supersede execution; on what terms, 604. 605.
execution not to be stayed, &c. without order of court, 603.
may be had by one or more of several defendants, as if they were all, 604.
provision, in such case, if damages recovered in the original suit, be reduced or increased, 604.
writ of, how to be sued out, form of, and how to be served, 602. 603.
on writ of, sued out by original plaintiff, defendant's property may be attached, 603.
of the pleadings, trial, evidence, judgment and costs, 603.
when amount of former judgment is reduced, original defendant to have execution for the difference, with his costs, 603.
or, in such case, if former judgment be not satisfied, one judgment may be set off against the other, and execution issue for the balance, 603.
when amount of former judgment is increased, original plaintiff to have judgment and execution for the excess, 603.
in actions of replevin, and wherever a set-off is filed, original defendant to be regarded, as to foregoing provisions, like a plaintiff in other actions, 604.
attachments and bail in original suit, not held to satisfy judgments on review, 603.
REVISED STATUTES, herein contained, when to go into operation, 800.
how may be designated, in citations thereof, 800.
REWARDS, for concealing or compounding offences, &c. See *Bribery.*
not exceeding $1000 in each case, may be offered and paid by governor, for apprehension of convicts, &c., who have escaped from any prison, 810.
what to be allowed and paid to informers, &c., who prosecute to conviction certain counterfeiters, &c., and sellers, &c., of lottery tickets, 731. 732. 744.

SEAMEN. See *Mariners.*

SEARCH WARRANT, if not supported by oath and accompanied with a special designation of the object of search, is contrary to the rights of the citizens, 22. 23.
ought not to be issued, but in the cases, and with the formalities, prescribed by law, 23.
may be issued, on complaint supported by oath, to search for property stolen, embezzled, or obtained by false tokens or pretences, 774.
to search for counterfeit coin, forged bank notes, &c., or tools, &c., for making them, 774.
for obscene books, &c., intended to be sold or circulated, 774. 740.
for lottery tickets or materials for a lottery; and for gaming implements kept in gaming houses, 774. 388.
shall designate the place and property, and direct the sheriff, &c., to search, *in the day time*, 774.
shall direct officer to bring such property, if found, and the persons in whose possession found, before a magistrate, 774.
when may be issued by two magistrates, or police court, authorizing search by a public officer *in the night time*, 774.
property seized on, to be kept, as long as is necessary, to be used as evidence on a trial, 775.
if stolen, embezzled &c., to be entered to the owner, 775
other things above, seized on, to be burnt or otherwise destroyed, by direction of court or magistrate, 775.
may be issued on complaint of fireward or selectman, directing constable to enter building specified, to search for gunpowder unlawfully deposited, 401. 402.

SECONDS, in a duel. See *Duel.*

SECRETARY, of Commonwealth, how chosen, 40.
may be appointed by governor, &c., if office of be vacant during recess of legislature, 50. 148.
oath of, 50. 148.
exempted from serving as juror, 578.
salary of, and of his clerks, 149.
records of Commonwealth to be kept in his office, 40. See *Seal.*
may appoint deputies, and have two clerks, 40. 149.
to attend on governor and legislature, if required, 40. 41.
to engross bills, and manner of doing it, 148.
to cause engrossed bills to be bound and lettered, &c., 148.
to give certificates, without charge, to procure release of impressed seamen, 149.
fees of, 712—to be deducted from salary, 149. 712.
to return quarterly, to governor, &c., on oath, accounts of fees received, 149. 712.
his deputies to execute his duties, if he be absent or disabled, 148.
may authenticate, by state seal, and certify, copies of records, &c., 148.
to furnish towns, yearly, with blank forms of school returns, 226.
to apportion, with treasurer, income of school fund, 227.
to furnish forms of bank returns, to cashiers, &c., 317. 320.
to prepare abstract of bank returns, and transmit it to cashiers, and to general court, 317. 320.

SECRETING, property with intent to embezzle. See *Embezzlement.*
persons by imprisonment, &c., against their wills, how punished, 718. 719.
See *Kidnapping. Concealment.*

SEDGE, punishment for wilful cutting, &c., of, without license, 727.

SEDITION, punishment of officers and soldiers in actual service, for exciting, and for not attempting to suppress, &c., 139.

SEIZIN, deemed to be given to Commonwealth by *mere judgment* in its favor, on information of intrusion, 640.
how to be declared on, in a writ of entry. See *Real Actions.*

SELECTMEN, to be chosen, at annual town meeting, by written ballots, 180.
penalty on towns for not choosing, 180.
to be sworn, 180—penalty on for acting before sworn, 183.
for not taking oath, when liable to serve, 181.
to be assessors, overseers of poor, and board of health, if others not chosen to those offices, 182. 208.
to be sworn as assessors, when they are such, 182.
to endeavor that youth attend schools, 219.

SELECTMEN, *(Continued.)*
shall appoint certain town officers, yearly, unless town choose them, 181.
duties of, as to schools, &c. See *Schools. School Districts. School Houses.*
to preside at certain meetings. See *Elections. Electors.*
to return names of persons liable to military duty, in certain cases, 103.
penalty on, for failing so to do, and how recovered, 103. 123. 124.
to appropriate moneys paid by conditional exempts, 102.
penalty on, for neglect, &c., so to do, and how recovered, 102. 123. 124.
to furnish equipments to poor soldiers, under a penalty, 109. 123.
how this penalty may be recovered, 124.
to deliver schedule of military stores, yearly, to captains, 111.
penalty on, for failing so to do, and how recovered, 111. 123. 124.
not to appoint town meetings for elections on days when military duty is required, 64. 123
penalty for so doing, and how recovered, 123. 124.
to examine lists of soldiers entitled to pay, and order payment, 136.
penalty on, for neglect, &c., so to do, and how recovered, 123. 124. 136.
to provide carriages, camp equipage, &c., for soldiers called out in case of war, insurrection, &c. 138.
penalty on towns, for selectmens' refusal, 123—how recovered, 124.
to appoint weighers of beef, in certain towns, 261.
to give certificates for bounties for killing wolves, bears, &c., 392.
to direct in what places livery stables, &c., shall be kept, 401.
may license fireworks, theatrical shows, &c., 400. 401.
to assign places for exercise of offensive trades, &c., 214.
duties, &c. of, when dangerous sickness breaks out, 213.
in perambulating, &c., town boundaries, 176. 177.
as to binding orphan children, 494.
may give permits to take shell fish in certain towns, 393. 394.
to assign limits, &c., to surveyors of highways, 244.
power and duties of, as to ways. See *Town Ways, &c. Water-courses.*
powers, &c. of, as to common sewers drains, &c., 251. 252. See *Drains, &c.*
in case of riots, &c., 737.
duties and liabilities of, as to jurors, 579. 583.
authority of, at fires, when no firewards are appointed, 192.
may appoint enginemen, and remove them for negligence, 193. 194.
power of, as to recognizances required of towns, 806. See *Recognizance.*
SELLING, corrupted or unwholesome provisions, knowingly and without giving notice, how punished, 742. See *Pickled Fish.*
land under known attachment, with intent to defraud and without giving notice, how punished, 725.
tickets in lottery not authorized by law, how punished, 743.
spiritous or fermented liquors, without license, how punished, 375. 376. 379. 779. 780. See *Fruit. Grain. Paper. Oil.*
SENATE, the first branch of the legislature, 28.
shall appoint its own officers, and make its own rules of proceeding, 30.
its power of adjournment, 30.
has power to punish contemptuous and disorderly conduct, &c., in its presence, 33. See *Threatening.*
may try cases in which its rights and privileges are concerned, by a committee of its own members, &c., 33.
a court to try all impeachments made by house of representatives, 30.
sixteen members of, a quorum, 31.
SENATORS, number of, and when and by whom elected, 27. 29. 52.
qualifications and oath of, 30. 50.
votes for, to be given on one ballot, 65.
by whom to be examined, counted, &c., 28. 29.
lists of, how to be made, transmitted, &c., 29. 66.
how to be summoned to take their seats, 29.
how to be sworn, before they try impeachments, 30.
places of, incompatible with certain offices, 46. 51.
13 districts for choice of, 66. 67.
exempted from serving as constables, 184.

SENTENCE, where no punishment is provided by statute, to be conformable to usage and the nature the offence, 765.
may be conditional, when the offence is punishable either by fine or imprisonment, 766.
in such case, prisoner may be ordered to pay a fine, and in default thereof, to be imprisoned, 766.
how prisoner shall be disposed of till he pays, or makes default, 766.
may be imprisoned without fine, and vice versa, whenever fine and imprisonment in county jail or house of correction are prescribed, 766.
for offences punishable, partly or wholly, by imprisonment in county jail, may be to house of correction, or solitary imprisonment and hard labor in either, 782.
of solitary imprisonment, and hard labor not more than 3 years, if convict was never before so sentenced, may be executed in house of correction, jail or state prison, 782.
in all cases not capital, nor punishable in state prison, sureties of the peace may be required, in addition to punishment prescribed by law, 766.
certified copy of, in such cases, to be delivered to officer by clerk, and to be sufficient authority, &c., for executing it, 766.
form of, when imprisonment in state prison is awarded, 766.
of solitary imprisonment in state prison, not to be for more than 20 days at one time, 766.
to be executed before that of hard labor, unless otherwise ordered, 766.
of imprisonment in state prison, not to be for less than a year, 766. See *Minors*. *Females*.
what *additional* shall be awarded at time of conviction, in different cases, when convict has been before sentenced to confinement to hard labor, 809. 810.
what additional shall be awarded by municipal court, on information filed, against convicts in state prison, who have been before sentenced to a state prison, 811. 795.
of death, copy of, and of whole record to be transmitted to governor, 767.
warrant for executing, to be issued to sheriff by governor, 767.
how to be executed, in what place, and in whose presence, 767. See *Return*.
not to be executed on a female while quick with child, nor on any one while insane, 767.
SENTINEL, in actual service, punishment of for sleeping on his post, or leaving it, &c., 141. 142.
SERGEANT AT ARMS, how chosen or appointed, 155. 156—salary, &c., of, 156.
to receive no fee or reward for admitting visitors to rooms in state house, 156.
to give bond to treasurer; condition of bond 155.
how he may be removed or suspended, 156.
to keep chambers, &c., of state house in good order, &c., 155.
to keep order among spectators of the legislature, 155.
to appoint door keepers to each house of the general court, 155.
to appoint a watchman of state house, and be responsible for him, 155. See *Watchman*.
to prevent trespasses on state house, 156.
to inform prosecuting officer of such trespasses, 156.
to serve processes and execute orders of general court, 155.
to attend clerks and members of general court, when they are charged with messages, 155.
to have charge and oversight of state house, &c., 155.
to inspect all apartments of state house, daily, and prevent damage thereto, and to the papers, &c. therein, 155.
SERGEANTS, four to each company, 106—how appointed, 112.
appointments of, to be returned to colonel, &c., 112.
warrants of, to be given, &c., by colonel, 112.
pay of, when called into actual service, 136. 137.
SERGEANT MAJOR, one to each regiment and battalion, 106—how appointed, 112.
SERGEANT QUARTER MASTER, one to each regiment and battalion, 106—how appointed, 112.
SERPENTS, not to be lighted, thrown, or kept for sale, &c., without license, 401. See *Rockets*.
SERVANTS, how to be bound, &c., to masters, 494. 495.
how to be taught, 495. See *Apprentices*. *Master*.
SERVICE of writs and executions. See *Absent Defendant*. *Writs*. *Execution, levy of*. *Franchise*. *Process*. *Attachment*.
of petitions to the legislature, 61. 62.
SET-OFF, of *mutual debts* or demands between plaintiff and defendant in an action, 583 to 586.
what demands may be, and what may not be, set off, 584.
not allowed, of claims against one deceased, in suit by his executor, &c. against a judgment creditor for avails of sale on execution after deceased's death, 560.

SET-OFF, *(Continued.)*
shall be allowed only in actions on demands that might themselves be the subject of, 584.
of demands assigned to defendant, with notice to plaintiff, before action brought, shall be allowed, 584.
where there are several plaintiffs or defendants, demand must be due from all jointly, except in case of dormant partners, 584.
allowed in actions by and against executors, &c. as if action were by or against the deceased, 584. 585.
not allowed in such actions, unless demands are in the same right, 585.
demands against cestui que trust may be set off, in action brought for his use by trustee, 584.
cannot be made, unless defendant file statement of his demand, in clerk's office, and give written notice to plaintiff or his attorney, 585.
within what time, such statement must be filed, and with what certainty as to substantial matter thereof, 585.
amendment of such statement may be allowed by court, as of declaration or other pleadings, 585.
after filing of demand, plaintiff shall not discontinue, without defendant's consent, 585. 586.
may be tried, when issue to the country is joined, without further plea, 585.
how issue on may be formed (except in assumpsit) when no issue to the country is otherwise formed, 585.
to be tried, as if defendant had brought an action; and subject to all legal defences of the plaintiff, 585.
statute of limitations to be applied to, as to an action on the same demand, if commenced when plaintiff's action was, 585.
judgment to be for balance found due to either party, 585.
against the plaintiff not to be rendered, if he had assigned his demand before action brought, &c. 585.
defendant who files, how far regarded like a plaintiff in other actions, as to writs of review, &c. 604.
costs not affected by reduction of plaintiff's damages by set-off, 704.
in actions before a justice, to be proceeded on, as in other courts, 585.
judgment for defendant not to be rendered for more than $20, 585.
of judgments, when a cross action is brought by a defendant, or one of several defendants, against a plaintiff, out of the state, 552. 553.
when plaintiff in review reduces the original judgment, 603.
for costs, when defendant recovers them on appeal by plaintiff, 703.
of executions, between the same parties, how to be effected, 595.
when not to extend to attorney's fees and disbursements, 595.
in what cases not allowable, 595.
SETTLEMENT, how acquired in a town, so as to oblige such town to support the person acquiring it, when poor, 367. 368.
of persons who had begun to acquire, under former laws, not to be prevented by new provisions, 368.369.
to continue till lost or defeated by acquiring a new one within the state, 369.
former defeated and lost by acquiring such new one, 369.
SEVERAL TENANCY, may be pleaded in bar or in abatement, 611.
no costs allowed to party, which accrued before filing of such plea, 611.
SEWERS. See *Drains, &c.*
SHAD. See *Pickled Fish.*
SHARES, in aqueduct corporations. See *Aqueducts.*
in manufacturing corporations, how taxed. See *Taxes*, 2.
in incorporated joint stock companies, how attached and sold on execution, 551. 591
See *Corporations. Execution. Writs.*
of proprietors of lands, wharves, &c., lying in common, how liable, &c., for assessments, 357.
SHEEP, less than six months old, exempted from taxation, 76.
kept in town where owner does not reside, to be taxed to him in such town, 77.
to be impounded, if found at large, contrary to law, 199. 664.
for doing damage, 665.
See *Poundkeepers. Replevin. Field Drivers. Distraining.*
six, if not of more than $30 value, exempted from execution and attachment, 589. 549.
SHELL FISH, other than oysters, not to be taken, &c., in certain towns, without written permit of selectmen, 394.
how many, and what kinds, may be taken for bait, 395.
penalty for illegal taking of, and how and to whose use recovered, 394. 395.

