

*New Jersey College Library*

AN

# ABSTRACT

OF THOSE

## LAWS OF THE UNITED STATES

WHICH RELATE CHIEFLY TO THE

DUTIES AND AUTHORITY

OF THE

JUDGES OF THE INFERIOR STATE COURTS,  
AND THE JUSTICES OF THE PEACE,  
THROUGHOUT THE UNION;

ILLUSTRATED BY EXTRACTS FROM ENGLISH LAW BOOKS.

TO WHICH IS ADDED,

AN APPENDIX,

CONTAINING A VARIETY OF USEFUL PRECEDENTS.

---

BY SAMUEL BAYARD, ESQ.

COUNSELLOR AT LAW,

AND LATE ONE OF THE JUDGES OF THE COURT OF COMMON-PLEAS  
FOR THE COUNTY OF WEST-CHESTER.

---

**New York:**

PRINTED FOR THE AUTHOR.

.....  
1804.

*New Jersey College Library*

AN

# ABSTRACT

OF THOSE

## LAWS OF THE UNITED STATES

WHICH RELATE CHIEFLY TO THE

DUTIES AND AUTHORITY

OF THE

JUDGES OF THE INFERIOR STATE COURTS,  
AND THE JUSTICES OF THE PEACE,  
THROUGHOUT THE UNION;

ILLUSTRATED BY EXTRACTS FROM ENGLISH LAW BOOKS.

TO WHICH IS ADDED,

AN APPENDIX,

CONTAINING A VARIETY OF USEFUL PRECEDENTS.

---

BY SAMUEL BAYARD, ESQ.

COUNSELLOR AT LAW,

AND LATE ONE OF THE JUDGES OF THE COURT OF COMMON-PLEAS  
FOR THE COUNTY OF WEST-CHESTER.

---

**New York:**

PRINTED FOR THE AUTHOR.

.....

1804.

*New Jersey College Library*

AN

# ABSTRACT

OF THOSE

## LAWS OF THE UNITED STATES

WHICH RELATE CHIEFLY TO THE

DUTIES AND AUTHORITY

OF THE

JUDGES OF THE INFERIOR STATE COURTS,  
AND THE JUSTICES OF THE PEACE,  
THROUGHOUT THE UNION;

ILLUSTRATED BY EXTRACTS FROM ENGLISH LAW BOOKS.

TO WHICH IS ADDED,

AN APPENDIX,

CONTAINING A VARIETY OF USEFUL PRECEDENTS.

---

BY *SAMUEL BAYARD, ESQ.*

COUNSELLOR AT LAW,

AND LATE ONE OF THE JUDGES OF THE COURT OF COMMON-PLEAS  
FOR THE COUNTY OF WEST-CHESTER.

---

**New York:**

PRINTED FOR THE AUTHOR.

.....

1804.

*New Jersey College Library*

AN

**ABSTRACT**

OF THOSE

**LAWS OF THE UNITED STATES**

WHICH RELATE CHIEFLY TO THE

**DUTIES AND AUTHORITY**

OF THE

**JUDGES OF THE INFERIOR STATE COURTS,**

**AND THE JUSTICES OF THE PEACE,**

**THROUGHOUT THE UNION;**

**ILLUSTRATED BY EXTRACTS FROM ENGLISH LAW BOOKS.**

TO WHICH IS ADDED,

**AN APPENDIX,**

**CONTAINING A VARIETY OF USEFUL PRECEDENTS.**

---

**BY SAMUEL BAYARD, ESQ.**

COUNSELLOR AT LAW,

AND LATE ONE OF THE JUDGES OF THE COURT OF COMMON-PLEAS  
FOR THE COUNTY OF WEST-CHESTER.

---

**New-York:**

PRINTED FOR THE AUTHOR.

.....

1804.

District of }  
New-York, } **BE IT REMEMBERED,** That on the ele-  
venth day of May, in the twenty-eighth year  
of the Independence of the United States of America, SAMUEL  
BAYARD, of the said District, hath deposited in this Office, the  
Title of a Book, the right whereof he claims as Author, in the  
words following, to wit:

“ An Abstract of those Laws of the United States, which re-  
late chiefly to the Duties and Authority of the Judges of the  
Inferior State Courts, and the Justices of the Peace, throughout  
the Union. Illustrated by Extracts from English Law Books.  
To which is added, an Appendix, containing a variety of use-  
ful Precedents.

“ By SAMUEL BAYARD, *Esquire,*  
*Counsellor at Law, and late one of the Judges of the Court of*  
*Common Pleas, for the County of West-Chester.”*

IN CONFORMITY to the Act of the Congress of the United  
States, entitled: “ An Act for the Encouragement of Learning,  
by securing the Copies of Maps, Charts, and Books, to the  
Authors and Proprietors of such Copies, during the times  
therein mentioned.”

EDWARD DUNSCOMB,  
*May 12, 1804.* Clerk of the District of New-York.

TO ELIAS BOUDINOT, ESQ. L. L. D., &c.

DEAR SIR,

IF a stranger were to inscribe to you the labours of his pen, he would probably address you in the language of encomium. He would endeavour to conciliate regard, rather by reminding you of *honors* which you *have* enjoyed, than of *virtues*, which you *now* possess. He would no doubt, advert to the high professional character, you sustained at the bar, prior to the American revolution—to your early, active, and decided patriotism—to the high stations you have filled, as PRESIDENT of the *old*, and a distinguished member for six successive years, of the *new* Congress. Nor would he fail to notice the general esteem and confidence of your fellow-citizens, and the *marked friendship* of that ILLUSTRIOUS CHARACTER, who was “First in war, first in peace, and first in the hearts of his countrymen.”

Very different, however, are my views. In affixing your name to the present compilation, I am influenced less, by a regard to your *fame*, than to my own *feelings*. Grateful for that affectionate attention and interest in my welfare, which I have uniformly experienced from you, ever since our acquaintance and connection first commenced, and desirous of giving some public testimony of my respect and gratitude; I avail myself of this opportunity of inscribing to you a work, which, however executed, is intended to diffuse a more correct knowledge of the laws of the Union, among a class of judicial magistrates, at once the most numerous, and the least informed, in the United States.

To no person, could a work like the present be addressed with *greater propriety* than to one, whose hand for several years was employed in framing many of the laws which constitute a part of the present compilation.

That the labours of a long and useful life, most of which, has been devoted to the public service, may be recompensed by public remembrance and acknowledgment; and that, as the evening of your days approaches, it may be brightened by the cheering sunshine, of an approving conscience, and the reflected lustre, of past usefulness, is the sincere wish of

Dear Sir,  
Your affectionate friend,  
And humble servant,  
THE AUTHOR.

(RECAP)

7682

155

66860

THE HISTORY OF THE  
CITY OF BOSTON  
FROM THE FIRST SETTLEMENT  
TO THE PRESENT TIME  
BY  
NATHANIEL BENTLEY  
VOLUME I  
FROM THE FIRST SETTLEMENT  
TO THE YEAR 1780  
BOSTON: PUBLISHED BY  
J. B. ALLEN, 1856.

The first settlement of the city of Boston was made in the year 1630, by a company of Puritan emigrants, who sailed from England in the ship *Arcturion*, and landed at the point now called the North End. They were accompanied by their wives and children, and by a number of servants and laborers. The first day of their settlement was the 1st of September, 1630. They were met by the Indians, who had been informed of their coming, and who offered them assistance in their journey. The Puritans, however, refused their aid, and proceeded to the point of settlement. They found the land fertile and well watered, and they were struck with the beauty of the surrounding country. They immediately set to work to build themselves habitations, and to cultivate the soil. They were not long in doing so, and in a few days they had erected a number of houses, and were engaged in the raising of corn and other provisions. They were also occupied in the building of a fort, and in the establishment of a school. The first church was organized in the year 1630, and the first meeting-house was built in the year 1631. The city of Boston was then a small and obscure settlement, but it was not long in becoming one of the most important and flourishing cities in the New England.

THE HISTORY OF THE CITY OF BOSTON

## PREFACE.

---

THE intention of the following work, is to afford some assistance to the judicial magistracy of the *several* states, in the execution of the laws of the *United States*. The acts of Congress amount now to six volumes. The expence of procuring these, is greater, than country magistrates are willing to incur: but were the expence defrayed by the public, there would be no small difficulty in distributing them, among judges scattered through the wide interior of our country; who, when supplied with them, (unless professionally skilled in the law) would be often at a loss to ascertain what acts were in force—what had been altered, supplied, or repealed—in what cases authority was conferred, limited, or annulled—and in what manner the acts in force, were to be carried into operation.

To remedy these inconveniences—to condense within a small compass, and to arrange under distinct heads, all those laws, or parts of laws, which relate to the duties and authority of Judges of the state courts and Justices of the peace—to illustrate them by a reference to the rules and provisions of the common law—to give a concise view of the mode of proceeding in criminal cases under the laws of the *United States*—to furnish a brief summary of the principles of evidence—together with some useful forms of procedure; is the aim of the following pages. But how far this aim has been accomplished, is for an impartial public to decide.

To the Judges of the supreme courts in the several states, and to gentlemen of the law, who have long been in extensive business, the present work will, perhaps, afford but little aid; but to gentlemen *commencing* practice, and to *students* of the law, it may possibly prove an useful compilation.

A large variety of forms might have been added, but as the addition would have increased the size, and enhanced the cost of the work, it was thought advisable to select, and annex such forms only, as had not appeared in print, or as would most frequently occur in practice.

For several *errors of the press*, in some of the first pages, the author's residence in the country, and frequent indisposition, while the printing was executed in the city, will, he trusts, be accepted as a sufficient apology.

Upon the whole, should the work be favourably received by those magistrates, for whose assistance it was principally intended, and introduce them to a more general, and correct acquaintance with the laws of the *United States*, the Author will consider himself as well rewarded for the time and pains, the work has cost him.

---

---

## TABLE OF CONTENTS.

---

	PAGE
<b>CHAPTER I.</b>	
Of the origin of justices of the peace,	1
<b>CHAP. II.</b>	
Of the manner of their appointment, and their tenure of office in the several states,	3
<b>CHAP. III.</b>	
Of their oaths of office,	9
<b>CHAP. IV.</b>	
Of the restrictions on judicial authority imposed by amendments to the constitution of the United States,	10
<b>CHAP. V.</b>	
Of crimes and criminals,	12
<b>SECT. 1.</b> Of crimes and punishments, <b>2.</b> Of criminals, who are such, and who, not	13
<b>CHAP. VI.</b>	
General remarks on the duties of justices of the peace, at common law,	17
<b>CHAP. VII.</b>	
Of the protection enjoyed by judicial magistrates in the due execution of their authority,	19
<b>CHAP. VIII.</b>	
Of the duties and authority of the judges of the infe- rior state-courts and justices of the peace, under the laws of the United States,	21
<b>CHAP. IX.</b>	
Of crimes and offences against the United States,	23

## CHAP. VIII.

Of crimes punishable with DEATH, in the prosecution of which the judges of inferior state-courts and justices of the peace, may *arrest* and *imprison*, but not admit to bail, 25

- SECT. 1. Of treason, 28  
 2. Of murder in an arsenal, fort, or other place, under the exclusive jurisdiction of the United States, 32  
 3. Of duelling, 32  
 4. Of murder and robbery at sea, &c. 32

## CHAP. XII.

Of accessaries to piracy, &c. *before the fact*, 34

## CHAP. XIII.

Of forgery, 36

## CHAP. XIV.

Of the rescue of persons convicted of capital offences, 37

## CHAP. XV.

Of robbing the mail, &c. 38

## CHAP. XVI.

Of debasing the public coin, &c. 38

## CHAP. XVII.

Of crimes and misdemeanors, *not* punishable with death; in the prosecution of which, magistrates *may* admit the accused to bail, 39

- SECT. 1. Of misprision of treason, 39  
 2. Of the rescue of the bodies of convicts, 40  
 3. Of misprision of felony, 41  
 4. Of manslaughter, 41  
 5. Of accessaries *after the fact*, to piracy and robbery, 43  
 6. Of confederacy to become pirates, *ib.*  
 7. Of maiming, 44  
 8. Of stealing or falsifying records, *ib.*  
 9. Of larceny, 45  
 10. Of receiving stolen goods, 47  
 11. Of perjury and subornation of perjury, *ib.*  
 12. Of false swearing, 49  
 13. Of bribery, 51  
 14. Of obstruction of process, 52  
 15. Of rescue as a misdemeanor, 54  
 16. Of suing ambassadors or other public ministers, *ib.*  
 17. Of the violation of safe-conducts, 55

\* \* By the inattention of the Printer first employed on this work, the Chapters from IX. to XII. were misnumbered; and from Chapter XII. to XVII. ought to have been *Sections*, which, however, unpleasant to the eye, does no essential injury to the Book.

## CHAP. XVIII.

## Of offences against neutrality.

SECT. 1.	Of taking commissions under a foreign power,	56
2.	Of assisting to go beyond the jurisdiction of the U. States,	57
3.	Of fitting out vessels of war, and issuing commissions in certain cases,	58
4.	Of increasing the force of a ship, by a belligerent,	ib.
5.	Of setting on foot certain expeditions,	59
6.	Of privateering against friendly nations or citizens of the U. States,	ib.

## CHAP. XIX.

Of frauds against the bank of the United States,	60
--	----

## CHAP. XX.

Of unauthorized negotiations with foreign powers,	61
---	----

## CHAP. XXI.

## Of certain misdemeanors against the United States,

SECT. 1.	Of enticing away workmen employed in the arsenals and dock-yards, &c. of the United States,	63
2.	Of serving on board vessels in the slave-trade,	ib.

## CHAP. XXII.

## Of alien enemies,

SECT. 1.	How they may be secured, restrained, &c.	64
2.	The state-courts authorized to receive complaints under this act,	65
3.	Marshals to remove alien enemies,	66

## CHAP. XXIII.

## Of offences against the act establishing the post-office,

SECT. 1.	Of an offence under this act made capital,	68
2.	Of misdemeanors punishable by fine and imprisonment,	ib.
3.	Of such as are punishable only by pecuniary forfeitures,	70

## CHAP. XXIV.

## Of penalties under the law to prohibit the slave-trade,

SECT. 1.	Forfeiture for fitting out a vessel to be employed in the slave-trade,	74
2.	Forfeiture for aiding in such fitting out, &c.	75
3.	Penalty for receiving on board or transporting persons to be sold as slaves,	ib.

## CHAP. XXV.

## Of penalties under the act for the encouragement of learning,

SECT. 1.	Copy-right secured to authors for 14 years,	76
2.	Penalties for breach of this copy-right,	77
3.	Conditions on which the benefit of this act to be obtained,	78
4.	Penalty for publishing manuscripts without the consent of the authors,	79
5.	Other requisites for securing the benefits of the above act,	ib.

	PAGE.
SECT. 6. Same privileges extended to makers of designs, etchings, engravings and prints,	80
7. Penalties for infringing the rights of makers or owners of such prints, &c.	81
8. Penalties for publishing maps, &c. contrary to the manner prescribed by law,	82

#### CHAP. XXVI.

##### Of the naturalization of aliens,

SECT. 1. How aliens may become citizens of the United States,	82
2. Mode of naturalization prescribed,	85
3. In what courts aliens may be naturalized,	86
4. Children of naturalized aliens may become citizens,	ib.

#### CHAP. XXVII.

##### Of fugitives from justice,

SECT. 1. How to be apprehended and secured,	87
2. Penalty on persons rescuing them,	88
3. Of fugitives from justice under the treaty with G. Britain,	89

#### CHAP. XXVIII.

##### Of fugitives from labour,

SECT. 1. Penalty for obstructing the claimants of such fugitives,	90
---	----

#### CHAP. XXIX.

##### Of proceedings by, or against, seamen in the merchant's service,

SECT. 1. Master and mariners to execute a certain agreement,	92
2. Penalty on the seamen for breach of such agreement,	93
3. What steps to be taken where the vessel proves leaky, &c.	ib.
4. Penalty for harbouring runaway seamen,	95
5. Penalty for a mariner's absenting himself from duty,	96
6. At what port, and when, a seaman may demand his wages,	ib.
7. How to proceed against a mariner deserting his vessel,	98
8. Penalty on a master for not providing a medicine chest, &c.	ib.
9. Penalty for vessels crossing the Atlantic, not having sufficient stores, &c.	99
10. Forfeiture of wages by seamen,	ib.

#### CHAP. XXX.

##### Of proceedings in regard to Indians,

SECT. 1. Boundary line marked out,	101
2. This line not to be crossed,	103
3. No one to go into the Indian country without a passport,	104
4. Offences in the Indian country how punishable,	ib.
5. No settlement or private survey to be made,	105
6. Killing an Indian, declared to be <i>murder</i> ,	ib.
7. Traders must have a licence from government,	ib.
8. Goods of unlicensed traders to be forfeited,	106
9. Articles not to be purchased from Indians,	ib.
10. Horses not to be bought or sold without licence,	ib.
11. Agents of the public not to trade,	107
12. No purchases to be made of Indians but under treaties,	ib.
13. Prohibited to use means for civilizing the Indians tribes,	108
14. Offences by Indians how to be punished,	ib.
15. What courts to have jurisdiction over these cases,	110

v

PAGE.

SECT. 16.	How to proceed against persons crossing the line, and going into the Indian country,	111
17.	Offences against the law how to be punished,	112
18.	How penalties to be fixed,	ib.

CHAP. XXXI.

Of the administration of certain oaths prescribed by sundry acts of Congress,

SECT. 1.	Of the oath to support the constitution of the United States,	112
2.	Of oaths or affirmations under the act to promote the progress of the useful arts,	113
3.	Oath to be taken by the collectors of customs,	114
4.	Of the deputy-marshal's oath,	115
5.	Of the oaths of persons employed in the post-office,	ib.

CHAP. XXXII.

Of penalties under the act relative to the fisheries of the United States,

SECT. 1.	Penalty for deceit in obtaining the allowance prescribed by this act,	117
2.	How the owners of fishing vessels are to proceed in obtaining this allowance,	118
3.	Proceedings against fishing vessels for wages,	119

CHAP. XXXIII.

Of penalties under the act for enrolling vessels employed in the coasting-trade,

SECT. 1.	On what conditions collectors may enroll vessels,	120
2.	How far licences shall be deemed in force,	121
3.	Forfeiture of certain vessels not complying with this act,	ib.
4.	Vessels before proceeding on a foreign voyage to give up enrolment and obtain a register,	122
5.	Forfeiture for neglecting to give up a licence about to expire,	123
6.	Penalty for a vessel not having her name painted on her stern,	124
7.	Penalty for not reporting a change of master,	ib.
8.	Penalty for a master of a vessel not exhibiting his licence to an officer of the customs,	125
9.	Duty of masters of licensed coasting vessels having on board distilled spirits, &c.	ib.
10.	Penalty for certain omissions in a master,	126
11.	Forfeiture for certain neglects in a master,	127
12.	Forfeitures for certain omissions, &c.	129
13.	Forfeitures for other neglects,	130
14.	Other cases of forfeiture,	131
15.	Regulations in respect to certain registered vessels,	132
16.	A certain forfeiture declared,	133
17.	Penalty for a certain neglect in a master of a vessel,	134
18.	Penalty for a certain neglect,	ib.
19.	Revenue-officers may go on board vessels without their own districts,	135
20.	Penalty on recording enrolment, &c. contrary to this act,	135
21.	Penalty for swearing falsely, and for counterfeiting an enrolment,	136
22.	Penalty for obstructing the execution of this act,	137
23.	Penalty for transferring vessels to foreigners, &c.	ib.