SHELL FISH, *(Continued)*.
vessels, boats, &c., having them illegally on board, may be seized, &c., 394.
to be discharged, if owner, &c., pay penalty, &c., 395.
See *Indians. Lobsters. Oysters.*
SHERIFFS, how appointed and removed, and tenure of office, 36. 166. 167. 168.
to be sworn, 166.
may not be county treasurers, 165.
cannot hold office, after election, &c., to congress, 51.
cannot be state senator or representative, or hold certain other offices, 46.
compensation of, in the several counties, 170—salary of, for keeping jails, 171.
to give bond, approved by common pleas; condition thereof, 166.
bond of, to be security for deputies' default after sheriffs' death or resignation, 169.
sureties of, may be discharged, on new bond being given, 167.
penalty on, &c., if they neglect or refuse to give bond, 167.
bond of, when broken, may be sued in treasurer's name, 167.
to be examined, yearly, and if insufficient, new one to be required, 167.
writ on, to be indorsed like writs on administration bonds, 167.
no suit on, till judgment or decree against sheriffs, 167.
copy of, to be given by treasurer, and to be competent evidence, unless, &c., 168.
See *Bond*.
may appoint deputies, who shall be sworn, 166.
to be responsible for their deputies, 166. 169.
actions against for deputies' misconduct, to be brought within four years, 169.
when appointed, to give notice to coroners, 167.
executors, &c., of, liable for misconduct of them and their deputies, 167.
exempted from arrest on civil process, 168.
from military duty, and from serving as jurors, 100. 578.
execution against, to issue against their property only, 168.
to be removed, if execution against be returned unsatisfied, unless it be paid, with costs in 30 days, 168.
when removed, bodies liable to arrest on alias execution, 168. 169.
shall distribute precepts for election of electors and of representatives in congress, and make returns of votes, &c., 71. 72. 73.
shall serve all writs and processes within their counties, 168. 222. 516. 524. 530.
may serve writs, &c., though town, parish or school district, of which they are members, be party or interested, 168.
may summon and attend juries to assess damages in turnpike and rail road cases, though their deputies are interested, 168.
when to preside over juries in highway cases, &c., 233.
may execute precepts in their hands when removed from office, 168.
shall collect taxes, in certain cases, 81. 87.
may require aid in execution of official duty, in criminal and other cases, 168.
power and duty of, in cases of riots, tumults, &c., 138. 737.
as to adjoining courts, 503. 512.
to aid warden of state prison in removing convicts thither, 794.
to have charge of jails and prisoners therein till their successors are qualified, 169. 778.
may sue for injury done to jail, &c., by prisoners, 788.
may remove prisoners from one jail to another, in the county, 788.
to keep calendar of prisoners; contents of calendar, 169.
to deliver calendar, prisoners, and papers concerning them, to their successors, 169. 170.
penalty for not so delivering, 170.
liability of, if he take bail bond, with one surety only, 562.
to dispose of bodies of such as die in prison, 170.
to inform of offences against the law concerning Lord's day, 386.
not to act as attorneys or counsel, nor make, &c., any writ, 169. 542.
not to advise a suit, nor advance money, &c., with intent to be employed to collect, &c., 169. 544.
penalty on in these cases, for breach of law, 169. 542. 544. 545.
for taking dead body on process, 169.
for not paying certain fines and costs collected, to county treasurer, 772.
for not paying money collected on execution, when demanded, 595.

SHERIFFS, *(Continued.)*
to keep, and render, yearly, to county treasurer, on oath, an account of all moneys received by them, 170.
to receive of deputies 25 per cent. of fees for travel, service and levy, 170.
not to receive any rent, &c., for use of county houses by jailers, &c., 171.
fees of, for distributing precepts for choice of representatives in congress, and returning votes, 71
for returning votes for governor, senators, &c. 710. 711.
for serving notice of petitions to general court, 61. 62.
for collecting taxes, 87—for divers specified services, 709. 710.
for summoning juries, &c., in highway cases, 233. 234.
not entitled to as witnesses in criminal cases, while paid for attending same court officially, 710.
deputies of, to be appointed by, and sworn, 166. See *Jailer*.
not to buy or advance money, &c., on demands for collection, 544.
not to act as counsel, &c., nor make writs, &c., 169. 542.
may collect taxes, serve writs, &c., and require aid as sheriffs may, 61. 81. 87. 168. 524. 530.
may summon and attend juries, in turnpike, &c., cases, though sheriff be interested, 168. 232.
not to preside over juries in highway cases, 233.
may execute precepts in their hands, though there be a vacancy in office of sheriff, 168. See *Executions*.
exempted from serving as jurors, 578.
shall render to sheriff, yearly, or oftener, account, under oath, of all fees received, &c., by them, 170.
SHINGLES, surveyors of, and of clapboards, to be chosen by towns, 278.
to be sworn, 278.
may be sawed or shaved, 278.
quality, size, &c., of, when for home use, and when for exportation, 278.
to be designated by numbers, 278.
to be bound in bundles of 1000, or half or quarter 1000 each, 278.
to be examined by surveyor, and branded with his name, &c., 278.
town brand to be set on hoop of bundle, 278.
fees of surveyor; and by whom paid, 278.
to be forfeited to use of town, if offered for sale before they are surveyed and marked, 278.
SHIP. See *Vessel*.
SHIP-OWNER, how far answerable for loss caused by master and mariners, 295.
when charterer to be deemed, 295.
how to be sued, &c., by several freighters, &c., when ship, &c., not sufficient to pay each in full, 295.
remedy of, against master, &c., not affected, 295. See *Paupers*.
SHIPMASTER, penalty on, for landing convicts, and notoriously dissolute persons, from other states and countries, 373. See *Paupers*.
by whom to be prosecuted for, 373. See *Pilots*. *Ship-owner*.
SHIPTIMBER. See *Agricultural Societies*. *Lumber*.
SHOES. See *Boots and Shoes*.
SHOP, breaking and entering, with intent to commit felony therein, how punished in different cases, 722. See *Breaking*.
SHOWS. See *Public Shows*.
SICKNESS, when dangerous breaks out, hospitals to be provided, &c. 212. 213. 249.
sources of, how to be removed by board of health, &c. 209.
See *Hospital*. *Board of Health*. *Small Pox*. *Quarantine*. *Removal*.
SIGN BOARDS, punishment for maliciously defacing, &c. 727.
SILVER, current coin, may be taken in execution, and paid to creditor as money collected, 589.
punishment for counterfeiting, having or altering counterfeit, or making, or having tools, &c. to coin, 731. See *Search Warrant*. *Counterfeiting*. *Coin*.
SISTERS, when to inherit property of brothers, and of each other, 413. 414.
not punishable as accessories, after the fact, to felony of each other, or of a brother, 746.
SLANDER, in action for, plea that the words were true, though not supported, shall not be proof of the malice alleged, 608.
action for, to be brought within two years, 699.
SLAVE, punishment for kidnapping, &c. persons, to sell, or selling them as, 719. See *Kidnapping*.
SLEIGHS, or *sleds*, not to be drawn by horses, without bells, 389.

SMALL POX, spreading of, to be prevented by selectmen and board of health, 213. 249.
notice of, to travellers, to be given by red flags, &c. 213.
to selectmen or board of health, by householders and physicians, 213.
penalty on householders and physicians, for not giving notice, 213. 214.
hospitals for sick, to be provided, 212. 213.
See *Inoculation. Hospital. Board of Health. Quarantine.*
SNIPES. See *Birds.*
SNOW, to be removed from roads, or trodden down, 243—penalty on towns for not removing, &c. 246.
SODOMY, how punished, 741.
SOLDIER, meaning of, in militia law, 146.
in companies raised at large, compensation of, and how obtained, 135. 136.
pay of, when called into actual service, 136. 137.
when discharged from service, 137.
to be detained to pay his fines, 143.
to be relieved by general court, if wounded, &c., while on duty, 136.
family of, to be relieved, if he be killed, &c., 136.
in actual service, how treated when arrested for trial by court martial, 144.
when accused of a capital crime, &c., how to be treated, 143. 144.
may make nuncupative will, 417.
property of, how secured, when killed, &c., 144.
remedy of, when wronged by his officers, 143.
not to be quartered in any house, in time of peace, without the owner's consent, 24.
how to be so quartered, in time of war, 24.
SOLE LEATHER, inspector general of, to appoint deputies, on application of selectmen, &c. 273.
to take bond of deputies, and be answerable for them, 273.
may receive part of deputies' fees, 274.
to make return, yearly, of amount, &c. inspected by him and deputies, 273.
not to be sold before it is inspected, weighed and sealed, except, &c. 273.
penalty for buying or selling, before inspection, 273—to whose use recovered, 273.
inspectors of, to inspect, on request, in town; and when in other places, 273. 274.
when they may require leather to be brought to them, 273.
fees of, for travel, and for inspecting, and by whom paid, 274.
to have scales, weights and seals, and to weigh and mark, 274.
sorts and denominations of, and how marked, 274.
penalty for counterfeiting or altering marks, and to whose use recovered, 274.
on inspector, when weight varies from his mark, &c. 274.
by whom recovered, 274.
manufacturer of, to have exclusive right to stamp his name and residence, 274.
stamp of, a warranty, 274.
not deemed merchantable, unless stamped by manufacturer, 274.
penalty for fraudulent stamping of others' names, 274.
SOLE TENANCY, may be pleaded in abatement or in bar, 611.
costs before such plea filed, not allowed to party so pleading, 611.
SOLITARY IMPRISONMENT. See *Sentence. State Prison. Houses of Correction.*
SOUTHWORTH'S OLEOMETER. See *Oil.*
SPECIAL ADMINISTRATOR, during pendency of suit concerning a will, &c. powers and duties of, 426.
See *Administrator. Appeal*, 5.
SPECIAL COMMISSIONERS. See *County Commissioners.*
SPECIFIC PERFORMANCE of written contracts may be enforced by supreme court, in suits therefor, 500.
of contract, by a person who has deceased, to convey real estate, may be sought by bill in equity against his heirs, devisees, executors, &c. 473.
supreme court, in such case, may authorize and require executors, &c. to convey, 473.
may require heirs or devisees, if in the state and competent to act, to convey, instead of executors, &c. or to join in conveying, 473.
conveyance, so made, shall pass the estate, as if made by the contracting party, 473.
if defendant refuse so to convey, court may enter judgment that plaintiff recover possession of the land, and may issue a writ of seizin, 473.

SPECIFIC PERFORMANCE, *(Continued.)*
foregoing provision not to prevent court from enforcing their decree by other process, 474.
when person, to whom conveyance was to be made, is dead, those who would have had the estate, if it had been conveyed, may sue for performance, 474.
in what manner *executor, &c.* of person to whom conveyance was to be made, may obtain decree for conveyance, 474.
conveyance, or tender thereof, under such decree, shall bind the other contracting party to a performance on his part, 474.
SPENDTHRIFT, word how construed, in provisions respecting guardians and wards, 493.
innkeepers and retailers not to sell strong liquor to, under penalty, when forbidden by selectmen, 377
may be sent to workhouse, 187.
to be put under guardianship; proceedings previous thereto, 490. See *Guardian, of Spendthrifts.*
all contracts of, except for necessaries, and all gifts, sales, &c. of, are void, if made after filing of complaint against him in registry of deeds, 490. 491.
SPIRITOUS LIQUOR, sellers of, without license, in the open air, booths, &c. or gaming houses, how to be arrested, secured and punished, 779. 780. See *Licensed Houses. Spendthrift.*
SPRINGFIELD, land in, ceded to U. States, 67.
SPRUCE, boards, &c. See *Lumber.*
SQUIBS, not to be kept for sale, nor lighted, thrown, &c. without license, 401. See *Rockets.*
STAGE COACHES. See *Drivers. Public Vehicles.*
STATE, word in statutes, applied to different parts of U. States, how construed, 61.
STATE HOUSE, and lands appurtenant, who to have care of, 93. 155.
penalty for defacing, &c. walls or other parts of, 94.
trespass on, to be prevented, &c. by sergeant at arms, &c. 156. See *Sergeant at Arms.*
STATE PAUPERS. See *Paupers. Shipmasters.*
STATE PRISON, in Charlestown, to be the general penitentiary and prison of the Commonwealth, and to remain under the care of the warden thereof, 790. 93.
to be visited, yearly at least, by governor and council, for examination of its concerns, and inquiry into alleged abuses, &c., 798.
additional buildings, or alterations in those existing, may be ordered by governor and council, 798.
appropriations for support of, how to be paid to warden, on governor's warrant, 798.
offences committed in, and in precincts of, may be tried in Suffolk or Middlesex, 797. See *Suffolk.*
officers of, and their several salaries, 790. 791—to have no perquisites, &c., 791.
appointed by warden and inspectors, not to be employed in any other business, 791.
punishment of, for unlawful indulgence to convicts, 796.
three inspectors of, to be appointed by governor, to hold office during his pleasure, but not more than four years, unless reappointed, 790.
inspectors to establish rules for direction of officers of in governing, employing, &c., the convicts, and preserving the public property, 791.
rules of, when approved by governor, &c., to be certified by clerk of prison and delivered to warden, 791.
to visit prison, and inspect books and all concerns thereof, 791. 792.
to report to governor, &c., all violations of law, &c., by warden, chaplain or physician and surgeon, 792.
to remove unfaithful, &c., officers, who hold place at their pleasure or that of the warden, 792.
to make detailed report, to governor, &c., in September, every year, of all concerns of prison, 792.
chaplain, how appointed, and tenure of office, 790—duties of, 792.
physician and surgeon, how appointed, and tenure of office, 790.
duties and powers of, 792.
warden, how appointed and tenure of office, 790.
shall give bond, with sureties approved by governor, &c.; penalty and condition thereof, 792.
shall have charge, &c., of prison, and all the property pertaining thereto, 792.
shall be treasurer, and receive, pay, and account for all moneys granted for support of prison, 792.
duty of, as to rendering a full yearly account of all receipts, &c., 793.
discretionary power of, to allow superintendent of stone department, and his assistant, a sum in addition to their salaries, 791.