## CHAP. XXXIV.

Of penalties under the act for the collection of duties  
on import and tonnage,

SECT. 1.	Penalty for not delivering goods transported by a lighter under a permit,	138
2.	Penalty for coming to, at certain ports and leaving manifests at others,	139
3.	Penalty for not transmitting the collectors and others oaths to the comptroller of the treasury,	ib.
4.	Penalty for breach of duty by the collector, &c.	140
5.	Penalty for not having on board manifests, &c.	ib.
6.	Penalty for not exhibiting manifests, &c.	141
7.	Penalty for unloading goods without authority,	142
8.	Penalty for aiding in such unloading.	143
9.	Penalty for sailing from a district before entry is made,	ib.
10.	Penalty for not reporting furs, wines, and teas,	144
11.	Penalty for not obtaining a copy of the first report, &c.	145
12.	Penalty on matters of vessels for certain neglects,	ib.
13.	Penalty for not making a separate entry of spirits, &c.	146
14.	Penalty for defacing marks, &c.	ib.
15.	Penalty for making a false entry of sea-stores,	148
16.	Penalty for not entering with baggage, articles subject to duty,	ib.
17.	Penalty for landing goods by night,	149
18.	Penalty for removing goods before being weighed,	150
19.	Penalty for misbehaviour of inspectors,	ib.
20.	Penalty for certain offences therein defined,	151
21.	Penalty on the master where the cargo does not agree with the report or manifest,	153
22.	Goods entered with a fraudulent invoice to be forfeited,	154
23.	Officers of the customs suspecting frauds may open packages,	155
24.	Collectors, &c. may search suspected places,	ib.
25.	Penalty on buying or concealing run-goods,	156
26.	Penalty for resisting the officers of the customs,	ib.
27.	Penalties on officers of the customs &c. for misconduct,	157
28.	Penalty on re-landing goods entered for drawback,	158
29.	Forfeiture for entering goods falsely, to obtain the benefit of drawbacks,	ib.
30.	Officers of the customs not to be concerned in shipping,	159
31.	Penalty for offering, or taking a bribe,	160
32.	Penalty for not exhibiting manifests and obtaining clearances to foreign ports,	ib.
33.	Revenue cutters to carry a certain pendant, and the penalty for other vessels carrying like ones,	ib.
34.	In what vessels or packages certain articles are to be imported,	161
35.	Penalty for breaking open certain packages, &c.	162
36.	Penalties how to be sued for,	ib.
37.	Manner of proceeding to the condemnation of goods and vessels seized,	163
38.	Distribution of fines, penalties and forfeitures,	165
39.	Of sundry incidental matters under this act,	ib.

## CHAP. XXV.

Of penalties under the act concerning the registering  
and recording of ships and vessels,

SECT. 1.	Penalty for a vessel's not having her name, &c. painted on her stern,	170
2.	Penalty for taking certain false oaths or affirmations,	171
3.	Penalty for not delivering up certificates of registry,	ib.

	PAGE.
SECT. 4. Penalties in other cases of a like nature,	172
5. Penalty for not delivering up registers, &c.	173
6. Penalty for giving up registers, &c.	174
7. Penalty for not reporting a change of master,	ib.
8. Forfeiture for not making known the sale of an American vessel to a foreigner,	175
9. Penalty on making false registers or demanding unlawful fees,	176
10. Penalty for taking a false oath or affirmation,	177
11. Penalties under this act how to be recovered,	ib.

#### CHAP. XXXVI.

Of the mitigation or remission of the forfeitures, penalties, and disabilities, accruing under the provisions contained in the four preceding chapters,

SECT. 1. By the secretary of the treasury,	178
I. On a report from a district judge;	
II. On a report from any state court, in cases depending before them.	
2. Prosecutions for fines and forfeitures may be instituted at any time within 5 years,	180

#### CHAP. XXXVII.

Of proceedings by judges of the several state courts and justices of the peace, in cases of contested elections for members of the House of Representatives of the United States,

SECT. 1. What judicial magistrates to summon witnesses,	180
2. Manner of serving summons,	181
3. Penalty for not attending in pursuance of summons,	ib.
4. Notification to the opposite party,	182
5. Witnesses to be examined on oath or affirmation,	ib.
6. What proceedings to be had in case the above mentioned officers cannot attend,	183
7. Two justices of the peace empowered to act,	ib.
8. Of the allowance to witnesses, and how the same may be recovered,	184
9. Fees to be paid to the officers employed,	184

#### CHAP. XXXVIII.

Of taking surety of the peace, and for good behaviour, under the laws of the United States,

SECT. 1. Who may be bound to keep the peace,	186
2. What will discharge a recognizance,	ib.
3. In what cases security may be required,	ib.
4. What forfeits a recognizance,	187
5. In what cases a recognizance for good behaviour may be taken,	ib.
6. When it is forfeited,	188

## CHAP. XXXIX.

Of proceedings in criminal cases under the laws of the United States,	188
SECT. 1. Of arrests,	189
I. By warrant,	ib.
II. Without warrant,	ib.
SECT. 2. Of bail and commitment,	190
I. Of cases in which bail <i>may</i> be taken,	ib.
II. Of cases in which it <i>cannot</i> be taken by judges of the inferior state courts and justices of the peace,	192

## CHAP. XL.

Of prosecutions for offences against the laws of the United States,	195
SECT. 1. Of presentment by grand juries,	196
2. Of indictments,	197
3. Of informations,	200

## CHAP. XLI.

Of arraignment and pleading,	202
------------------------------	-----

## CHAP. XLII.

Of trial and its incidents,	203
SECT. 1. Of general rules of evidence,	205
2. Of general rules in regard to written evidence,	207
3. Of the various kinds of evidence,	208
I. Of records,	ib.
II. Of acts of congress,	209
III. Of foreign laws or sentences of foreign courts,	210
SECT. 4. Of the authentication of public records, and judicial proceedings of the different states,	210—211
5. Of other exemplifications and of sworn copies,	212
6. Rules in regard to confessions in writing,	212—213
7. Of depositions under the act of congress, and manner of taking the same,	214—215

## CHAP. LXIII.

Of parol evidence.	216
SECT. 1. Of persons disqualified from giving testimony on account of their incompetency,	217
I. From want of understanding,	ib.
II. From infamy of character,	218
III. From interest,	219
IV. From relation to either of the parties to a cause,	222
V. Of persons privileged from examination,	223
SECT. 2. Of the examination of witnesses,	225
3. Of hearsay evidence,	226
4. Of compelling the attendance of witnesses,	227

## CHAP. XLIV.

Of summing up the evidence, &amp;c. 228

## CHAP. XLV.

Of incidents subsequent to trial, 230

- Sect. 1. Of motions in arrest of judgment, ib  
 2. Of the removal of causes from an inferior to a superior court, 231  
     I. By writ of error, 232  
     II. By certiorari, 233—234

## CHAP. XLVI.

Of pardon, and the remission of penalties and fines, 236

- Sect. 1. Of pardon, ib  
 2. Of the remission of penalties, ib  
 3. Of punishments, 237—238

LIST OF FORMS CONTAINED IN THE  
APPENDIX.*Warrants.*

- No.  
 I. General warrant.  
 II. Warrant in any case bailable.  
 III. Peace warrant.  
 IV. Search warrant.  
 V. Search warrant under the act of congress for the collection of duties on import and tonnage.  
 VI. Warrant to apprehend a fugitive from justice.  
 VII. Warrant to apprehend a seaman who has deserted his vessel.  
 VIII. Mittimus.  
 IX. Mittimus in a capital case for further examination.

*Recognizances, &c.*

- X. Recognizance for the appearance of a party to answer a charge alleged.  
 XI. For a witness to appear and testify.  
 XII. For the peace or good behaviour.  
 XIII. Mittimus for want of sureties.  
 XIV. Supercedeas.

*Summons.*

- XV. Form of a summons against the master of a vessel for seaman's wages.  
 XVII. Form of a certificate by a justice of the peace, that there is cause of complaint against the master of a vessel for non-payment of a seaman's wages.

*Oaths, &c.*

- XVII. Oath of a witness to give evidence.  
 XVIII. Special form of an oath used by some denominations of christians.  
 XIX. Affirmation of a quaker.  
 XX. Oath of a person requesting surety of the peace.  
 XXI. Oath of a juryman impannell'd to try a cause.  
 XXII. Oath of a witness or a juryman on his VOIRE DIRE.  
 XXIII. Oath of jurors to ascertain the truth of a challenge against a juror.

*Examinations, &c.*

No.

- XXIV. Examination of a witness in behalf of the public.  
 XXV. Confession of one charged with an offence.  
 XXVI. Form of an affidavit.  
 XXVII. Notification to an adverse party of the time and place of taking a deposition before a mayor or chief magistrate of a city, or judge of a court of common pleas, &c. under the act of congress directing the same.  
 XXVIII. Form of taking depositions under the act of congress for the establishment of the judicial courts of the United States.  
 XXIX. Form of a certificate to be annexed to a deposition, taken as above, where the magistrate does not himself deliver the deposition into the court, by which the taking of the same, was authorized and directed.  
 XXX. Affidavit of the service of the notification aforesaid.