STATE PRISON, *(Continued.)*
warden to appoint deputy warden, and all officers, not above mentioned, subject to approval of inspectors, 790.
may appeal to governor, &c., if inspectors do not consent to removal of such officers by him, 790.
to report to inspectors all his appointments of officers, 791.
and his deputy shall reside constantly within precincts of the prison, 791.
shall propose to the inspectors such alteration of rules, &c., as he may deem advisable, 791
to make all contracts on account of prison, to be approved by inspectors, 793.
may sue and be sued, and his successor also, on all such contracts, 793.
death of, shall not abate suit brought on such contract, 793.
in what manner, and on what notice for proposals, he shall make contracts, 793.
duty of, as to taking bills of supplies, &c., furnished, 793. 794.
as to removing convicts from jails to state prison, 794. 766. 767.
when satisfied that any convict has been before sentenced, &c., 811.
shall receive convicts sentenced to the prison by courts of U. States held in the state, 795.
shall have custody and government of all convicts, according to law, and their sentences, 794.
shall use all necessary means to maintain order, &c., and prevent escapes, 798.
discretionary power of, as to rations for convicts, 797.
as to furnishing small sums of money to convicts on their discharge, 798.
deputy warden, to have all the powers, duties, liabilities, &c. of warden, when warden is absent or his office vacant, 794.
may be required to give bond, if office of warden become vacant when governor and council are not in session, 794.
shall have salary of warden, in such case, till a new warden enters on his duties, 794.
hospital of, to be visited daily by the physician, and journal of admissions thereto, &c. kept by him; contents of such journal, 792.
subsistence and diet of convicts in, to be under physician's direction, 797.
convicts in, vacate all offices, held by them under laws of the state at time of sentence, from time of commitment, 795. See *Pardon*.
sentenced, &c. to solitary imprisonment, how to be confined and fed, 795.
sentenced to hard labor, how to be employed and kept separate, 798.
how to be proceeded with, when additional sentence is to be imposed by municipal court, on account of former convictions, &c. 811. 795. See *Sentence*.
entitled to trial by jury, in such cases, and to appeal to supreme court, 795. 791. 811. 812.
punishment of, for escaping or attempting by violence, to escape, 796. See *Escape*.
of persons employed in or about the prison, for delivering to, or depositing for, convicts, any articles without warden's permission, 796.
sustenance, rations and yearly clothing of, 797.
to be treated kindly by warden and other officers, while they are obedient, industrious, &c. 798.
to have decent clothing, on leaving prison, 798.
STATUTES, enacting style of, 47.
to be *promulgated* by printing and publishing by authority of general court, 58.
one copy of, so published, to be deposited in secretary's office, 58.
copies to be distributed annually, to divers officers and institutions, 58. 59.
to take effect at the same time throughout the state, 59.
on the 30th day next after approval, unless otherwise expressly prescribed therein, 59.
of incorporation, to be deemed public, with incidents of public acts, 59.
words and phrases in, to be construed according to common usage of language, unless, &c. 60.
technical words in, to be construed technically, 60.
words importing the singular number, may be applied to the plural, and vice versa, 60.
words importing the masculine gender only, may be applied to the feminine, 60.
words importing a joint authority to more than two, shall give authority to a majority, unless, &c. 60.
divers other words, how to be construed, 60. 61.
general, may be referred to in declarations or other pleadings, by specifying the chapter, or mentioning, in general terms, the subject thereof, 608.
indictments not to be invalid for omission to charge offences to have been committed contrary to the form of, 762.
See *Evidence*. *Bill or Resolve*. *Repeal*. *Revised Statutes*. *Following Section*. *Preceding Section*.

STAVES. See *Hoops and Staves.*
STAY, of execution. See *Execution. Review. Error.*
STOCKS, public, and in bridge, turnpike, and monied corporations, in and out of the state, taxable to owner, 75.
STONES, punishment and damages for wilfully digging up, &c. without license, 727. 630
STOVE, one iron, used for warming house, exempted from execution, &c. 589. 549
STRAITSMOUTH ISLAND, ceded to U. States, 58.
STRAY BEASTS, when taken up, notice of to be entered with town clerk, 396.
notice of, to be entered by clerk in a book, 396.
how to describe them, 396.
how to be cried, and what notifications of, to be posted, 396.
of $10 value, how to be appraised, 396.
appraisers of, by whom appointed and sworn, 396.
owner of, to have restitution of, if he appear within 3 months, 396.
to pay charges, before restitution, 396.
charges for keeping, &c. how determined, 396.
finder of, may sell at auction, if owner do not appear, &c. within 3 months, 396.
how to give notice of sale, 396.
penalty on, for not giving notice, &c. 397.
to deposite net amount of sale in town treasury, 396. 397.
if not sold, the owner may, within a year, have restitution, on paying charges, 397.
if sold, owner to have the money, if he appear within a year, 397.
the proceeds, if owner do not appear, to be divided between the town and the finder, 397.
penalty for taking, without paying charges, 397.
to whose use, and how recovered, 397.
if taken up within 10 miles of Agricultural Hall in Brighton, how finder shall proceed, 396.
STRIP. See *Waste.*
SUBMISSION, to arbitration, 670. See *Arbitration.*
SUBORNATION, of perjury. See *Perjury.*
SUBPŒNA, *writ of*, in suits in equity, may be issued from clerk's office in term time, or vacation, 561.
form, teste and service of, 561.
for witnesses, in civil cases, may be issued by every justice of the peace, and clerk of a court of record, 530. 570. 571.
may be issued by coroners, when they take inquests, 769.
how and by whom served, 571.
form of, to be as heretofore, 571—fee for, 707. 709.
in criminal cases, when may be issued by a justice, 531.
See *Attorney General. District Attorneys. Justices of Peace.*
SUFFOLK, jurisdiction of county of, in common with Middlesex, on part of Charles river, 159.
process from, may run into, &c. said common jurisdiction, 159.
offences within banks of said river, may be tried in county where process is first issued, 159.
courts and magistrates of, have concurrent jurisdiction with those of Middlesex, of offences committed in state prison and its precincts, 797.
county property of, vested in city of Boston, 159.
county buildings of, to be provided by city of Boston, 160.
board of accounts in. See *Board of Accounts.*
ways in Boston, to be under direction of mayor and aldermen, as of commissioners in other counties, 237. 238.
persons aggrieved by their doings, as to ways, to apply to common pleas for a jury, 238.
part owners to become parties to petitions, as in other counties, 238.
such jury to try the case at bar of said court, 238.
shall have a view, if it be requested, 238. See *Highway*, 1.
SUNKEN ROCKS, buoy on, ceded to U. States, 57.
SUMMONS, for witnesses. See *Subpœna.*
SUNDAY. See *Lord's Day.*
SUPERSEDEAS, of execution. See *Execution. Review. Error.*
SUPREME JUDICIAL COURT, general jurisdiction and authority of, in matters civil and criminal, 499. 500.
shall be the supreme court of probate, 519.

SUPREME JUDICIAL COURT, *(Continued.)*
may frame new writs, when necessary, and control the form, &c. of writs framed by court of common pleas, 499. 547.
may regulate changes in writs, in all courts of the state, 548.
shall have supervision and control of rules for conducting business of probate courts, 516.
shall establish rules of practice, and for simplifying pleadings, &c. 500.
See *Rules of Court.*
shall try all capital offences, 499. 501. 504. 759.
in *Suffolk*, has original jurisdiction of all offences, concurrently with municipal court, &c. 501. 512.
to determine all bills in equity to redeem mortgages to the Commonwealth, 639.
has appellate jurisdiction, as to additional sentences awarded by municipal court on convicts in state prison, 811. 812. 795. 796.
in all counties, has appellate jurisdiction of indictments for libel, nuisance, conspiracy, and crimes punishable by more than 5 years hard labor, 511. 532. See *Appeal.*
jurisdiction of, in equity. See *Equity. Bill in Equity.*
terms of, for hearing law questions and for trial of jury cases, &c. when to be held in different counties, 505. 506. 507.
provisions for adjournment of, when no justice thereof is present, 503. 504.
there shall be a chief justice of, and three other justices, 499.
when chief justice is absent, or his office vacant, his duties shall be performed by the senior justice qualified to act, 505.
it is for the security of the rights of the people, and of every citizen, that said justices hold their offices during good behavior, 24. 25.
justices of, how appointed, and tenure of office, 36. 41.
not to hold certain other offices, 46. 50. 51.
opinions of, when may be required by governor and council, and by each branch of the legislature, 41.
severally conservators of the peace, throughout the state, 748. 749. 500.
may issue warrants, in vacation, for apprehension of offenders, 751.
salaries of, and how paid, 25. 507.
three justices of, a quorum for doing any business that might be done by the full court, 501.
full court to hear all motions for new trials, issues in law, and questions on special verdicts, 501.
all questions on exceptions from common pleas, and on cases stated by parties, 501.
all questions reserved, or raised on exceptions allowed by, or taken to opinion of, a single judge, 502. 510.
shall try all capital indictments, 501.
shall appoint clerks (except pro tempore) and establish general rules of practice, 501.
shall attend, in counties where no law term is held (except Duke's county,) for trial of capital indictments, 504. See *Duke's County.*
provisions for convening and giving notice, in such case, 504.
power of, at special term that may be held in such case, 504.
when present at a term to be held by one justice, has the same power, as at a stated law term, 503.
one justice of, may arraign prisoner indicted capitally, and sentence him, if he plead guilty, 501. 759.
may assign counsel to such prisoner, if he put himself on trial, and may make preparation therefor, 501. 759.
may reserve questions of law for consideration of full court, and shall make report of the case, 502.
at a law term, if the others are absent, shall have same power as at other terms, 503.
See *Equity. Exceptions.*
law term, in Berkshire, may be commenced by one judge, by trial of jury cases, &c. 505.
when held for two or more counties, court to have the same power as to cases in each, as if held in the county where they are pending, 505.
no issue to be tried by a jury, in such case, except in county where suit is pending, unless by consent of parties, 505.
provisions, as to process, separate dockets, the several clerks' duties, &c. where such law terms are held, 505. 506.
how judgments may be rendered and entered, when actions are continued nisi; and the clerk's duty, 506. See *Judgment.*

SURETIES, on bonds given to judge of probate, how may be relieved, &c., 450. 492.
See *Bond, given to judge of probate. Guardian.*
on replevin bonds, liability of, and limitation of actions against, 559. 670.
when may be discharged, and others substituted, in order to render them competent witnesses, 577.
See *Witnesses. Bail Bond. Sureties of the Peace. Recognizance, in criminal cases. Poor Debtors, imprisonment of.*
SURETIES OF THE PEACE, in what case may be required, in addition to punishment prescribed by law, 766.
proceedings, in such cases, on breach of recognizance, to be the same as in others, 766.
may be required, without process, of persons who make an affray, threaten, &c., in presence of courts or magistrates, 750.
how may be required, of such as go armed with a dangerous weapon, having no cause to fear an assault, violence, &c., 750.
may be required, on complaint, &c., of those who threaten to commit an offence against the person or property of another, 749.
have the same authority to surrender their principal, as if they were his bail in a civil action, 750.
See *Bail.*
shall be discharged, upon such surrender, from liability for subsequent acts of the principal, 751
complaint to be made on oath and subscribed, before a warrant shall issue, 749.
warrant for arresting party complained of, what to recite, and precept thereof, 749.
deft., when brought before a magistrate, to be heard in his defence, 749.
shall be discharged, if there be no just cause of fear, 749.
may be required to enter into recognizance, with sureties, to keep the peace for a term not more than six months, 749.
shall not be bound over to the next court, unless he be charged with some other offence, &c., 749.
shall be discharged, on complying with order to recognize, 749.
shall be committed to jail or house of correction, &c., if he do not recognize, 749.
may be discharged from jail, &c., on giving the security that was required, 750.
may recognize anew, before any justice, when surrendered by his sureties, 751.
may be ordered to pay costs of prosecution, or part thereof, and be committed till they are paid, or he be discharged, 749.
may appeal from magistrate's order to common pleas or municipal court, on recognizing as required, 749. 750.
witnesses may be required to recognize to appear at appellate court, 750.
authority of appellate court, in such cases, 750.
if appeal be not prosecuted, recognizance to remain in force without affirmation of magistrate's order, and stand as security for costs, 750.
penalty of recognizance, may be remitted in part by court, if circumstances render it just, &c., 750.
complainant may be ordered to pay costs, if his complaint be frivolous, malicious, &c., 749.
SURGEON, how to be licensed, &c., 215.
licensed and in practice, exempted from serving as jurors, 578.
See *Medical Society. Dead Bodies. Physic and Surgery.*
and physician of the state prison. See *Physician. State Prison.*
punishment of, for being present professionally, at a duel, 717.
one to each regiment and battalion of militia, 106—how appointed, 112.
one to every two companies of artillery, cavalry, &c., not attached to a regiment, 106.
how appointed, 112.
penalty on for receiving any fee for certificate of inability to do military duty, 134.
SURGEON'S MATE, one to each regiment, 106—how appointed, 112.
SURGERY. See *Physic and Surgery. Medical Society.*
SURRENDER of any interest in lands, must be in writing, or by operation of law, 408.
of principal, by bail, 562. 563. 564. See *Bail.*
by sureties in a recognizance to keep the peace, 750. 751.
by poor debtors, and their sureties, on a bond for jail limits, 594.
SURVEYORS of WAYS, to be chosen by towns, and sworn, 180. 243.
not obliged to serve but once in three years, 185. 243.
penalty for refusing to serve in office of, and for neglect of duty, &c., 185.
liable to indictment for defective highways, 185.
to towns for amount of fines, &c., imposed for defective ways, 185.