*Writs and pleadings.*

- XXXI. Form of a writ of error as approved by two of the judges of the supreme court of the United States, agreeably to an act of congress.  
 XXXII. Form of a certiorari to a justice of the peace to remove proceedings under an act of congress.  
 XXXIII. Form of a subpoena to give evidence, and of a ticket.  
 XXXIV. Form of pleas in an action of debt on a custom-house bond where judgment is entered by default.  
 XXXV. Form of naturalizing a foreigner as used in the mayor's court of New-York.  
 XXXVI. General form of an information QUI TAM.  
 XXXVII. General form of conviction.  
 XXXVIII. Form of a venire for summoning a jury.  
 XXXIX. Form of a libel for goods seized under the act of congress for the collection of the duties on import and tonnage.  
 XL. Form of an information under the act of congress, for regulating vessels in the coalting trade and fisheries.  
 XLI. Form of an information under the act for punishing certain offences against the neutrality of the United States.  
 XLII. Claim and plea to the foregoing information.  
 XLIII. Forms for taking the acknowledgment of deeds, for lands lying the state of New-York.

---

# ABSTRACT

OF THE

*Laws of the United States, &c.*

---

## CHAP. I.

*Of the origin of Justices of the Peace.*

THE first institution of Justices of the Peace was about the year of our Lord 1327. Prior to this period, we read of the *Chief Justice* of England (*Capitalis Justiciarius totius Angliæ*) of the *Justices* of the Court of *King's Bench*, and of the *Common Pleas*: but *Justices of the Peace* date their origin from the first year of the reign of Edward the Third. Previously to his reign, the preservation of the public peace had been committed to a class of officers, stiled "Conservators of the Peace." These derived their authority either from prescription, and were bound to exercise it by the tenure of their lands; or were chosen by the freeholders, in the County Court, from the principal men in the County. The persons so chosen were to be returned to the King, and by him were commissioned to undertake and execute the office until superseded. In seasons of imminent danger, either of foreign invasion or domestic insurrection, *extraordinary* Conservators of the Peace (*custodes pacis*) were appointed to watch over and defend particular districts, and had authority to command the Sheriff, with all his *posse commitatus*, to assist in maintaining peace and order.

A 3

But when Isabel, the wife of the unfortunate Edward the Second, assisted by Mortimer, her gallant, had contrived to depose her husband, she affected to place her infant son Edward, the Third, on the throne, while his father was still alive and in the full enjoyment of his mental powers. For some time these usurpers continued to delude the English nation with the persuasion that Edward the Second was incompetent to the exercise of the regal authority, and had therefore delegated the same to his son; and that during his minority it was to be executed by his mother, Isabel.—Recovering however from this delusion, into which they had been led, by the artifices of the Queen and her paramour, the nation began to murmur at the confinement of their lawful king, and to concert his liberation.

To prevent any popular insurrection for the accomplishment of this object, the Infant-King, or rather, the Mother and her party, sent writs in the name of Edward III. to all the Sheriffs of England, giving a plausible account of the manner in which he had obtained possession of the crown, and commanding each Sheriff, “that the peace be kept in his bailiwick, on pain and peril of disinherittance, and loss of life and limb.”

In a few weeks after the date of these writs, it was ordained in Parliament, that “for the better maintaining and *keeping the peace* in every county, *good and lawful men*, which were no maintainers of evil, or barretors in the county, should be *assigned to keep the peace*.”

In this manner, and on this occasion, say the English Historians, was the election of the *Conservators of the Peace* taken from the people, and vested in the crown. This *assignment* mentioned in the statute being construed to be by the *King's commission*.—Still however these peace officers were denominated “Conservators, Wardens, or Keepers of the Peace” until a subsequent statute, passed<sup>(a)</sup> in the same reign, empowered them to try *felonies*; at which time says Sir W. Blackstone, “they acquired the more honorable appellation of JUSTICES.”

(a) 36 Ed. 3. Ch. 2.

In England there are three descriptions of Justices of the peace:—1. Such as have been antiently created by Act of Parliament, as the Archbishop of York, the Bishops of Ely, Durham, &c. who are clothed at once with civil and ecclesiastical authority:—2. Such as have been created by the King's letters patent, under the great seal, as Mayors and Chief Officers in several corporate towns, who are *Justices of the Peace*, within the limits prescribed by their charters:—3. Those created by the King's special commission, under the great seal, who are appointed by the Lord Chancellor, Lord Keeper, or (when these places are vacant) by the Commissioners of the great seal. The tenure of their office is during the King's pleasure; and they may be dismissed by the Lord Chancellor at any time, for misfeasance, or non-feasance of official duty.

## CHAP. II.

*Of the manner of their appointment and tenure of office in the several States.*

It will gratify a laudable curiosity to know in what manner Justices of the Peace, are constituted—and by what tenure they hold their respective offices in the different States of the American Union.

### NEW HAMPSHIRE.

By the Constitution of the *State of New Hampshire*, framed and established in the year 1792. "All *judicial officers* are to be *nominated* and *appointed* by the Governor and Council, in which the Governor and Council have a negative on each other."

"The General Court (which consists of the Senate and House of Representatives), are empowered to give Justices of the Peace jurisdiction in civil cases, when the damages demanded shall not exceed four pounds, and the title of real estate is not concerned, but with right of appeal to either party to some other court, so that a trial by jury in the last resort may be had. And by a subsequent article in the Constitution, provision is made that "No Judge or *Justice of the Peace* shall act as attorney, or

be of counsel to any party; or originate any civil suit, in matters which shall come before him as Justice of the Peace;”—the Judges of the Supreme Court however may be Justices of Peace throughout the State.”

#### MASSACHUSETTS.

By the Constitution of the State of *Massachusetts*, “ All *judicial officers* duly appointed, commissioned and sworn, shall hold their offices, during good behaviour, excepting such concerning whom, there is a different provision made in the constitution; provided nevertheless, that “ the Governor with consent of the Council, may remove them upon the address of both houses of legislature.”

“ In order” however, “ that the people might 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,” it is ordained (a) that “ 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, and another person appointed as shall most conduce to the well-being of the Commonwealth.”—By art. 9. of chap. 2. “ All judicial officers” are to be nominated and appointed by and with the advice and consent of the Council.”

#### RHODE-ISLAND.

The State of *Rhode-Island* has no *written* Constitution. The separation of the United States from the Mother Country introduced no change there, in the form of state government. All authority with them is still exercised under the colonial charter of Charles the Second.

Their *judicial* as well as executive officers, are annually chosen by the legislature, and are removable at their pleasure—a system too hostile to the fair and equal administration of justice one would suppose, to exist a single year, in a country so enlightened as ours!

(a) Ch. 3. Art. 3.

## CONNECTICUT.

The State of *Connecticut* is also without a formal Constitution—but this defect is in a great measure supplied by the correctness of principle, and the extensive information possessed by the people of that state. There also, *judicial officers* are *annually* elected by the legislature, but the tenure of their office, from the cause just mentioned, is no less secure, than where written constitutions have declared it to be “*during good behaviour.*” Judges and justices are there continued in office for life, unless convicted of *misbehaviour*, or rendered incompetent by *disease* or *infirmity* to the discharge of their duty.

## VERMONT.

In *Vermont* the constitution provides that “the General Assembly in conjunction with the Council, shall annually, (or oftener if need be) elect *justices of the peace*, to be commissioned by the Governor and Council, but is silent on the tenure of their office, or the mode of removal in case of *misconduct*. In case of a vacancy in any office during the recess of the legislature, it may be filled by the Governor, or in his absence by the Lieutenant-Governor, with the Council, “until the office can be filled in the manner directed by law or this constitution.”

In this state “every member of the Council and Judge of the Supreme Court, is a *justice of the peace* for the whole state by virtue of his office.”

## NEW-YORK.

In the State of *New-York*, the authority to *appoint*, *commission*, and to *dismiss*, is vested by the Constitution in the *Council of Appointment*, which consists of the Governor and four Members chosen from the Senate by the Assembly of the State, during whose pleasure, all the Judges of the Courts of Common Pleas (with the exception of the first Judge) and Justices of the Peace, hold their commissions, which are to be “issued to them at least once in three years.”

## NEW-JERSEY.

*In New-Jersey*, Justices of the Peace are chosen by the Assembly and Council, for five years, and commissioned by the Governor, and in case of his absence, by the Vice-President of the Council. If they are found guilty of any misbehaviour, by the Council, on an impeachment by the Assembly, they are liable to be dismissed."

## PENNSYLVANIA.

*The Governor of Pennsylvania*, (by art. 5. sect. 10. of the Constitution) is authorized "to appoint a competent number of Justices of the Peace, in such convenient districts, in each county, as are or shall be directed by law—they shall be commissioned *during good behaviour*, but may be removed on conviction of misbehaviour in office; or of any infamous crime; or on the address of both houses of the legislature."

## DELAWARE.

By the constitution of the State of *Delaware*, the Judicial power is vested in a Court of Chancery, a Supreme Court, and Courts of Oyer and Terminer and General Gaol Delivery, in a Court of Common Pleas, and in an Orphan's Court, Register's Court, and a Court of Quarter Sessions of the Peace for each county, in *Justices of the Peace*, and in such other courts as the Legislature, two-thirds of all the members of each branch concurring, may from time to time, establish.

The Governor appoints a competent number of persons to the office of Justice of the Peace, not exceeding twelve in each county, until two-thirds of both houses of the legislature shall by law direct in addition to the number, who shall be commissioned for seven years, if so long they shall behave themselves well; but may be removed by the Governor within that time on conviction of misbehaviour in office, or on the address of both houses of the legislature.

The members of the senate and house of Representatives, the Chancellor, the Judges of the Supreme Court,

and the Court of Common Pleas, and the Attorney-General, shall by virtue of their offices, be conservators of the peace throughout the state; and the Treasurer, Secretary, Clerks of the Supreme Court, Prothonotaries, Registers, Recorders, Sheriffs, and Coroners, shall, by virtue of their offices, be conservators thereof, within the counties respectively in which they reside.