SURVEYORS of WAYS, *(Continued.)*
may remove all obstructions on ways, except fences placed to prevent spreading of disease, 243.
shall forthwith remove, &c., snow, 243.
may not incommode buildings, &c., by watercourses, unless, &c., 243.
limits of, to be assigned yearly, by selectmen or assessors, 244.
list of persons in limits of, and their assessments, to be delivered to, 244.
to give notice of amount of highway tax, to inhabitants, 244.
of time and place for working on roads, 244.
to expend, on repairs, money paid them by persons taxed, 244.
to render to assessors lists of those who have not worked out or paid their tax, 245.
See *Assessors.*
power of, when tax is insufficient, or is not paid, &c., 245.
when towns do not vote a sum sufficient to repair ways, 245.
persons employed by, how to be paid, 245.
may be authorized by towns to contract for making or repairing ways, 245.
to collect highway taxes, not seasonably paid, 245.
when to exhibit tax bill to selectmen, 245. See *Assessors.*
to account to selectmen for expenditure of taxes paid by collector, 245.
penalty on, for not so exhibiting and accounting, 245. See *Collectors.*
to pay unexpended money to town treasurer, 245.
penalty on, for not so paying, and how recovered to town's use, 245.
of private ways and bridges, 248. See *Private Bridges and Ways.*
of shingles and clapboards. See *Shingles. Clapboards.*
of lumber. See *Lumber.*
SUTLERS, liable to rules, &c. for troops in actual service, 139.
SWAMPS, improvement of. See *Meadows, &c.*
SWEARING profanely. See *Profane cursing, &c.*
SWINE, less than six months old, exempted from taxation, 76.
kept in town where owner does not reside, to be taxed to him in such town, 77.
to be impounded, if found at large, contrary to law, 199. 664.
for doing damage, 665.
See *Distraining. Field Drivers. Pound Keepers. Replevin.*
one, of debtors, exempted from attachment and execution, 549. 589.
SWORDS, or sabres, to be provided by members of cavalry and artillery, 110.
penalty for deficiency of, 121—how recovered, 124. 125.
SWORN, word includes *affirm*, where by law affirmations may be substituted for oaths, 60.

TALESMEN. See *Jurors. Inquest.*
TARPAULIN COVE, land at or near, ceded to United States, 57.
TAUTOG and BASS, not to be taken, in certain waters, by persons living out of the state, to be carried away in certain vessels, 393.
TAVERNS. See *Licensed Houses.*
TAXATION, to be by consent of the people, or their representatives, 24.
all property, not expressly exempted, subject to, 75.
of real estate, includes buildings, &c., affixed thereto, 75.
of personal estate, what included therefor, 75.
what property exempted from, 75. 76.
of polls. See *Poll Tax.*
of ships and vessels, whether at home or abroad, 75.
of all money at interest, more than the owner pays interest for, 75.
of all public stocks, &c., and stocks in monied corporations, &c., in and out of the state, 75.
of debts due to, more than are owed by, persons taxed, 75.
of costs, how made and regulated, 706. 771. See *Costs.*
TAXES. 1. *Where, and to whom, to be assessed.*
on *real estate*, generally, in town where it lies, to him who is owner or possessor on 1st of May, 76.
school tax, on all lands in the town, if occupied by owner, in the district where he lives, 222.
on real estate, &c., of manufacturing corporations, in district where situate, 222.
of non-residents, all in one district, where assessors shall determine, 222.

TAXES, *(Continued.)*
parish tax, in owner's parish, wherever estate may be, 204.
mortgagor deemed owner, till mortgagee takes possession, 76.
undivided estate of persons deceased, to heirs or devisees, without designating their names, 77.
See *Contribution.*
estate held as ministerial fund, to treasurer of society, 77.
on *personal estate,* to owner, in town where he is inhabitant on 1st of May, with *exceptions,* as to place of taxing, 76. 77.
1st. goods, &c., stock in trade, in towns where owners do not reside, to be taxed in such towns, if owners there occupy stores, wharves, &c., 76. 77.
2d. machinery for manufacturing, owned by corporations, taxed where situated.
3d. horses, mules, neat cattle, sheep and swine, kept in towns where owners do not reside, to be taxed there, 77.
4th. property of *minors* under guardianship to be taxed to guardian, where he is inhabitant, 77.
of other *persons* under guardianship, to guardian, where the ward is an inhabitant, 77.
5th. property held in trust, income whereof is to be paid to married woman, to her husband, where he is inhabitant, 77.
where income is to be paid to other person, to such person where he is inhabitant, 77.
where income is to be paid to person out of the state, to trustee, where he resides, 77.
6th. property in accumulating fund, for future benefit of heirs and others, to such heirs, &c., if within the state, 77.
if they are without the state, to the donor, or his legal representatives, till a trustee is appointed, 77.
7th. undistributed estate of persons deceased, to executors, &c., where deceased last dwelt, 77.
8th. property held as ministerial fund, to treasurer of society, in town where society holds its meetings 77.
on *property mortgaged* or pledged, to the party in possession, 77.
on *partners'* property, may be to partners jointly, in towns respectively, where their business is transacted, 78. See *Partners.*
on *proprietors of general fields,* 359.
2. *How to be assessed.*
treasurer to transmit to assessors warrants for assessing state taxes, 78.
to send therewith blank invoices, valuation books, &c., 78.
to send also blank forms of warrants, notices, tax lists, and certificates of assessments, for state, county, and town taxes, 78.
how to proceed, when tax is laid on unincorporated places, 82.
all taxes to be assessed by rules in chapter 7th, and in tax acts, 78.
if assessors neglect to assess state tax, county commissioners to appoint other persons to do it, 78. 79.
assessors to give notice to have lists of taxable polls and estates brought to them, before they assess, 79.
may require that such lists be sworn to, 79.
shall take them as true, unless oath thereto is refused, 79.
shall estimate property, of which no list is given, 79.
such estimate conclusive on those who have no reasonable excuse for bringing in lists, 79.
shall make a valuation of all taxable property, 79.
may include state, county, and town taxes, or any two of them, in same assessment, 79.
in Boston, may assess taxes for county and city purposes, separately, or as city taxes only, 79.
may add 5 per cent. to amount of tax, as fractions may make convenient, 79.
shall deposite lists of valuation and assessment, before taxes are committed for collection, in their office, &c., for inspection, 79. 80.
what such valuation list shall exhibit, 80.
form of such tax list, 80.
in unincorporated places, to proceed as in towns, 82.
shares in manufacturing corporations, when taxed, what shall first be deducted from value of, 77. 222
highway tax to be assessed like other town, 244.
parish taxes, to be assessed like town, 202.
not to be assessed on corporations, 203.

TAXES, *(Continued.)*
county taxes, to be apportioned according to last state valuation, 163.
no assessment of, till treasurer has rendered his accounts to general court, 164.
3. *How to be abated, and discount on.*
assessors may make reasonable abatement, where any one is overrated, 81. 223.
if assessors refuse to abate, county commissioners may do it, 81.
appeal to commissioners to abate, to be within a month after assessors refuse, 81.
no abatement, if party has not brought in a list, &c., to assessors, 81.
nor if he does not apply therefor within 6 months from date of tax bill, 81.
party entitled to certificate of abatement, to be exhibited to collector, 81. 84.
and to be reimbursed, with charges, if he has previously paid, 81.
to pay costs legally accrued before abatement, 81.
and costs, &c., before he exhibits certificate of abatement to collector, 34. See *Collector.*
tax on proprietors of general fields, how abated, 359.
towns and parishes may authorize *discount* on, for punctual payment, 81. 203.
4. *How to be collected.*
may be collected of person intended to be taxed, though he be misnamed, 83.
to be collected, by collector or constable, according to assessors' warrant, 33.
by sheriff or deputy, when town does not chose collector, 81. 87.
sheriff, &c., to post, in the town, copy of tax list and warrant, 87.
when treasurer is collector, he may issue warrant to constable or sheriff, &c., to collect, 87. 183. 203.
such warrant to be like that of assessors, and returnable in 30 days, 87.
sheriff not to distrain, until 30 days after posting list, &c., 87.
may distrain, like collectors, after 30 days, 87.
collectors to complete collection, though term of office has expired, if not removed from office, 87.
to levy tax by distress and sale, after demand and refusal of payment, 83. 84.
what property exempted from distress for taxes, 84. 110.
collector, 14 days after demand, may commit to jail, if tax be not paid, nor property found, 84.
may forthwith distrain or commit, by assessors' order, if they doubt credit of person taxed, 84.
to keep distress 4 days at least, and sell by auction within 7 days, 84.
to post, in the town, notice of sale, 48 hours at least before he sells, 84.
may adjourn sale once, not more than 3 days, 84.
to post notice of adjournment, at place of sale, 84.
to return to owner surplus, &c. on demand, after deducting tax and charges, 84.
to give jailer, when he commits for taxes, copy of warrant, with statement of tax, costs, &c. 84.
may demand payment of persons who remove without paying, wherever found, and if they do not pay, may forthwith distrain or commit, 84.
in what cases collector may sue for taxes, 84. 85.
may, after demand, distrain, within 9 months, produce of real estate, cattle, &c. thereon, when such estate is taxed to occupant who is not owner, 85.
when demand, in such case, need not be made, 85.
real estate, taxes on, a lien therefor for 2 years, 85.
such estate may be sold 14 days after demand on person taxed, or on occupant, 85.
and after 2 years, if not alienated in mean time, 85.
advertisement of sale of real estate, 3 weeks successively, in what newspaper, &c. 86.
to state names of owners, amount of taxes, &c. 86.
to give old and new name of town, where name has been changed within 3 years, 86.
notice of sale also to be posted in town, like advertisement, 86.
what evidence competent, of demand and notifications, 85. 86.
sale by auction to be made of so much as will pay taxes and charges, 86.
or of rents and profits of whole lot for limited time, or whole lot itself, when not conveniently divisible, 86.
when whole lot is sold, surplus to be paid to owner, 86.
may be adjourned from day to day, not exceeding 7 days, 86.
notice of adjournments, how and when to be given, 86.
collector to give deed to buyer, of rents, &c. or of estate, 86.
what recitals deed shall contain, 86. 87.
owner and his heirs, &c. may redeem estate sold, within 2 years, 87.
terms of redemption, 87.

TAXES, *(Continued.)*
on non-resident owners' estates, may be collected as on estates of others, 85. 246.
no demand necessary, before levy, unless the owner have an attorney in the town, 85.
if owner have such attorney, demand to be made on him before levy, 85.
and sale not to be advertised till 2 months after such demand, 85.
such attorney to be constituted by writing, and notice thereof filed with town clerk, 85.
on *proprietors of general fields*, to be collected like town taxes, 359.
of private ways and bridges, how collected, 248.
highway tax, may be collected like others, or may be worked out, 244.
pews, taxes on. See *Meeting houses.*
TEACHERS. See *Schools. Academies.*
TENANT, and his assignee, who hold without right, after determination of a lease, may be proceeded with, as in cases of forcible entry and detainer, 628. See *Forcible Entry, &c.*
paying rent for real estate, if taxed therefor, may retain half of tax paid by him, out of the rent, unless there be an agreement to the contrary, 76.
liable, in such case, when landlord is taxed, to pay him half the tax, 76.
when liable for unauthorized sales by auction, in premises occupied by him, 287.
convicted of keeping a house of ill fame, liable to landlord, as in case of forcible entry, &c. 740.
at will, estate of, determined by his giving or receiving 3 months' written notice, 412.
if rent be payable oftener than once in 3 months, the time of such notice may be equal to the interval between rent days, 412.
if he neglect to pay rent due, entitled only to 14 days' notice to quit, 412.
See *Estates at Will.*
for years, or for life, does not forfeit his estate, by a conveyance purporting to grant a greater estate 405. See *Deed.*
not entitled to partition, unless 20 years of his term are unexpired, 618.
See *Freeholder. Terms. Lease.*
in tail, and for life. See *Estates Tail. Deed. Dower. Curtesy. Waste.*
TENANTS IN COMMON, how constituted by conveyance or devise, 406.
lands of, how taken in execution, and with effect, 464. 465.
may be compelled to divide lands, by writ, &c. of partition, 618. See *Partition.*
penalty on, for cutting wood, or other waste, during pendency of process for partition, 630.
may sue severally, or all or any two may unite in suit, for recovering lands, &c. 611.
liable to each other for injury to estate in their alternate occupancy, after partition, 621.
See *Common Lands, &c. Mills*, 2.
TENDER of payment may be made after money is due and payable, with the same effect as at the time prescribed for payment, 607. 608.
may be to plaintiff or his attorney, with costs incurred after action brought, if made four days at least before return day of the writ, 608.
if accepted, in such case, plaintiff or his attorney shall, if requested, sign a notice thereof to the officer, 608.
not to be valid, unless defendant pay officer any further costs of service incurred after tender and before notice thereof, 668.
may be made to master of house of correction, by convicts, for their support, &c. as in other cases, 781.
if not accepted, may be pleaded, and the money brought into court, 608.
of gold, by banks, not legal, unless it is weighed with weights sealed by state treasurer, &c. 314.
of amends, may be made before action brought, by casual and involuntary trespasser on lands, or he may bring amends into court without previous tender, 631.
defendant to disclaim title, in such case, 631.
of damages caused by flowing lands, 681. See *Mills*, 1.
to redeem mortgages, and lands, &c. taken on execution. See *Mortgage. Redemption.*
TEN POUND ISLAND, ceded to United States, 57.
TERMS for more than 100 years, while 50 are unexpired, to be regarded as estates in fee simple. 411.
for years, how taken, &c., on execution, 591. See *Execution, levy of.*
TESTAMENTARY GUARDIAN & TRUSTEE. See *Guardian. Trustees.*
THACHER'S ISLAND, light houses on, ceded to United States, 56.
THEATRICAL EXHIBITIONS, may be licensed and regulated by selectmen, 400.
penalty for setting up, advertising, &c., without or contrary to license, 400. 401.
promoters of, without license, may be bound to keep the peace, and imprisoned for refusing, 401
license of, how long to be in force, 400.

THEFT. See *Larceny.*
THREATENING, in presence of a court, &c., to kill or beat, or do other violence, a cause for ordering the party to recognize to keep the peace, 750. See *Sureties of the Peace.*
letters, &c., with intent thereby to extort money, how punished, 718.
speeches, utterers of, may be stayed and arrested by order of justices, 529.
harm to members of legislature, for official acts, &c., how punishable, 32. 33.
TIMBER, carried away by floods, may be taken by owner, on paying, &c., 389.
when to be property of owner of land where found, 389.
floating logs, &c., penalty, &c., for destroying, &c., owner's marks on, 390.
possession of with marks cut out, &c., presumptive evidence of guilt, 390.
punishment, &c., for cutting, destroying, or carrying away another's, 727. 631.
on Connecticut river, not to be floated, except in rafts, 806.
rafts to be under care of persons sufficient to manage them, 806.
damage, done by, to bridges or dams on said river, if by such rafts, to be paid for by persons in fault, 806. See *Lumber. Ship-timber.*
TINKER'S ISLAND, part of, ceded to United States, 57.
TOLL, for grinding grain, not to be more than 1-16th part thereof, 684.
on rail roads, how regulated, 348. See *Rail Road, &c.*
rates of, on turnpike roads, when demandable, &c., 338. 339.
right to, transferred by sale of franchise on execution, 365.
TOMBS, exempted from taxation, 76.
from attachment and execution, while used, &c., 549. 589.
punishment for wilfully destroying, defacing, &c., 742.
TOOLS, of mechanics, &c., exempted from taxation, 76.
necessary for one's trade, &c., exempted from distress for taxes, 84.
to value of $50, exempted from execution, &c., 589. 549.
TORTURING horses, oxen or other animals, how punished, 742.
TOWN, word includes districts and cities, unless, &c., 61.
right of, to send representatives to general court, and liability for not sending, 31.
boundary lines of, to be perambulated, 176. 177. See *Boundary Lines.*
inhabitants of, to have powers and duties of bodies corporate, 177.
may sue and be sued, and appoint attorneys, &c., 177.
competent witnesses in suits by and against, 576. 577.
writs, &c., against, how to be served, and how long before return day, 551. 549.
may hold real estate, and convey it by vote or deed of agents, &c., 177.
may hold property in trust for support of schools, &c., 177.
may hold and dispose of personal property for public uses, 177.
may make orders for disposal, &c., of property, 177.
may accept or discontinue town or private ways, 178.
may make contracts necessary for exercise of corporate powers, 177.
may grant money for schools, &c., and all other necessary charges, 177. 178. 214. 242. 244. 392. 219. 370.
may make by-laws, subject to approval of common pleas, 178.
may annex penalties for breach of by-laws, 178.
how, and to what uses, such penalties may be recovered, 178.
by-laws of, binding on persons, who enter the town, as well as on inhabitants, 178.
to be published in newspaper in the county, 178.
officers of, what and how to be chosen, at annual meeting, 180. 276. 278. 290.
what may be appointed by selectmen, 181.
penalty on, for not choosing selectmen or assessors, 180.
liable to action of enginemen, if treasurer refuse to pay them amount of their poll-tax, 195.
and to what extent for damages caused by defective roads, bridges, &c. See *Highway,* 2. *Town and Private Ways. Bridges.*
TOWN CLERK, to be chosen at annual meeting, by written ballots, 180.
to be sworn, 180. 182.
pro tempore, may be chosen when clerk is absent from meeting, or his office vacant, 182.
may be appointed by selectmen, in other cases, 182—to be sworn, 182.
to make record of his election or appointment, 182.
to record all votes, 181.

TOWN CLERK, *(Continued.)*
to swear town officers who come to him to be sworn, 182.
to record oaths administered by him, 182.
to file certificates of oaths administered by justices, 182.
may swear appraisers, &c., of estates of deceased persons, if no justice in town, 182.
to return certificate of such oath to probate office, 182.
may appoint and swear appraisers of cattle impounded, 666.
to record births and deaths, specifying dates, and names of parents, &c., 182.
to file copies of physicians' and surgeons' licenses, 216.
to enter notices of lost goods, and stray beasts, 395. 396.
may issue warrant to appraise such goods, &c., 396.
duty and fees of, as to entering notice of attachments of certain property, 550.
and liability of, as to drawing jurors, 579. 583.
TOWN MEETINGS, annual, in March or April, 178.
occasional, when selectmen order, 178.
to be held in pursuance of warrant under selectmen's hands, 178.
may be called by minority of selectmen, if majority be dead, &c. 179.
may be called by a justice, if selectmen unreasonably refuse, 179.
how to be notified, 178. 179—may be adjourned, 179.
warrant for, how to be directed, 178. 179.
shall express time, place and purposes of meeting, 178.
shall contain all subjects which 10 or more voters shall, in writing, request selectmen to insert, 178. 179.
may include two or more distinct meetings, 178.
nothing done at, to be valid, unless subject were inserted in warrant, 178.
voters at, in town affairs, qualifications of, 178.
disorderly conduct at, how punished, &c. 65. 179.
TOWN OFFICERS, what to be chosen at annual meeting, 180. 199. 270. 275. 278
what to be sworn, 180.
what to be appointed by selectmen, if town do not choose, 181
how to be notified of their election, and by whom sworn, 181.
vacate office, by removing from town, 181.
vacancies in office, may be filled at any meeting, 181.
not obliged to serve two successive years in same office, 181.
penalty on, for not taking oath, when liable to serve, 181.
may file certificate of oath with clerk, when taken before a justice, 181. See *General Issue.*
TOWN TREASURER, to be chosen at annual meetings, by written votes, 180.
shall be sworn, and give bond with sureties, 180. 183.
may be appointed collector, 183. See *Taxes*, 4.
compensation of, 184. 223.
shall take charge of town's money, and dispose of it, &c. as ordered, 183.
shall account yearly, 184.
shall prosecute for trespasses on town's property, 183.
may prosecute, if county treasurer do not, for trespasses on property owned by county and town, 183.
may sue, in his own name, on bonds, &c. given to him or his predecessor, 183.
shall prosecute for all fines, &c. that enure to use of town or its poor, 184. 214.
duty of, as to compensation allowed to soldiers, 136.
as to paying amount of poll tax to enginemen, 195.
and power of, concerning weights and measures, 289. 290. See *Weights and Measures.*
TOWN WAY and PRIVATE WAY, damages, &c. caused by defect of, to be paid as in case of highway, 246. See *Highway. Private Ways and Bridges.*
may be laid out, altered, &c. by selectmen, 240
not to be laid out, &c. until certain notice is first given to owners of land, 240.
not to be established, until reported to, and accepted, &c. by, town, 240.
nor unless boundaries, &c. of, are filed in town clerk's office, 7 days before town meeting, 240.
may be laid out, &c. by commissioners, after notice and view, if selectmen unreasonably refuse, &c. 247.

TOWN WAY and PRIVATE WAY, *(Continued.)*
may be approved, &c. by commissioners, and ordered to be recorded by town clerk, if town unreasonably refuse, 241.
party appealing to commissioners, to recognize for payment of costs, in case, &c. 241.
legality of, not to be contested by town, when laid out by town, and recorded, 242.
may be discontinued by town, 241.
by commissioners, if town refuse, 241.
when laid out, &c. or discontinued by commissioners, shall not, within 2 years, be discontinued or laid out, &c. by town, 241.
damage caused by laying out, discontinuing, &c. to be estimated by selectmen or commissioners, 240. 241.
to be paid by town, if a town way, 240. 242.
by individuals alone, or by them and town, as selectmen or commissioners shall determine, if a private way, 240. 241.
party aggrieved by laying out, discontinuing, &c. or by award of damages, may apply to commissioners for a jury, 240. 241.
jury to be applied for within a year, 241.
to have the same powers, &c. as in cases of highways, 242.
charges of, by whom paid, 242. See *Highway*.
money for making of town ways, may be voted by towns; and how may be assessed and collected, 242.
boundaries of, when fences or buildings shall be deemed, 239.
fences, and buildings on, when adjudged to be a nuisance, may be sold, &c. 239.
on, may be removed by order of a justice, unless, &c. 249.
may be replaced by commissioners, in case, &c. 249.
repairs of town ways to be made like those of highways. See *Highway*. *Surveyor of Ways*.
of private ways. See *Private Ways and Bridges*.
TRADES. See *Offensive Trades*.
TRAINING. See *Militia*, 4.
TRAINING FIELDS, when fences, buildings, &c. shall be deemed boundaries of, 239.
fences, &c. on, if adjudged to be a nuisance, may be sold, &c. 239.
TRANSITORY ACTIONS. See *Actions*.
TRAVEL of members of general court, to be paid from state treasury, 31.
what fees for, allowed to be taxed by parties to actions, 706. 707.
of attorney general, &c. not to be taxed in civil suits, in which the state is a party, 705.
costs for, not to be taxed in suits on recognizances in criminal cases, 755.
what fees for, may be taxed by sheriffs, &c. in different cases, 61. 62. 71. 710. 711.
what allowed for to jurors, witnesses and appraisers, &c. 711. 712. See *Road*. *Bridges*.
TREASON, definition and punishment of, 715.
to be proved by two witnesses to the same overt act, whereof the party is indicted, 716.
to be examined into by justices of the peace, 529.
no man to be declared guilty of, by the legislature, 24.
TREASURER of COMMONWEALTH, how chosen, or appointed, 40. 50.
salary of, 150—oath of, 50—limitation of office, 40.
cannot hold office, after being elected, &c. to congress, 51.
cannot be state senator or representative, 46.
exempted from serving as juror, 578.
to give bond, with at least three sureties, in sum of $100,000, 149.
condition of his bond, 149.
bond of, to be deposited in secretary's office, 149.
to be put in suit by attorney general, when ordered by governor or legislature, 149.
removable by governor, on complaint of his sureties, if he become insane, abscond, &c., 149. 150.
on death, or other vacancy in office of, secretary, &c., to secure the property of Commonwealth, 150.
when newly elected, to give duplicate receipts, to his predecessor, of property received from him, 150.
may employ two permanent clerks, 150—his clerks' salaries, 150.
may prosecute suits instituted by his predecessor, 151.
may sue, in his own name, on notes, &c., given to his predecessor, 151. 608.
to apportion, with secretary, income of school fund, 227.