---

#### MARYLAND.

In the State of *Maryland*, Justices of the Peace are appointed by the Governor, by and with the advice and consent of the Council—they hold their offices, during good behaviour—they are eligible as Senators, Delegates, or Members of Council, and may notwithstanding continue to act as Justices of the Peace.

---

#### VIRGINIA.

By what tenure Justices of the Peace hold their commission in the State of Virginia, does not appear from their Constitution, which on this point is silent—but from the provision made in favour of the Chancellor and Judges of the Superior Courts, it is to be inferred that Justices of the Peace can be superceded by the same authority that appoints them. This power of appointing is vested in the Governor, with advice of the Privy Council, who “in case of vacancies, or a necessity of encreasing the number, is authorized to make further appointments on the recommendation of the respective County Courts.”

---

#### NORTH-CAROLINA.

By the 33 art. of the Constitution of *North Carolina*, it is ordained “that the Justices of the Peace within their respective counties in the State shall in future be recommended to the Governor for the time being, by the representatives in General Assembly, and the Governor shall commission them accordingly; and the Justices when so commissioned shall hold their offices during good behaviour,

and shall not be removed from office by the General Assembly, unless for misbehaviour, absence or inability.

---

#### SOUTH CAROLINA.

The Constitution of *South Carolina* is wholly silent in regard to Justices of the Peace. The tenure, duration, and duties of their office must therefore be regulated by the Legislature of the State.

---

#### GEORGIA.

By the Constitution of the State of *Georgia*, 3 Art. Sect. 1. "all judicial powers of this State are vested in a Superior Court, and in such inferior jurisdictions as the Legislature shall from time to time ordain and establish."

Sect. 5. The Justices of the Peace shall be nominated by the Inferior Courts of the several counties, and commissioned by the Governor, and there shall be two Justices of the Peace in each captain's district, either or both of whom, shall have power to try all cases of a civil nature, within their district, where the debt, or liquidated demand, does not exceed thirty dollars, in such manner as the Legislature may by law direct. They shall hold their appointments during good behaviour, or until they shall be removed by conviction on indictment in the Superior Court for mal-practice in office, or for any felonious or infamous crime, or by the Governor, on the address of two-thirds of each branch of the Legislature.

---

#### TENNESSEE.

The Constitution of *Tennessee*, provides that "There shall be Justices of the Peace appointed for each county, not exceeding two for each captain's company, except for the company which includes the county town, which shall not exceed three, who shall hold their offices during good behaviour."

They are appointed by the Legislature by joint ballot of the State.

## KENTUCKY.

By the Constitution of *Kentucky*, (4th art. sect. 6.) "a competent number of justices of the peace shall be appointed in each county; they shall be commissioned during good behaviour, but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of two-thirds of each house of the General Assembly: Provided however, that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each House."

"The number of the justices of the peace, to which the several counties in this commonwealth now established, or which may hereafter be established, ought to be entitled, shall from time to time be regulated by law."(a)

"When a justice of the peace is "needed in any county, the county court for the same, a majority of all its justices concurring therein, shall recommend to the Governor two proper persons to fill the office, one of whom he shall appoint thereto: Provided however, that if the county court shall for twelve months omit to make such recommendation, after being requested by the Governor to recommend proper persons, he shall then nominate, and by and with the advice and consent of the Senate, appoint a fit person to fill such office."(b)

The Governor is authorized to "nominate, and by and with the advice and consent of the Senate, appoint all officers, whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for."(c)

## CHAP. III.

*Of their Oaths of Office.*

By the 6th art. (sect. 2.) of the Constitution of the United States, that instrument and all laws and treaties, made in pursuance thereof, are declared to be the *supreme*

(a) sect. 7.

(b) sect. 8.

(c) 3. art. sect. 9.

*law of the land*; and the judges of every state are to be bound thereby, any thing in the constitution and laws of any state to the contrary, notwithstanding—and by sect. 3. of the same art. “*all judicial officers, &c.*” are to be bound by oath or affirmation, to support this constitution.”

In pursuance of this provision, (a) all executive and judicial officers of the several states, are required to take the following oath or affirmation:—

“ I, (A. B.) do solemnly swear, or affirm, (as the case may be,) that I will support the Constitution of the United States.”

Until after taking this oath, judicial officers are not allowed to execute the duties of their office; and the person administering the oath, is required, “to cause a record or certificate thereof to be made, in the same manner as by the laws of the state, he shall be directed to record or certify the oath of office.”

---

#### CHAP. IV.

#### RESTRICTIONS,

IMPOSED BY THE AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

WITH the view of preventing the powers that might be vested in the judicial officers of the United, and of the individual States, from abuse, the amendments to the Constitution enjoin certain limitations in the exercise of judicial authority. These are to be considered as paramount restrictions, and as explanatory principles in the interpretation and execution of the laws of Congress. The following articles having an operative effect, and applying to the exercise of all judicial power under the authority of the United States, claim a high degree of attention:—

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

(a) Laws U. S. Ch. 1. sect. 3.

oath or affirmation—and particularly describing the place to be searched, and the persons or things to be seized.”

V. “No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of 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 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.”

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

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.”

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

It may not be amiss to point the attention of justices of the peace, particularly to the 7th art. There are many cases, hereafter to be stated, in which they may be required to impose fines, or to adjudge the recovery of penalties to the amount of *twenty dollars* and upwards. In all such cases it behoves them to recollect that the facts in issue are to be *tried by a jury*. Should they undertake to impose a fine, or penalty, or give judgment for this or a larger sum, without the intervention of a jury, their proceedings,

if removed by certiorari to a higher tribunal, would probably be declared irregular and void.

*GENERAL RULE.*— In a great variety of cases the laws of Congress declare offences; prescribe fines and penalties, and vest the cognizance of the same, in “*Courts proper to try the same*” — in “*Courts of competent jurisdiction*” — in “*Courts having authority to try causes to that amount, &c.*”

In all such cases, the first enquiry of an inferior *State Court*, will be, whether by the laws of the state, under whose authority they act—they are vested with powers to try a similar offence, or adjudge a fine or penalty, or to give judgment for a sum to the amount of that, in the case brought before them under the act of Congress.

So also, Justices of the Peace, should not, under the laws of Congress; exceed the authority given them by the state laws, unless that confided to them by laws of the United States, be *express and clear*.

---

CHAP. V.

OF CRIMES AND CRIMINALS.

As a large portion of the authority vested in Judges of the inferior State-Courts, and in Justices of the Peace, relates to the prevention of crimes, or to measures necessary in order to bring offenders against the laws of the United States, to punishment; it may be useful to bestow a few words on the nature of CRIMES in general; and on those persons who are not subjects, from *defect of will*, to the punishments of the law.

---

SECT. I.—*Of Crimes.*

“ A crime may be defined to be an act, committed or omitted, in violation of a public law, that either forbids, or commands it. A punishment is some pain or penalty inflicted on a criminal, by the judgment and command of some lawful court, for the purpose of correcting and amending him, and preventing him from the commission of like crimes in future: and likewise for the purpose of operating as a public example to mankind in general, in order to

deter them from the practice of similar crimes, by the dread of similar punishments. A misdemeanor is synonymous with crime; but when crimes and misdemeanors are mentioned together, it is commonly understood that the first relate to higher, and the last to lower offences.

“ The object of the institution of society, is to preserve to individuals certain private social rights, and to restrain those acts, which disturb the peace, interrupt the happiness, and tend to the dissolution of government. As mankind united in society for that purpose, this must be the leading principle of all laws, which restrain their conduct. Those acts which violate the rights of individuals, are private wrongs; and those which affect the general welfare are public crimes. The same acts will generally constitute a private injury, as well as a public crime. A public punishment is inflicted on the part of the state, to restrain such conduct, and the party injured is intitled to a compensation for the injury he has sustained. If one man assaults and beats another, he is punished by a fine for disturbing the peace, and compelled to compensate in money the person he has abused and wounded. All public crimes therefore are considered and estimated as relative to the community at large, and private wrongs as they affect individuals. If every man were allowed to kill, wound, or evilly treat his neighbour, and to take away and destroy his property at pleasure, it is apparent that it would not only destroy all private right, but dissolve the bands of society. It is therefore not only necessary that a compensation should be awarded to the person who has suffered the loss; but that the collected strength of the community should be exerted, to prevent those acts which endanger its existence. (a)

---

#### SECT. II.—Of Criminals.

By the common law of England and of the U. States, a criminal is one, who, with a *vicious will* commits an *unlawful act*.—But there are several cases in which persons having *no will*, or which is the same thing, being so far

(a) Swift's System, vol. 2. p. 291.

destitute of that portion of a rational mind or understanding, or not in circumstances to exercise it, which is necessary to *determine the will aright*; are not held to be the subjects of legal punishment in cases where they transgress the law.

Although the *general* rule is, "that no persons shall be excused from punishment for disobedience to the laws of his country, except such as are expressly defined and exempted by the laws themselves;" yet, in the following instances, the nature of the thing dictates, that the parties ought not to be subject to the penalties of disobedience.

I. Where there is a *total defect of understanding*, as in the case of a child, or one who has not attained to years of maturity. By our laws no precise time is fixed at which a person shall be considered as capable of judging of what is right or wrong—but the rule is, that "the capacity of doing ill or contracting guilt, is not so much measured by years and days, as by the delinquent's understanding and judgment."

Under 7 years of age indeed, persons cannot be guilty of felony—but at 8 years it has been adjudged that they *may*. Between 7 and 14 years of age, the law *presumes* innocence; but if it appear that the party could discern between good and evil, he may be capitally convicted. And in all cases the malice or *vicious will*, which is to supply the defect of years, ought to be clear beyond all doubt or contradiction.

II. A second case of defect of will as that of *idiocy* or *lunacy*:—In criminal cases, idiots and lunatics are not chargeable for their own acts, if committed while under these incapacities: but if a lunatic has lucid intervals of understanding, he shall answer for what he does in those intervals, as if he had no deficiency.

III. There is however, a *defect of will* occasioned by the parties own misbehaviour, which by the English and our law, does not exempt a person from guilt or punishment—that is, the case of wilful drunkennes: For the law considers this rather as an aggravation, than an extenuation of an offence. A drunkard, says Sir Edward Coke, "is a *voluntary dæmon*, and hath no privilege thereby, but what hurt or ill soever he doth, his drunkennes doth aggravate

it; for *inebriety discloses and enhances every crime.*" Besides, considering how easy it is to counterfeit this excuse which at best is weak—the law will not suffer a drunkard to privilege one crime by the commission of another.

IV. A fourth deficiency of will is where a man commits an unlawful act by *misfortune or chance*, and not by design. Here the will observes a total neutrality, and does not cooperate with the deed; which therefore wants one main ingredient of a crime. Of this when it affects the life of another, we shall find more occasion to speak hereafter; at present only observing, that if any accidental mischief happens to follow from the performance of a *lawful* act, the party stands excused from all guilt: but if a man be doing any thing *unlawful*, and a consequence ensues which he did not foresee or intend, as the death of a man or the like, his want of foresight shall be no excuse; for, being guilty of one offence, in doing antecedently what is in itself unlawful, he is criminally guilty of whatever consequence may follow the first misbehaviour(*a*).

V. Fifthly, *ignorance or mistake* is another defect of will; when a man, intending to do a lawful act, does that which is unlawful. For here the deed and the will acting separately, there is not that conjunction between them, which is necessary to form a criminal act. But this must be an ignorance or mistake of fact, and not an error in point of law. As if a man, intending to kill a thief or housebreaker in his own house, by mistake kills one of his own family, this is no criminal action(*b*): but if a man thinks he has a right to kill a person excommunicated or outlawed, wherever he meets him, and does so; this is wilful murder. For a mistake in point of law, which every person of discretion not only may, but is bound and presumed to know, is in criminal cases no sort of defence. *Ignorantia juris, quod quisque tenetur scire, neminem excusat*, is as well the maxim of our own law(*c*), as it was of the Roman(*d*).

VI. A sixth species of defect of will is that arising from *compulsion* and inevitable *necessity*. These are a constraint

(a) 1 Hal. P. C. 39.

(b) Cro. Car. 338.

(c) Plowd. 343.

(d) Ff. 22. 6. 9.

upon the will, whereby a man is urged to do that which his judgment disapproves; and which, it is to be presumed, his will (if left to itself) would reject. As in the case of *civil subjection*, where the subject or citizen is compelled in certain instances to act contrary to his judgment.—So also in the case of a wife acting under the command or coercion of her husband, which will excuse her even in some capital offences from punishment. If therefore, a woman commit theft, burglary, or like offences by the coercion of her husband, or even in his company, which the law construes as coercion, she is guilty of no offence, as she is considered as acting by compulsion and not of her own will. But in crimes that are *mala in se* (criminal in their own nature, and not by the will of the Legislature;) as in treason, murder, and the like, she is not excused by any coercion of her husband—but may be punished as if single. So also she may be punished *with* her husband for keeping a brothel, or disorderly house; and whenever she commits a crime *alone* without the command or coercion of her husband, she is liable to punishment.

But this privilege extends to no other relation beside a wife. Neither a child nor a servant is held excusable for any offence committed by the command or coercion of a parent or a master.

There is, however, a certain degree of compulsion, arising from threats and menaces, which induce a fear of death or bodily hurt, which serves to *extenuate* the guilt of breaking the positive laws of society—but not those which are *mala in se*, so declared by the laws of God.—So likewise where a choice of two evils are set before a man, and he chuses the least of the two; as where a person is bound to arrest an offender, or to disperse a riot; here it is justifiable to beat, wound or perhaps to kill the offenders, rather than let a murderer escape, or a riot continue.

With these exceptions, all other persons are liable to punishment for offences against the laws of that society, of which they are members.

## CHAP. VI.

## GENERAL REMARKS,

ON THE

## DUTIES OF JUSTICES OF THE PEACE AT COMMON LAW.

In no instance, ought a justice of the peace to hear and determine a cause in which he is materially interested; unless where he is assaulted or injured, and no other justice is present; in which case it seems, (says the Common Law) he may commit such offender till he can find sureties for the peace, or for his good behaviour.

If a (a) person be brought before a justice of the peace, expressly charged with felony upon oath, the justice cannot discharge him, but must either bail or commit him: But if a person be charged with suspicion only of felony, and no felony is proved to have been committed—or if the fact charged as a felony, be no felony in point of law, the justice may discharge him.

“In all cases where the statutes refer the trial of offences to the discretion of a justice or justices of peace out of sessions, it is requisite that the said justices take due examination of the offenders themselves, and also of credible witnesses, as well concerning the fact itself, as the circumstances thereof; and upon confession, or other due proof, to proceed according to law and justice, and not to give sentence before the party be cited and heard to answer for himself: and in all cases where the statutes refer the trial to the discretion of the justices, they seem also to authorise the justices to take examination of witnesses upon oath.

The authority of a justice of peace is to be exercised only within the county where he is appointed by his commission, nor must he intermeddle in any city there, which is a county of itself, nor in any other city or town corporate, tho' it be no county of itself, which have their proper justices of the peace within themselves, especially such if in the charter there be any special words of prohibition, that the Justice of the Shire *non se intromittant*, &c. except such county justice be also in commission for such city or town corporate.

(a) 2 H. H. 121.

But in other corporate towns which have not their proper justices of peace, as also in all Liberties and Franchises (within the county) which have the return of writs, but have not their proper justices, there the justices of the peace of the county ought to execute their authority, and that by the words of their commission.

It is a rule, that whatever one justice of peace alone may do in the execution of his office, the same may be done by two or more justices; but where the law gives authority to two, there one alone is excluded: Nevertheless, where a Statute appoints a thing to be done by two justices of the peace, or more, if the offence be against the peace, upon complaint made thereof to any one justice of peace, he may grant his warrant to arrest the offender, and bring him before him or any other justice of the peace to find sureties for his appearance at the next General Sessions to answer such offence, or he may bind the offender to his good behaviour, at his discretion.

There seems to be a general rule established in *Stradlings Case*, *Plowden* 206. That when a thing is appointed by a statute to be done by or before one certain person, such thing cannot be done by or before another, but ought to be done as the statute appoints, as by an express designation of one, or power given to one certain person, all others are excluded.

The power and authority of a justice of the peace, as well by his commission as by the statutes, is in some cases ministerial, and in others judicial; ministerial when he is thereunto commanded by an higher authority; judicial when he acts by his own discretion; which discretion if justly observed without fear or favour, or any bias or tendency to popularity, or self-interest, how worthy such a magistrate. On the contrary, if exercised partially, unjustly, with tyranny, violence or oppression, how unworthy such a mortal!"

## CHAP. VII.

*Of the protection enjoyed by Judicial Magistrates, in the due execution of their authority.*

On this subject, Congress as yet, have passed no law—Perhaps they considered that as Justices of the Peace, and Judges of the County Courts, hold their commissions under the authority of the several states; that, of course, the state-legislatures would enact suitable provisions to secure this class of officers from insult and injury, while in the discharge of their judicial duties.

Whatever then these provisions may be in the several states, they must be equally applicable to Justices of the Peace, &c. whether acting as *national* or as *state* magistrates.

The common law of England and America, will not suffer a judicial officer to be slandered with impunity, while in the execution of his office. Words spoken against a judicial magistrate are actionable, when they would *not* be if uttered against a private individual.—As (a) where a Justice of the Peace was called “a rascal, a villain, and a liar.” Here the Court held “that though *rascal* and *villain* were uncertain, yet being joined with *liar*, and spoken of a *justice of the peace*, they imported a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff.

(b) So where a justice of the peace was called a *rogue*. Words of this kind if spoken in the hearing of a Court or of a magistrate while in the exercise of his office—or addressed to them, may be punished in a summary way by *commitment*; but if spoken of them out of their hearing, the offender may be proceeded against, either by indictment, for an offence against public justice; or by a private suit of the party injured, for damages.

If, however, the words in question are spoken of a person for acts done, in a *private* and not in a *judicial* capacity, the contempt and insult are not the same, nor are the penalties alike.

If magistrates acting in a *judicial* capacity, *err in judgment*, they are in no respect, personally liable for such error.—

(a) Ld. Ray. 1396.

(b) Str. 1168.

But whether acting in a *ministerial* or *judicial* character, if they are guilty of evident partiality, malice, or corruption, they are punishable either by indictment, or at the suit of the party injured, but not in *both* ways. Burn. 719.

In England several statutes have been passed for the protection of magistrates while in the exercise of their office; which, having generally been copied into the laws of most of the states, with certain modifications or amendments—to these the American magistrate should carefully refer.

By the 7 *Jac. c. 5*. If any action shall be brought against a justice for any thing done by virtue of his office, he may plead the general issue, and give the special matter in evidence; and, if he recovers, he shall have double costs.

And by the 21 *Jac. c. 12*. such action shall not be laid but in the county where the fact was committed.

And by the 24 *G. 2 c. 44*. No writ shall be sued out against, or copy of any process at the suit of a subject, shall be served on any justice, for any thing done by him in the execution of his office till notice in writing shall have been given to him, or left at his usual place of abode, by the attorney for the party, one month before the suing out, or serving the same; containing the cause of action, and indorsed with his name and place of abode; for which he shall be entitled to a fee of 20*s.* and no more. *f. 1*.

And unless it is proved upon the trial, that such notice was given, the justice shall have a verdict and cost *f. 3*.