TREASURER of COMMONWEALTH, *(Continued.)*
to transmit, yearly, to public prosecuting officer, an account of all securities, &c., that are due and unpaid, to be collected, 151.
to transmit warrants, &c., for state taxes, 78. 82.
his duty as to state taxes, 78. 82. See *Taxes*, 2.
as to moneys received from sale of public lands, 92.
when and how to order meetings in unincorporated places, 82.
may sue towns for taxes, when they neglect, for five months, after receiving his warrant, to choose assessors, 87.
or when collectors neglect to pay him taxes assessed by towns, 87.
power and duty of, as to mortgages made or assigned to Commonwealth, 639.
to sue for bank tax, if not paid, 89.
duties of as to loans to state from banks, 313. See *Banks*.
to preserve standard weights and measures, 289. See *Weights and Measures*.
to audit county treasurers' accounts of expenses in criminal cases, 772.
TREATING, with spiritous liquors, forbidden at military elections and trainings, 114. 118.
jurors, when a cause for new trial, 582.
TREES, on land taken for ways, when to be removed, or right in lost, 231. 234.
fruit, ornamental or other, punishment and damages, for destroying, girdling, &c. 727. 631.
punishment for entering improved lands, gardens, &c. with intent to cut or injure, 727.
for destroying, &c. when marked as boundaries of land, 727.
See *Trespass*. *Joint Tenants*.
fit to be felled, on land owned by one person for life, with remainder, &c. to another, may be ordered, by supreme court, to be cut and sold, 806. 807.
commissioners to be appointed to superintend the cutting and sale, 807.
proceeds of such sale, how to be invested, and put under care of trustees, 807.
income of, to be paid to tenant for life, while he is entitled to profits of the land, 807.
principal of, on determination of tenant's estate, to belong to remainderman, &c. 807.
trustees to give bond, and be removable by court, 807.
TRENCH, punishment for wilfully injuring, &c. or drawing water from, without color of right, 726.
TRESPASS, on the state house, &c. See *State House*. *Sergeant at Arms*.
wilful, on personal and real estate, how punishable, in various instances, 726. 727.
committed on Lord's day, or in the night, or in disguise, how to be punished, 727.
action of, for cattle doing damage, and for riotous tearing down of buildings, &c. 665. 738.
by one joint tenant, &c. against another, for cutting trees, &c. without license, 630.
by demandant in a real action, after recovery, for strip, &c. pending such action, 630. 631.
for wilful cutting down or destroying of trees, timber wood, &c. on another's land, 631.
See *Damages*.
provision for a tender, &c. in cases of casual and involuntary trespass on lands, 631
See *Tender*.
TRIAL, *in criminal cases*.
every party indicted may defend himself, and be heard by counsel, 714.
shall have a right to produce witnesses, &c. and meet witnesses against him, face to face, 22. 715. 753.
of issues of fact joined on an indictment, to be by a jury drawn, &c. as in civil cases, 761.
See *Jurors*.
no member of the grand jury, that found an indictment, shall be on the jury for trial thereof, if challenged by defendant, 761. See *Challenge*. *Grand Jurors*.
no juror allowed to try a capital case, if his opinions would prevent him from finding any deft. guilty, 761.
form of jurors' oath and affirmation, in trial of capital and other cases, 761.
in what cases defendants may be tried in their absence, 761. See *View*. *Offenders*. *Prisoners*. *New Trial*. *Exceptions, in criminal cases*. *Reports*. *Arraignment*. *Conviction*. *Evidence*. *Indictment*. *Punishment*. *Witnesses*.
TROUT, to be taken only by hooks and lines, unless permitted by vote of town, 393.
penalty for illegal taking, how and when recoverable, 393.
to be paid by parents, &c. of minors who offend, 393.
TRUMPET. See *Militia*, 6.
TRUMPETER, one or more to every company of cavalry, 106—how appointed, 112.

TRUST, property held in, where and to whom taxable, 77. See *Taxes*, 1.
concerning land, not to be created or declared unless by written instrument signed, or by implication of law, 408.
not to defeat purchaser or attaching creditor, without notice, 408.
recording declaration of, in registry of deeds, equivalent to actual notice, 408.
equity jurisdiction of, conferred on supreme court, 500.
TRUSTEE PROCESS, lies in all personal actions before courts or justices, except replevin, &c. 643. 652. 653.
writ to bear teste, &c. like other writs, and to be in form heretofore established, 643. 652.
may be served a second time on trustee, before service on the principal, 644.
additional trustees may be inserted in writ, at any time before such service, 644.
in what county actions shall be brought, and how writs shall be served, 644.
all corporations may be summoned as trustees; by whom to make answer, 644.
every person, having goods, effects, &c. of defendant, may be summoned, 644.
provision for indemnity of persons, who make payments, &c. after service, and before notice thereof, 644.
what demands not liable to, 647.
provisions, when a defendant is summoned as plaintiff's trustee, pending an action between them, 647.
money, &c. due, without contingency, subject to this process, though not payable, 647.
trustee not compellable, in such case, to pay, &c. before the time appointed by the contract, 647.
goods, &c. fraudulently conveyed by defendant, may be reached by this process, 647. 648.
debt, legacy, or other effects, &c. in hands of executor, also liable to this process, 651.
on trustee's death, goods, &c. remain bound, and his executors, liable therefor, 651.
if trustee die before judgment, executor, &c. may appear voluntarily, or may be cited, and may answer, &c. 651.
if executor do not appear, in such case, plaintiff may take judgment as if trustee were alive, 651.
payment, by executor, &c. on such judgment, shall discharge him from defendant's claim, 651.
if executor, &c. refuse to pay the amount in his hands, scire facias lies against him, 651.
executors, &c. to pay, when trustee dies after judgment against him, or be liable to scire facias, 651.
property and body of executor, not liable on execution, 652.
plaintiff has same remedy against executor, &c. that principal defendant would have had on judgment recovered for the same demand, 652.
if trustees are discharged, plaintiff shall not proceed against principal, unless the service on him be such as is required in other actions, 644.
how trustee may appear, be interrogated and answer, and when he shall be charged or discharged, 644. 645.
sworn answers of trustees, to be taken as true; but facts, not stated nor denied, may be alleged and proved by either party, 645.
such additional facts may be tried by court or jury, 645.
provisions for contesting assignments by defendant of goods, &c. in trustees' hands, 645.
person, claiming under such assignment, may be admitted as a party, 645.
testimony, in such case, to be given by depositions; principal may be a witness, 645.
provision as to costs, in such case, 645.
how person chargeable as trustee, may dispose of goods and chattels that he is bound to deliver to principal, 645. 646.
when such person has a lien on the goods, he shall deliver them to the officer holding the execution, on being paid his demand, 646.
so if creditor perform any other contract as to goods, by order of court, 646.
officer, in such case, to sell the goods, as if taken on execution in common form, 646.
above provisions not to prevent trustee from selling the goods before tender of payment, &c. by plaintiff, 646.
liability of trustee for refusing to deliver goods, as above, 646. 647.
trustee allowed to deduct, from effects in his hands, whatever he might set off against deft., and shall be liable for balance only, 648.
liable to a scire facias, when adjudged trustee, upon default or otherwise, if he do not pay over on execution, 648. See *Default*.
proceedings and costs in different cases, on such scire facias, 648. 650. 651.
judgment against trustee shall discharge him from deft.'s claim, 649.
in original suit, need not specify the sum for which he is chargeable, 648.

TRUSTEE PROCESS, *(Continued.)*
judgment against trustee on scire facias, shall express the sum, 648.
discharging trustee, shall not bar action by deft. for same demand, 649.
goods, &c., liable to a second attachment, &c., if not demanded of trustee within 30 days after judgment against him, 649.
may be recovered by original deft. after 30 days, if there be not a second attachment, 649.
shall be delivered to officer, on demand, after 30 days, if not again attached, nor sued for by the original deft., 649.
if trustee be dead, when the 30 days expire, demand on his executor, &c., within 30 days of his appointment, shall have same effect as if made seasonably on the deceased, 652.
what shall be deemed a demand, in such case, when officer cannot find the trustee, 649.
what costs and charges, on original suit, shall be allowed to or paid by trustee, in different cases, and how recovered of him, 649. 650.
costs against several trustees, in same suit, shall be taxed jointly; remedy of one who pays more than his proportion, 650. See *Contribution.*
scire facias may issue against several trustees, jointly or severally, or against any two or more, 651.
provision as to costs, in such case, 651.
before a justice, or *police court*, to be brought only in the county where trustee dwells, 652.
trustee not chargeable, if out of the county at time of service and final judgment in the suit, 652.
to what costs, &c., trustee shall be entitled, 652.
justice, &c., may issue scire facias against trustee, though debt and costs exceed $20, 652.
will lie only where justice, &c., would have jurisdiction, if commenced by ordinary process, 653.
liability and punishment for wilful false answers on oath by persons summoned as trustees, 653.
See *Perjury.*
TRUSTEES, *appointed by will*, when to give bond to judge of probate; condition of such bond, 443.
need not give such bond, if testator requests, in the will, that he should not; unless from change of situation, &c., judge requires it, 443.
who have already undertaken the trust, not required to give bond, if not before required by law; unless, as above, 443. 444.
need not give such bond, if persons interested consent that it shall not be required, 443.
neglecting to give bond, when required, deemed to have declined the trust, 444.
may resign, by permission of judge, 444.
when successors of may be appointed by judge of probate; their rights, duties, &c., 444.
executors, &c., of, not required to accept the trust, 444.
to be removed, if they become insane, or otherwise unfit, 444.
successors of, to give bond, 444—may be excused by judge from returning an inventory, 444.
shall have property, included in inventory, appraised like estates of deceased persons, 444.
may be authorized and required by supreme or probate court, to sell personal property, stock, &c., and invest the proceeds in real estate, 444. 445.
bond of, may be put in suit, by order of judge, and suits thereon conducted as on administration bond, 445. See *Bond, of executors, &c.*
accounts of joint, may be allowed by judge on oath of one, 450.
how to dispose of money not claimed for six months after decree for distribution, 451.
See *Evidence. Equity. Probate Court.*
how and when property, in possession of, shall be taxed, 77. See *Taxes*, 1.
of corporations, whose charters have expired, &c., 364.
of women divorced, for investing, &c., property awarded to them by court, 482.
of lunatic hospital and of savings banks. See *Lunatic Hospital. Savings Bank.*
power, &c., of, when they hold stock in manufacturing corporations, 333.
appointed to invest, &c. proceeds of sale of trees, in certain cases. See *Trees.*
TUMULTS, &c., how suppressed. See *Firewards. Militia*, 3. *Riots.*
TURF, punishment for wilfully digging up, &c., without license, 727.
TURNKEYS in state prison, number and salary of, 790. 791.
TURNPIKE CORPORATIONS.
1. *hereafter established*, shall deposite with secretary of state, within six months after erecting their gates, an account of their expenses, 337.
route of proposed road of, to be first examined by committee of legislature, 336.
what notice such committee shall give, before examination, 336.
penalty for constructing road through burial ground without consent, 742.

TURNPIKE CORPORATIONS, *(Continued.)*
road of, to be laid out by county commissioners as in case of highways, 336.
shall pay all sums assessed for damages caused by laying out road, 336.
damages caused by, to be assessed by jury, as in highway cases, if either party require it, 336. See *Highway*, 1.
when land, &c., of a ward or married woman, is taken by, the guardian or husband may release the damages, 350.
may purchase and hold land over which road is made, 336.
required width of road of, and of the travelled part thereof, 336.
shall construct road, where it intersects an existing way, so as to render passage from one to the other convenient, 336.
shall not open enclosures, &c., or proceed to make road, till they pay or tender damages, 336
above provision not to prevent entry on lands for surveying and laying out road, 336.
charter of to be void, if road be not completed within five years, 336.
may erect gates, when road is sufficiently made, where commissioners shall direct, 338.
rates of toll, allowed to be taken, 338. 339. See *Wheels*.
of whom toll shall not be demanded or received, 339.
2. *established after* 16*th March*, 1805, shall exhibit, yearly, to governor and council, an account of their income and necessary disbursements, 337.
books of, subject to inspection of governor, &c. and legislature, 337.
when, and in what cases, may be dissolved by legislature, and property in road thereupon belong to the state, 337.
when road is out of repair, commissioners may cause gates to be set open till they otherwise order, 341.
shares in, shall be sold by treasurer, and on what notice, if proprietors refuse to pay assessments, 337.
deeds of, given by treasurer to purchaser, and recorded in books of corporation, shall transfer, 337.
3. *all* shall keep erected and exposed to view, at every gate, a board, with the rates of toll inscribed thereon, or shall not be entitled to demand toll, 339.
may commute the rates of toll with any person, 339.
shares in, personal estate; how transferred and recorded, 336. 337.
when road is discontinued, land taken for, though bought and conveyed by corporation, shall revert to former owner or his heirs, &c., 337.
gates not to be placed on previously existing town or county roads, 340.
for full toll, not to be within ten miles of each other, 340.
may be removed by commissioners, on petition of directors; proceedings in such case, 339. 340.
penalty for passing, &c. gates, without paying toll, 340.
for going round a gate, and entering on the road again, to avoid toll, 340.
for making passage way, &c. to avoid toll, 340.
for giving false answer to toll gatherer, and thereby going toll free, 339.
on toll gatherer, for demanding or receiving more than legal toll, 341.
on corporation, for toll gatherer's hindering travellers, 341.
all above penalties accruing to corporations, may be sued for by their treasurer, in an action on the case, 350.
punishment for wilfully breaking down gates of, 726.
fines imposed on, for neglect to make or repair, to be appropriated to repairing, &c. 341.
liability of, for injury sustained by persons chargeable with toll, by reason of road's being out of repair, 341.
not more than twenty neat cattle or horses to be on bridge of, without consent, 341.
carts or wagons with more than 4500 pounds' load, not to pass on road, unless with broad wheels, 340.
drivers of loaded carts, &c. with narrow wheels, shall give account of the weight of their loads, &c. if requested, 340.
penalty on, for misrepresentation, 341.
for locking, &c. wheels, without putting iron shoe under them, 342.
not liable for loss of cattle, loads, &c. caused by breaking of bridge, if driven upon it contrary to law and without consent, 341. 342.
provisions for commissioners to lay out turnpike roads as highways, 337. 338.
proceedings, in such case, to be as in laying out highways in other cases, 338.
what damages shall be allowed in such case, by whom to be paid, and how payment thereof may be enforced, 338.
duties, &c. of, cease, when their road is established as a highway, 338.

TYTHINGMEN, to be chosen by towns, unless, &c. 180—need not be sworn, 180.
to inquire into, and inform of, offences as to the Lord's day, 185. 186. 386.