And by the same statute, *f. 2*. The justice may at any time, within one month after such notice, tender amends to the party complaining, or to his attorney; and if the same is not accepted, he may plead such tender in bar to the action, together with the plea of not guilty, and any other plea with leave of the court; and if upon issue joined, the jury shall find the amends tendered to have been sufficient, they shall give a verdict for the defendant; and in such case, or if the plaintiff shall be nonsuit, or discontinued, or if judgment be given for the defendant upon demurrer, the justice shall be entitled to the like costs as if he had pleaded the general issue only. And if the jury shall

find that no amends, or not sufficient, were tendered, and also against the defendant on such other plea, they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he shall recover with costs. *f. 2.*

If the justice shall neglect to tender amends, or shall have tendered insufficient, before the action brought, he may, by leave of the court before issue joined, pay into court such sum as he shall see fit; whereupon such proceedings and judgment shall be had, as in other actions where the defendant is allowed to pay the money into court. *f. 4.*

And no evidence shall be permitted to be given by the plaintiff on trial, of any cause of action, but such as is contained in the notice. *f. 5.*

---

## CHAP. VIII.

### OF THE DUTIES AND AUTHORITY, OF THE JUDGES OF THE INFERIOR STATE COURTS, AND OF JUSTICES OF THE PEACE, UNDER THE LAWS OF THE UNITED STATES.

By the Constitution of the United States, art. 3. it is declared that "the judicial power of the United States, shall be vested in one Supreme Court, and in *such inferior Courts as Congress may from time to time ordain and establish*"

Under this article, Congress have established one Supreme Court, and "from time to time" certain courts inferior to the Supreme—such as the Circuit and District Courts, now existing in the several states. But in a government constituted like ours, derived immediately from the people—framed and administered for their protection and welfare, it was found indispensibly necessary, in order more effectually to promote the general administration of justice, in a manner the least expensive, and the most convenient to the people at large; to assign the execution of *many* of the laws of Congress, to authorities constituted under the state governments.

On the first institution therefore of the national government, the legislature foreseeing the difficulties that would

attend the execution of its laws, and more especially of its *criminal code*, if entrusted only to the few judges of the Federal Courts, was compelled by the necessity of the case, to confide an important portion of judicial authority to the judges of the State Courts, and to justices of the peace.— Without an arrangement of this kind, it was plain that either it would be necessary to encrease the number of the federal judges, to an extent that would be burdensome to the people, or that offenders against the laws of the union would go unpunished, and the national authority cease to be respected.

As the best means of surmounting these difficulties, it was thought expedient to vest considerable authority not only in the Superior State Courts, but in the *County Courts of Common-Pleas and Quarter-Sessions, and in Justices of the Peace.*

Accordingly in the “act to establish the judicial courts of the United States,” Congress declare, “that for any crime or offence against the United States, the offender may, by any justice or judge of the United States, or by *any justice of the peace, or other magistrate of any of the United States* where he may be found agreeably to the usual mode of process against offenders in such state, and at the expence of the United States, be arrested, and imprisoned or bailed, as the case may be, for trial before such court of the United States as by this act has cognizance of the offence: And copies of the process shall be returned as speedily as may be, into the clerk’s office of such court, together with the recognizances of the witnesses for their appearance to testify in the case; which recognizances the magistrate before whom the examination shall be, may require on pain of imprisonment.”

By this section the cognizance of *all crimes and misdemeanors*, against the United States in the first instance, is given to all the judicial magistrates of the several states.

By an act also passed on the 16th July, 1798, entitled, “*an act in further addition to the act, intituled “an act to establish the judicial courts of the United States,”* “the judges of the supreme court, and of the several district courts of the

United States, and all judges and justices of the courts of the several States, having authority by the laws of the United States to take cognizance of offences against the constitution and laws thereof, shall respectively have the like power and authority to hold to *security of the peace*, and for *good behaviour*, in cases arising under the constitution and laws of the United States, as may or can be lawfully exercised by any judge or justice of the peace of the respective states, in cases cognizable before them."

Hence it becomes highly important for them to know the precise nature and limits of the authority thus confided, and the true mode of carrying it regularly into effect.

To afford them some aid on a subject so interesting to them, and to the people at large—to give them in a short compass, and at a small expence, a view of their power and duties as *Magistrates of the United States*, under the acts of Congress; with occasional illustrations drawn from the *English law*, (the *parent source*, from which the various *streams* of *American* legislation and jurisprudence have flowed) is the true intent of the following pages :

## CHAP. IX.

### OF CRIMES AND OFFENCES

#### AGAINST THE UNITED STATES.

From that part of the 33 sect. of the act of Congress, for the establishment of the judicial courts of the United States, which we have quoted above, we find the magistrates of the several states authorized "to arrest, imprison, or to bail, as the case may be," all offenders against the laws of the United States.

But this authority is subject to a limitation in a subsequent part of the same section in which it is further enacted that,

"Upon all arrests in criminal cases, bail shall be admitted, *except where the punishment may be death*, in which cases it shall *not* be admitted, but by the supreme or a circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the

offence, and of the evidence and the usages of law. And if a person *committed* by a justice of the supreme, or a judge of a district court, for an offence *not punishable with death*, shall afterwards procure bail, and there shall be no judge of the U. States in the district to take the same, it may be taken by any judge of the supreme or superior court of law of such state."

Whether any judicial construction has been given to either of the above clauses, does not appear from any reported case—but so far as a private opinion may serve as a guide to the magistrate, the following is suggested as the probable intention of the legislature :—

I. That in all cases "except where the punishment may be death," in which application in the first instance, is made to judges of the inferior state courts, or justices of the peace, they are authorized to commence proceedings against persons charged with the violation of any law of the United States, and may "arrest, imprison, or bail them—but,

II. If complaint has, in the first instance, been made to a judge of the United States, in any case, and he has committed or directed the commitment of any person charged with an offence against the laws of the union—and after the commitment of such offender there shall happen to be no judge of the United States in that district, or state, in such case it shall *not* be competent for any judge of an inferior state court, or any justice of the peace, to bail such offender; but this authority, for wise reasons, shall be exercised only by a judge of the United States, or by a judge of a *supreme or superior state court*.

III. But where process has been issued against any person charged with a breach of the laws of the United States, and the marshal, sheriff, or constable, is authorized to bring the offender before any judge of a supreme or inferior state court, or before any justice of the peace for examination; in such case either of those judicial magistrates would be authorized to admit the offender to bail; but the case would be different if the executive officer were directed to bring the offender *only* before the judge issuing the process, or any other judge of the United States.

## CHAP. VIII.

*Of Crimes punishable with DEATH, in which the judges of inferior state courts and justices of peace may arrest and imprison, but not admit to bail.*

While in Great Britain there are no less than 176 offences punishable with death, to the honor of the United States, this class is very small. The genius of our government, and the general disposition of our citizens concurring with our interest, as a *people*, leads to the preservation of life, and to the *reformation*, rather than the *punishment* of criminals. Still, it is a matter highly worthy the consideration of our *National Legislature*, whether the number of crimes punishable with death, might not be materially diminished. In some states of the union, two—in others only one crime is punishable with death. But in these states it is not found that lenity has augmented the number of offences. Indeed, nothing is more clear to the attentive enquirer, than that it is the *certainty* rather than the *severity* of punishment, which tends to prevent the commission of crimes.

Would it not therefore be highly honorable to our national legislature, if they would revise their penal code, and while their treasury is rich—while they enjoy peace abroad, and tranquility at home—and while the current of public sentiment favours the humane experiment; to adopt a system by which offenders against the laws of the union might be safely kept, and so employed, as would reform and would return them to society, industrious, temperate, and useful citizens.

---

 \* \* \*
   
 SECT. I.

## OF TREASON.

The first offence made punishable with death by the act of Congress "for the punishment of certain crimes against the United States" is *treason*.

In regard to this crime, there is a material departure from the English law, in the constitution and laws of the United States.

D.

By the laws of England, there are at present, no less than ten species of high treason. Prior to the time of Edward the Third, the judges of the King's Courts assumed the authority of *construing* what acts they thought proper, to be treason—but in this reign a statute passed, declaring what acts should be adjudged treasonable amounting to seven. Since that period, Parliaments, in the reigns of arbitrary monarchs, have accumulated treason upon treason, under the delusive idea, that crimes could be prevented rather by the *enormity* than the *certainly of punishments*; but most of these by successive acts of Parliament have been repealed, till, at this time, the number has been reduced to *ten*, including those by the statute of Edward.

The only part of the English law of treason which corresponds with ours, is that which relates to "*levying war against the King*," (in whom the majesty and sovereignty of the state are supposed to reside,) "*adhering to his enemies, giving them aid and comfort*." Any adjudication in the English Courts, on either of these points would be considered as authority in the courts of the United States.

Under these words it has been held, that for English subjects to defend a fortress against the king's forces—to take up arms, under a pretence of reforming religion or the laws—to remove evil counsellors, or other grievances, either real or pretended, is treasonable—So also is a combination to pull down *all* churches, brothels, &c.—but an assemblage to demolish a *particular* building, or to injure a particular person, or society, would be construed a riot.

Sending intelligence to enemies at open war—sending them provisions, arms, ammunition, &c. is adjudged treason. So also it is to assist foreign pirates invading the coast without any commission from a foreign power—also aiding or assisting persons in open rebellion or insurrection at home—but it is not treason to relieve a rebel who has fled to a foreign place—nor is it to join rebels or insurgents at home, *provided* this is the effect of *compulsion* or *fear*; and that the person so compelled or put in fear, quits them on the first favourable opportunity.