UMPIRE, punishment for bribing, or attempting to bribe, 733. 734.
for his accepting a bribe, 734.
UNDERGRADUATES. See *Colleges*.
UNDERWOOD, penalty for wilful cutting or destroying without license, 630. 631
UNIFORM, of officers, and of soldiers in uniformed companies, 109. 110.
exempted from seizure and sale for debts or taxes, 110. 589.
penalty for deficiency of, 121—how recovered, 124. 125.
UNINCORPORATED PLACES, how and for what to be taxed, &c. 82. 239. 240.
See *Assessors*. *Taxes*, 2. *Collectors*.
meetings of inhabitants of, how called, &c. 82.
See *Treasurer of Commonwealth*. *County Treasurer*. *Moderator*.
ways in, to be laid out, paid for, &c., as in towns, 239. 240.
inhabitants of, at time when incorporated into a town, acquire a settlement therein, 368.
paupers in, how relieved, 372. See *Boundary Lines*.
UNITED STATES, words include Territories and District of Columbia, 61.
jurisdiction of, in places ceded, concurrent, &c. 56.
to have use of jails, houses of correction, and state prison, for confinement of persons committed by courts of, 778, 795.
to have priority on bonds for duties, when limited partnerships make assignments, &c. 305.
in what cases to have priority, when their debtors are insolvent, 305. 438.
statute laws of, when admissible in evidence, 577.
all officers of, exempted from serving as jurors, 578.
except postmasters, excluded from holding office of governor, lieut. governor, counsellor, senator, or representative, 50. 51.
property of, exempted from taxation, 75.
UNLAWFUL ASSEMBLIES. See *Riot*.
UNWRITTEN LAWS, of foreign countries, and of other states, &c. how proved, 577.
USURY. See *Money*.

VAGABONDS and rogues, how to be arrested, secured and punished, 779. 780.
VALUATION of estates, to be taken once in every 10 years at least, 27. See *Taxes*, 2.
VARIANCE, acquittal on the ground of, between an indictment and the proof, no bar to a subsequent prosecution for same offence, 715.
not caused, in certain prosecutions, by proof of *part ownership*, &c., of the person alleged in an indictment to be *the owner* of property, 747.
not caused by proof of embezzlement at time within six months after the day alleged in an indictdictment, 746.
not caused by proof that a forgery was intended to defraud a particular person, corporation, &c., when indictment alleges an intent to defraud generally, 731.
VEGETABLES, punishment for entering gardens, &c., with intent to carry away, 727.
VEHICLES, how to be driven, when meeting others, 389. See *Public Vehicles*. *Drivers*.
VENIRES, fees for dispersing and serving, 710. 711. See *Grand Jurors*. *Jurors*.
VERDICT may be set aside, and a new trial granted, for legal cause, 234. 510. 582. 679. 680.
See *New Trial*.
acquitting of part of an offence charged, and convicting of the residue, when may be received, &c. 761. 762. See *Bastard*.
special, questions arising on, in supreme court, shall be heard by full bench, 501.
See *Mills*, 1. *Highway*, 1. *Insane Person*.
VESSELS, whether at home or abroad, to be taxed, 75.
liability of owners of, for embezzlement, &c., of master and mariners, 295.
master of. See *Mariners*. *Shipmaster*.
pilotage of. See *Pilots*. *Pilotage*.
infected, &c., how to be treated. See *Board of Health*. *Quarantine*.
riotously demolishing, &c., or beginning to demolish, &c., how punished, 738.
wilfully casting away, burning, sinking, &c., with intent to defraud, how punished, 725.
lading, fitting out, &c., with intent that they shall be cast away, sunk, &c., to defraud, 725. 726.
making false invoices, bills of lading, &c., of property laden, &c., on board, to defraud, 726.

VESSELS, *(Continued)*
punishment of master or mariner of, for making false protest, or affidavit, 726.
of owner and others concerned, for procuring or fraudulently exhibiting such protest, &c., 726.
how breaking and entering, in the night or day time, with intent to commit felony therein, shall be punished, 722.
weighers of, and of lighters, that transport stones, gravel, &c., how to be appointed, 292. 293.
to be sworn, 293—fees of, and by whom to be paid, 294.
shall cause such vessels to be weighed, and marked, 293.
what marks they shall furnish, and how to apply them, 293.
marks made by, shall express the weight which the vessel, &c., can carry, &c., 292.
shall keep an account, and give certificate to master, of the distance of marks, &c., 293.
penalty on, for placing marks contrary to law, or for giving false certificates, 294.
where persons on board shall be stationed, under a penalty, while weigher is marking, &c., 293.
such marks to be examined, yearly, by a sworn weigher; his duty, if they do not agree with former certificate, 293.
penalty on owner or master, for neglect to have vessel weighed, &c., or for removing marks or altering certificate, 294.
VESTRY, when to be a corporation, together with the minister, to take, &c., grants to their churches, 205. See *Church Wardens. Ministers of the Gospel.*
VIBRATING STEELYARDS, may be used in weighing, if sealed yearly, &c., 291. 684. 261.
VICE CONSUL. See *Consul.*
VICTUALLERS. See *Licensed Houses.*
VIEW, by county commissioners and jurors, of highways and routes for, 230. 234. 238. 241. See *Highways*, 1. *Suffolk.*
by a jury, may be ordered, in action of waste, 630.
in any criminal case, 761.
in any case, if court deem it necessary, and on what terms, 582.
costs of, to be taxed like other costs, 582.
VOTERS, at town meetings, qualifications of, 49. 62. 63. 67. 70. 178.
lists of, to be made twice a year by selectmen, and posted ten days before meetings, 63.
selectmen to meet to receive evidence of qualifications, 63.
to give notice of their meeting, on posted lists, 63.
when to meet, if voters exceed one thousand, 63.
giving false names or answers to selectmen, at such meetings, penalty for, 64.
not liable for omitting to put on list names not returned by collectors, 64.
nor for refusing votes of persons not on list, unless they have given evidence of qualifications, 64.
list of persons, who have paid taxes, to be kept by collectors, and returned to selectmen, twice a year, 63.
penalty for not making such return, or for making false one, 63.

WARDEN of state prison. See *State Prison. Process.*
WARDENS, of episcopal churches. See *Episcopal Churches. Churches.*
WARDS. See *Guardian.*
WARRANT *to arrest*, must be founded on previous oath, and specially designate the person, 22. 23. 751. See *Search Warrant.*
may be issued by judges in vacation, as well as in term time, 751.
complaint on which founded, to be reduced to writing, 751.
shall recite the substance of the accusation, and be returnable forthwith, 751.
may direct the officer to bring the deft. before the justice, &c., who issues it, or before some other justice or court, 751. 752.
may be served by officer, to whom it is directed, in any county, if the deft. has escaped, &c., 752. See *Arrest.*
to enter gaming houses and seize persons and implements of gaming, 388.
to remove convicts from jails to state prison, 766. 767. 794.
to execute sentence on capital offenders, to be issued by governor, under the great seal, 767.
how and where to be returned, 777.
of distress, when may issue against towns and other corporations for damages assessed against them for taking land for turnpike, highway, &c., 236. 365.
for assessment and collection of taxes. See *Treasurer of Commonwealth. Taxes*, 3. *Assessors.*

WARRANTY, of sole leather, boots and shoes, the effect of manufacturer's stamping thereon his name and residence, 274.
WASTE, action of, may be brought by reversioner, &c., against tenant for life or years, 630.
may be brought by heirs for waste done while ancestor was alive, 630.
plf. shall recover place wasted, and damages done to the premises, 411. 630.
damages for, to be assessed by the jury that inquire of the waste, 630.
action on the case in the nature of, may be brought, instead of action of, 630.
such action, if commenced in tenant's life time may be prosecuted against his executor, &c., 630.
may be commenced against executor, &c., for waste committed by the deceased, 630.
may be maintained by reversioner, &c., in fee, and also by intermediate reversioner, &c., for life or years, 630.
penalty on joint tenants, &c., for strip and waste, without notice, or during pendency of process for partition, 630. 631.
equity jurisdiction of, given to supreme court, 500. 631.
injunction to stay, may issue and be dissolved by one justice in vacation as well as in term time, 631.
committed, or threatened, on land attached, may be stayed by court in which suit is pending, or by any justice thereof in vacation, 631. 632.
deft., in such case, may be arrested and committed for violating injunction, 632.
of deceased's effects by administrators, &c., how redressed, 654. 528.
WATCH and WARD, may be ordered in towns, by selectmen, to be kept nightly, unless, &c. 190.
numbers of, and time and places of service, may be directed by selectmen, 190.
who liable to watch, &c. and who exempted, 190.
selectmen may, in writing, order constable to warn the watch, 190.
charge to be given to, 190—powers and duties of, 190.
may examine suspicious persons abroad after 10 o'clock, 190.
may enter houses of ill fame, to suppress disturbances, 190.
to secure, and carry before magistrate, suspected and disorderly persons, 191.
to walk the rounds to prevent danger from fire, and observe persons of ill fame, 191.
constable to attend, when selectmen watch, 191.
to carry his badge of office, 191.
expense of, chargeable to towns, though they direct it kept differently from foregoing provisions, 191.
when towns direct a different watch, they may fix the number, &c. of persons employed 191.
selectmen, in such case, may appoint an officer of the watch, 191.
and may prescribe watchmen's equipment, 191.
such watchmen to have powers, &c. of others, 191.
penalty, if officer of, or constable, neglect to obey orders, 191.
if those liable to watch refuse, when warned, or do not furnish substitutes, 191.
WATCHMAN, of the state house, to be appointed yearly by sergeant at arms, 155.
to be under control of, and removable by sergeant, 155. 156.
to employ an assistant approved by sergeant, 155—salary of, 156.
he and assistant to be in state house, and watch it every night, from 9 o'clock till sunrise, 155. 156.
to prevent trespasses, or inform prosecuting officer thereof, 156.
he or assistant to be in state house at all other hours, when the outer doors are open, 156.
to visit, every night, rooms in which fires have been during the day, 156.
to take care of lower floor, keys, fires, &c. 156.
WATCHMEN of the state prison, number and salaries of, 790. 791.
WATER COURSES, in roads, to be regulated by selectmen, on complaint, 243. 244.
See *Surveyors of Ways*.
WATERTOWN, land in, ceded to U. States, for arsenal, &c. 57.
WAY, highway, town way, private way. See *Highway. Town Way, &c. Private Bridges and Ways.*
right of, over another's land, not acquired by adverse use, unless uninterrupted for 20 years, 412.
acquiring, may be prevented by notice, &c. 412. See *Easement*.
WEARING APPAREL, exempted from taxation, 76.
to be allowed to a widow, and not inventoried, 424. 429.
of person deceased to amount of $100, to be distributed among his family, 429
nor assets, not to be inventoried, 429.
of minor children of deceased persons, not assets, &c. 429.
necessary for debtor, and of his wife and children, exempted from distress for taxes, attachment and execution, 84. 549. 589.

WEIGHERS, of beef, when and how to be appointed, 261.
not to be dealers in cattle, 261—to be sworn, 261.
duties and fees of. See *Beef.*
of hay. See *Hay. Hay Scales.*
of lighters and other vessels that transport stones, &c. See *Vessels.*
public, of goods, &c. who deemed, and how to certify the weight by the hundred, under a penalty, 292.
WEIGHTS and MEASURES, approved Winchester, in state treasury, to remain authorized public standards of, 288. 289.
standards of, to be preserved by state treasurer, and kept in the treasury, 289.
required dimensions, materials, marks and seal of, when procured to replace the present standards, 289.
duplicates of standard, to be procured by treasurer, and kept by his sworn deputy, 289.
may be used by such deputy for sealing, 289.
complete sets of (except bushel measure) to be kept by each county treasurer, at expense of county, and used for standards only, 289.
seal for sealing town standards, to be kept by county treasurer, 289.
county treasurers to cause their standards to be tried and sealed by state treasurer, once in every 10 years from 1st Jan. 1830, 290.
what standard weights, &c. shall be kept by town treasurers at expense of town, 290.
town treasurer to keep a seal for sealing weights, &c. of inhabitants of the town, 290.
shall cause town standard to be tried and sealed, once in ten years (as above) by state or county treasurer, 290.
penalty on county and town treasurers, for each neglect of above prescribed duty, 290.
on persons who refuse, &c. to have their weights, &c. sealed once a year, 291.
for selling goods, fruit, grain, &c. by weights or measures not sealed, 292.
fees of state and county treasurers for sealing town standards, 290.
special provisions respecting measures for salt and grain, and the manner of measuring, 291. 292.
such provisions not to prevent the measuring of salt from vessels in such measures as are used by government of U. States, 292.
sealers of, in towns, and their duties. See *Sealer.*
hundred weight, in sale of commodities, shall mean net 100 pounds avordupois, 292.
used by banks, to be sealed by state treasurer once in five years, 314. See *Tender.*
See *Weighers. Hay Scales. Vibrating Steelyards. Sole Leather.*
WEST CHOP, land at, ceded to U. States, 57. 58.
WHARVES, held in common, &c. See *Common Lands and Wharves.*
others' goods on, punishment for carrying away without license, 727.
WHEAT, not to be sold unless first weighed, 279. 284.
standard weight of bushel of, 284. See *Grain.*
WHEELS, carts and wagons having broad, shall pass for half toll on turnpike roads, 339.
See *Turnpike Corporations.*
of watermills, punishment for maliciously destroying or injuring, 726.
WIDOW, may remain 40 days in husband's house, after his death, without paying rent, 411.
not to have dower, and also provision in husband's will, unless, &c. 410.
to elect, within 6 months, whether to be endowed, or take such provision, 410.
may waive jointure, made before marriage without her assent, 410.
though she waive provision in his will, 424. 429.
claim of, to administration on husband's estate, 425.
to be allowed her apparel and ornaments, according to husband's degree and estate, 424. 429.
provisions, &c. for sustenance, for 40 days after husband's death, 411. 429.
such further necessaries, as judge shall order, for herself and minor children, 429.
as well when she waives provision in husband's will, as when he dies intestate, 424.
may have second allowance, when estate, represented insolvent, proves to be solvent, 442.
See *Jointure. Dower.*
WIFE. See *Married Woman. Divorce.*
WIGWAM POINT, land on, ceded to U. States, 57.
WILD CATS, bounty for killing, and how obtained, 392. See *Noxious Animals.*
WILD LANDS, not to be assigned as dower, 410.
WILLS, word includes codicils, 61.
may be made, by persons of full age, of all personal and real estate, and all right to, and interest therein, except an estate tail, 416. 417.

WILL, *(Continued.)*
shall pass devisor's right to land, though he be not seized at time of making it, or be disseized afterwards, 416.
shall pass estate, &c. in land, acquired by devisor after it is made, if such be his manifest intention, 417.
shall be construed to convey all devisor's estate, which he could lawfully devise, unless it clearly appears that he meant to pass a less estate, 417.
giving land to one for life, and after his death to his heirs in fee, shall vest estate for life in the first taker, and a remainder in fee simple in his heirs, 405.
giving land to two or more, shall create an estate in common, and not in joint tenancy, unless it expressly provide, or be manifestly intended otherwise, 406.
exception, in such case, if devise be made to husband and wife, or in trust, 406.
of estates in long terms, made before 1st June, 1834, not affected by statute passed on that day, 411.
none, (except nuncupative) shall pass or affect any property, unless written and signed by testator, &c. and attested and subscribed in his presence by three or more competent witnesses, 417.
if witnesses to be competent at time of attesting, their subsequent incompetency shall not prevent probate thereof, 417. See *Legacies.*
charging land with payment of debts, shall not make creditors incompetent witnesses to, 417.
by what acts, may be revoked; revocation of, may be implied by law, 417.
may be deposited in registry of probate, and shall be received and kept by register, 417.
provisions for sealing, securing, &c. and delivering up, in such case, 417. 418.
not effectual, to pass any property, until duly proved and allowed in probate court, 421.
accidental, &c. omission, to provide for any child, or the issue of a deceased child, shall not affect their rights by inheritance, unless testator had provided for them in his life time, 419.
See *Legatees. Devisees. Posthumous Children.*
probate of, conclusive as to due execution of, in all cases, 421.
person having custody of, (except register of probate,) to deliver to probate court, or executor, within thirty days after notice of testator's death, 418.
punishment, &c. for neglect so to deliver, after being cited by judge of probate, 418.
when probate of may be granted on testimony of one subscribing witness only, 418.
on appeal from probate of, what questions may be tried by jury, by direction of the court, 418.
proved and allowed in another state or country, may be allowed and recorded in this state, in any county where there is property on which it may operate, 418.
what notice to be given, before such will is allowed, 419.
if allowed, copy thereof, and of the foreign probate, to be filed, &c. 419.
such will not valid, unless executed, &c. as required by laws of this state, 419.
if of an alien, shall have same effect only, as if originally proved in this state, 419.
letters testamentary, in such case, shall extend to all the testator's property in the state, and exclude jurisdiction of other probate courts, 419.
WITHERNAM, writ of, to be denominated a writ of reprisal, 670.
WITNESSES, when and how may be compelled to give depositions. See *Deponent.*
fees of, for attendance and travel, in different cases, 711. 769.
not obliged to attend, unless fees for one day's attendance, and travel to and from the place, be paid or tendered, 571. 531.
if summoned on behalf of the Commonwealth, in criminal cases, bound to attend, without payment or tender of fees, 759.
liable for damages, and to process as for contempt, if they neglect to attend when duly summoned, &c. 571.
punishment for taking a reward, &c. on an agreement, &c. not to testify in certain criminal cases, 735.
of military officers in actual service, for concealing witnesses to offences cognizable by courts of law, 144.
may be sworn according to peculiar ceremonies of their religion, or the mode they deem most obligatory, &c. 571. See *Quakers. Oath. Affirmation. Perjury.*
on examination of prisoners before a magistrate, may be excluded from hearing each other's testimony, and kept separate from each other before testifying, 753.
against a prisoner, may be bound by recognizance to appear and testify at next court, 753. 754.
when may be required to find sureties on such recognizance, 754.
may be committed, if they refuse to recognize, 754. 778. See *Minor. Married Woman.*
if disqualified to testify in a particular suit, by indorsing writ, or being surety in replevin bond or recognizance for an appeal, how made competent, 577.

WITNESSES, *(Continued.)*
not rendered incompetent by conviction of any crime in a court out of the state, 577.
See *Conviction. Grand Jurors. Inquest. Will.*
When competent, though interested.
inhabitants of counties, towns, parishes, school districts, &c. in suits by or against corporate body, 576. 577.
members of incorporated mutual fire insurance companies, in suits by and against the corporation, 577.
informer as to obscene books, &c. though entitled to half the fine, 741.
defendant in trustee process, when third person contests his assignment of goods, &c. 645.
plaintiff and defendant, when a third person contests the validity of an attachment, 557.
in suits to recover back money won by gaming, 387.
in suits in which usury is pleaded, 307.
See *Fence Viewers. Bastard. Oath.*
WOLVES, bounty for killing, and how obtained, 392. See *Noxious Animals.*
WOOD, cord, exposed to sale, dimensions of, 285.
brought by water into a town, how to be corded and piled for measuring, 285.
penalty for offering to sell, before measured and ticket thereof given, 285.
to whose use, 285.
measurers of, to be chosen by towns, or appointed by selectmen, 180. 181.
to be sworn, 180.
fees of, and by whom established and paid, 181. 285.
to deliver tickets, certifying quantity of load, 285.
carters, &c. of, from wharves, &c. to have tickets from owner or seller, 285.
such tickets to state quantity of, and driver's name, 285.
penalty on such driver, for not having or not showing ticket, 285.
on such owner, if such ticket be false, &c. 285.
exception, where owner or buyer transports from wharf to his own house, &c. 285.
in Boston, survey, &c. of, may be regulated by city government, 285.
on land taken for highways, when to be removed, or right to, lost, 231. 234.
punishment, &c. for cutting down, carrying away, &c. another's, 727. 631.
WOODCOCKS. See *Birds.*
WOODLAND. See *Dower. Trees.*
WORK HOUSES. may be erected by towns for the employment and support of paupers, spendthrifts, idle, dissolute and vagrant persons, 186. 187. 779. 538.
may be discontinued, and applied to other uses, when towns so decide, 189.
directors of, may be chosen at annual town meetings, 187.
shall have inspection and government of, and may appoint a master of, and all necessary assistants, 187.
overseers of poor shall be, if others are not chosen, 187.
to hold meetings, monthly at least, and make needful regulations, 187.
regulations of, subject to control of the town, 187.
to adjust controversies between masters of, and overseers of the poor, as to accounts, &c. 189.
towns may unite in providing, for their common use, and may purchase land therefor, 187.
regulation of such houses, and appointment and removal of masters and other officers thereof, to be by joint board of directors, 187.
an equal number of such directors to be chosen by each town, 187.
if any of the towns omit to choose directors, those chosen by the others to have whole charge, 187.
provision for quarterly and other meetings of joint board, and for choice of clerk, &c. 187. 188.
authority of such board to make by-laws, and order compensation to master and officers, 188.
expenses of such houses to be borne by the towns in proportion to their state tax; or as they shall otherwise agree, 188.
town neglecting, &c. to pay its proportion of charges, may be sued therefor by any person appointed for that purpose by directors, 188.
town neglecting to provide its proportion of materials, &c. for work required in the house, shall not send persons to be employed, &c. there, 188.
each town may furnish such additional materials and means of work, as its overseers of the poor may choose, 189.
such materials, &c. shall be kept separate from those of other towns, and accounted for, by the master, 189.

WORK HOUSES, *(Continued.)*
no town to send more than its proportion of inmates, to the exclusion or inconvenience of those who belong to the other towns, 188.
masters of, to keep a register of persons committed, &c. and of their earnings, to be submitted to overseers of the poor, on request, 189.
shall not be licensed to sell strong liquors, 736.
persons committed to, if able to work, to be kept employed, 189.
if idle and stubborn, to be punished according to orders established by directors, 189.
by what authority only may be discharged, within the time for which they were committed, 189. 781.
provision for commitment of foreigners, and payment of expenses, by the state, 189.
one third of earnings, &c. of persons committed, to belong to the master, in addition to his yearly salary, 189.
the other two thirds, and the stock on hand, to be disposed of, as overseers of the poor shall direct, 189.
no special law, respecting workhouses in any town, affected by above provisions, 189.
WORSHIP. See *Public Worship*.
WRECKS and SHIPWRECKED GOODS, commissioners of to be appointed by governor, who shall be sworn and give bonds, 397. 398.
bond of such commissioners to be given to judge of probate, and remedy thereon to be as on administration bonds, 398.
commissioners of, to take charge of and secure wrecked goods, if of $100 value, and not in owner's custody, 398.
power of, to employ assistants, and suppress disorders, 398.
duty of, as to taking inventories and delivering copies thereof to parties interested, 398.
compensation of, how to be decided on, in case of dispute, 398.
shall publish particulars of the shipwreck and of the goods found, 399.
penalty on, for not so publishing, 399.
may sell by auction, within 30 days, property sufficient to pay duties thereon, 399.
when may sell perishable goods, after advertising, 399.
if no owner, &c., establishes his claim to the property within a year, commissioners shall account for or deliver it to state treasurer, 399.
treasurer to make just compensation, in such case, to commissioners, for their services and expenses, 399.
how such compensation shall be adjusted, in case of disagreement, 399.
treasurer shall commence suit against commissioners who neglect to account, &c., within 60 days after the expiration of a year, 400.
owner of wrecked goods not liable to pay any person except a commissioner, for services rendered after a commissioner arrives where they are, 398.
commissioner to decide on compensation for services rendered before his arrival, 399.
such decision final, if sum demanded does not exceed $50, 399.
when appeal is taken from such decision, common pleas shall determine the question summarily, and issue necessary process, 399.
penalty for intermeddling with wrecked property, after a commissioner is present, 399.
WRITING. See *Written, &c.*
WRITS, issuing from clerk's office, how to be signed, sealed and bear teste, 47. 535. 547. 643. 807.
issued by justices of the peace, &c., form, &c., of, 527. 528. 547.
seal of, may be by impression on the paper alone, 61.
not to be made, or altered, by sheriffs, constables, &c., 169. 542.
of review, and in trustee process, form of, 603. 643. 652.
in suits in equity, form, teste, &c., of, 561.
may be altered, when necessary, by allowance of courts, 547. 643.
changes in, to be under final control of supreme court, 547. 548.
new may be framed by supreme court when necessary, and by justices of the peace, 499. 503.
how day of commencement of a term may be designated in, 507.
all original, in supreme court and common pleas, may be issued by the clerk in any county, and be made returnable in any other county, 547.

WRITS, *(Continued.)*
all original, issued from common pleas, to be signed by clerk of same court for any county, and may run into any county, 807.
how may be framed, as to order to arrest, attach or summon, 547.
against executors, &c., for deceased's debts, to run only against his property in their hands, 653.
may be sued out in vacation as well as in term time, 547.
when plaintiff is not an inhabitant of the state, to be indorsed, before entry, by an inhabitant, 548.
so when plaintiff removes from the state, after suit commenced, 548.
indorser of, not to be required, if any one of several plaintiffs is an inhabitant, 548.
may be required by court, whenever deemed reasonable, 548.
liable for costs, during one year, 548.
new indorser, when court may require, or allow to be substituted, 548. 577.
liable as if he were original, 548.
if not indorsed, as court may order, suit to be dismissed, &c. 548.
of review, audita querela, scire facias, and error in civil cases, to be indorsed, &c. like original, 605. 609. 563.
on administration and sheriffs' bonds, and bonds given to pay value, &c. of goods attached, how to be indorsed, 447. 167. 554. See *Bond*. *Sheriff*.
Service of.
not to be served on the Lord's day, 386.
from courts, to be served 14 days at least before return day, 549. 561. 606.
from justices, not more than 60 nor less than 7 days before return day, 549. 527. 528. 628.
of writ of subpœna, in suits in equity, like other writs, 561.
against counties, towns, parishes, school districts, proprietors of general fields, and of common lands, &c. 30 days before return day, 549.
with whom copy of summons shall be left, 551.
against other corporations, with whom summons or copy to be left, 552.
See *Franchise*. *Corporations*. *Attachment*.
manner of serving, so as to make a valid attachment. See *Attachment*.
service of separate summons, sufficient, whenever property is attached, 547.
separate summons, after attachment, to be delivered to defendant, or left at his house, or last place of abode, 551. 644.
original summons, without attachment, to be read to defendant, or copy delivered or left as above, 551. 644. See *Trustee Process*.
on defendants out of the state, how made, 552. 553. See *Absent Defendant*.
mode of serving, when attachment or arrest is ordered, in the alternative, to be as plaintiff or his attorney directs, 553.
a second service may be ordered by court, after return, in case of certain defects in the first, 553. 619.
When returnable
from supreme court or common pleas, at court next after 14 or 30 days from date, 560. 561.
from justices of the peace, not more than 60, nor less than 7 after service, 527. 528. See *Return*.
WRITTEN and IN WRITING, words may include printing, engraving, &c. except where written signature is required by law, 61.
what promises, &c. must be, to render them valid, 472. 473.
representations, &c. concerning the character, credit, ability, &c. of others, 472.
contracts for sale of goods, &c. for price of $50 or more, unless purchaser accepts and receives part thereof, or gives something in earnest, &c. 473. See *Payment*.
acknowledgments, &c. to prevent effect of statute of limitations, 700.
grants, assignments and surrenders, of estate or interest in lands, must be; or shall have effect of estates at will only, 408.
trusts concerning lands must be, unless they result by implication of law, 408. See *Trust*.

YARMOUTH, land in, ceded to United States, 57.
YEAR, word means calendar year, unless otherwise expressed, 60.
alone, equivalent to year of our Lord, 60.

YEAR, *(Continued.)*
political, when to begin, 51.
for purposes of lunatic hospital, when to commence, 383.
YOUTH, provision for instruction of, 218. 219. See *Schools.*
endeavors to be used that they shall regularly attend schools, 219.
instructors of, to impress on their minds principles of piety, justice, regard to truth, temperance, industry, &c., 219.