So far then have we any concern with the English law of treason. The framers of our Federal constitution fore-

seeing the danger that might arise from allowing the national legislature to *enact*, or the judges of the United States to *construe* new, and various treasons, have, in the 3 art. and 3 sect. of that instrument, limited the powers of Congress on this subject, and declared expressly that treason against the United States shall consist *only* "in *levying war against them, and in adhering to their enemies, giving them aid and comfort.*" The constitution further provides, that 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."

The act of Congress for the punishment of certain crimes against the United States, pursuing the authority vested in Congress declares, "That if any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States or elsewhere, and shall be thereof convicted, on confession in open court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and shall suffer death."

As justices of peace, &c. under this section may arrest and imprison persons who may be charged with violating it—their attention to the following particulars may be useful.

I. Although the testimony of two witnesses to the same overt act, or the confession of the party in open court may be necessary to *convict* an offender; yet the testimony of *one* credible witness, or the confession of the party, will authorize the *arrest* and *commitment* of persons charged with treason.

II. That in treason there can be no accessories—all are principals.

III. No words spoken will amount to an *overt act* of treason, although they may explain a person's conduct—but they may amount to a high misdemeanor. (a)

(a) 3 Dall. 23.

IV. That no bail can be received—the accused must be sent to prison.

At Common law, “Though treason and misprision of treason are not within the letter of the commission of the peace, yet as they are against the peace of the king and of the realm, any justice of the peace may, either upon his own knowledge, or the complaint of others, cause any person to be apprehended for any such offence.

Agreeable to this is the law of the United States.

---

SECT. II.

OF MURDER,

IN AN ARSENAL, FORT, &c.

“If any person or persons shall, within any fort, arsenal, dock-yard, magazine, or in any other place or district of country, under the sole and exclusive jurisdiction of the United States, commit the crime of wilful murder, such person or persons on being thereof convicted, shall suffer death.”(a)

The word *murder* is a term of complex yet definite meaning. We derive it from the common law of England, to which we must refer for its precise import. It is defined by Lord Coke to be “when a man of sound memory, and of the age of discretion, unlawfully killeth another person under the king’s peace, with malice aforethought, either expressed by the party or implied by law.”

Without going largely into a description of the various kinds of Homicide, punishable capitally, by the laws of England, it will be of use and probably sufficient for the American magistrate, if we bestow a few words on *justifiable* and *excusable* homicide, before we consider that which is *felonious*.

1. Justifiable homicide may be subdivided also into three kinds; that from necessity, that for the purposes of public justice; and for the prevention of any atrocious crime.

Such as is owing to unavoidable *necessity*, without any will, intention or desire, and without any inadvertency or

(a) Laws U. S. chap. 9. sect. 3.

negligence in the party killing, is certainly without any degree of guilt; as for example, where a sheriff or executioner puts a malefactor to death, by virtue of his office. But to justify such homicide, the law must *require* it; of course, wantonly to kill a felon or a traitor, attainted or outlawed, un-compelled and extra-judicially, is murder; nay, if judgment of death be passed by a judge not properly authorized, such judge is guilty of murder.

Homicide is also justifiable when committed for the *purposes* or advancement of *public justice*, as 1. Where a person assaulting or resisting, is killed by an officer in the execution of his office; 2. Where a man charged with felony, and resisting, is killed by any officer or private person attempting to take him; 3. Where officers should kill any one, in their endeavouring to disperse a mob, as in cases of riot; 4. A goaler or officer, in his own defence, to prevent an escape, may justifiably kill prisoners in a goal, or going to goal, that assault such goaler in his office.

But, in all these cases, there must be an apparent necessity on the officer's side, *viz.* that the party could not otherwise be arrested or taken, the riot could not be suppressed, the prisoners could not be kept in safe custody, or could not otherwise but escape.

Homicide committed for the *prevention* of any *atrocious crime* is also not punishable. Thus, if any person attempts a robbery or murder of another, or attempts to break open a house in the *night-time*, (this extends also to an attempt to burn it) and shall be killed in such attempt, the slayer shall be acquitted. But it does not extend to any crime unattended with force, as picking of pockets; or to the breaking open any house in the *day-time*, unless it carries with it an attempt of robbery also. A woman is justified in killing one who attempts to ravish her, so is the husband and father; a man, who attempts a rape upon his wife or daughter: but not, if he finds them in adultery by consent. In short, where a crime, in itself capital, is endeavoured to be committed by force, it is lawful to repel that force, by the death of the party attempting. In the cases hith-

erto mentioned, the killer is perfectly without blame, and is rather to be commended than censured. But,

2. Excusable homicide, though not punished by our laws, is scarcely justifiable. This is of two kinds, by accident and in self-defence.

Homicide by *accident*, is where a man doing a lawful act, without any intention of hurt, unfortunately kills another; as where the head of an ax, with which a man is at work, flies off and kills a stander-by, or where a person is accidentally killed, by a man shooting at a mark, or where death is the consequence of a parent's moderately correcting its child, a master, his apprentice or scholar, or an officer inflicting corporal punishment on a criminal; but if the correction be immoderate, or inflicted with improper instruments, and death ensues, the act would, in some cases, be manslaughter, and in others, according to circumstances, murder; for immoderate correction is unlawful.

Homicide in *self defence* is also rather excusable than justifiable. The right of natural defence does not imply a right of attacking, the laws being the proper resource for redress; no man therefore can justify the killing another in his own defence, unless certain and immediate suffering would be the consequence of waiting the assistance of the law. As homicide in self-defence generally arises from casual quarrels, and since in quarrels, both parties may be, and usually are, in some fault; if two persons fight, and one kills the other, the law will not deem the survivor entirely guiltless. Masters and servants, parents and children, husbands and wives, being allowed to stand upon the reciprocal defence of each other, either killing an assailant, in the necessary defence of the other respectively, will be homicide excusable or *se defendendo*.

3. *Felonious homicide* is thus defined, or rather described, by Sir Edward Coke, "when a person, of sound memory and discretion, unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied."

To constitute murder, it must be without excuse; and the party must be actually dead; for a bare assault without

a design to kill, is only a great misdemeanour. To make the killing murder, the party must die within a year and a day after the injury received, and in the computation, the whole day on which the hurt was given shall be reckoned the first.

To kill a child in its mother's womb is not murder, but a great misprision; but if the child be born alive, and dies of the potion or bruises it received in the womb, it is held to be murder, in such as administered the potion or gave the bruises.

Lastly, to make killing murder, it must be committed with *malice aforethought*; and it may be either expressed or implied. Expressed malice is from deliberation and design; and this takes in the case of duelling, where both parties meet with a murderous intent.

Implied malice, is where a particular enmity can be proved, as where one man wilfully poisons another. No affront, by words or gestures only, is sufficient provocation, so as to extenuate such acts of violence as endanger life; of course, if a man kills another suddenly, without a considerable provocation, the law implies malice. But if the person so provoked had unfortunately killed the other, by beating him so as only to shew he meant to chastise him, and not to kill him, the law adjudges it to be manslaughter only; but if the beating was severe and in cool blood, by way of revenge, it is murder. So if one kills an officer of justice in the execution of his duty, or any of his assistants, endeavouring to preserve the peace, or any private person striving to suppress an affray, or apprehend a felon, knowing his authority or the design with which he interferes, the law implies it to be malice, and the killer will be guilty of murder. In a word, all homicide amounts to murder, unless *justified* by the command or the permission of the law; *excused* on the account of accident or self-defence, or *alleviated* into manslaughter by the circumstances we have mentioned, which circumstances of justification, excuse, or alleviation; it is incumbent on the prisoner to make out to the satisfaction of the court and jury.

SECT. III.  
OF DUELLING.

In the penal laws of most of the individual states, the crime of duelling is described and forbidden under the penalty of death—but as there is no express prohibition of this offence in the laws of Congress, it must stand as at Common Law, when committed within any place under the exclusive jurisdiction of the United States. By this it is classed under the head of *murder*, and as such is to be punished.—Sergeant Hawkins says,

“The law so far abhors all duelling in cold blood, that not only the principal who actually kills the other, but also his seconds are guilty of murder, whether they fought or not; and it is holden that the seconds of the person killed are also equally guilty, in respect of that countenance which they give to their principals in the execution of their purpose, by accompanying them therein, and being ready to bear a part with them: but perhaps the contrary opinion is the more plausible; for it seems too severe a construction to make a man by such reasoning the murderer of his friend, to whom he was so far from intending any mischief, that he was ready to hazard his own life in his quarrel. 1 *Hawk.* 82. *Dalt. c.* 93.

So also Sir William Blackstone, in his Commentaries, under the title of murder, says, “This takes in the case of deliberate duelling, where both parties meet avowedly with an intent to murder: thinking it their duty, as gentlemen, and claiming it as their right, to wanton with their own lives and those of their fellow creatures; without any warrant or authority from any power either divine or human, but in direct contradiction to the laws both of God and man: and therefore the law has justly fixed the crime and punishment of murder, on them, and on their seconds also.

SECT. IV.  
OF MURDER AND ROBBERY,  
AT SEA, &c.

The next offences made punishable with death, by the laws of Congress, are:

1. "When any person or persons shall commit upon the high seas, or in any river, haven, bafon or bay, out of the jurisdiction of any particular state, murder or robbery, or any other offence which if committed within the body of a county, would by the laws of the United States be punishable with death.

2. Or if any captain or mariner of any ship or other vessel, shall piratically and feloniously run away with such ship or vessel, or any goods or merchandize to the value of fifty dollars, or yield up such ship or vessel voluntarily to any pirate.

3. Or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent his fighting in defence of his ship or goods committed to his trust, or shall make a revolt in the ship; every such offender shall be deemed, taken and adjudged to be a pirate and felon, and being thereof convicted, shall suffer death.

4. When any citizen shall commit any piracy or robbery aforesaid, or any act of hostility against the United States, or any citizen thereof, upon the high seas, under color of any commission from any foreign prince, or state, or on pretence of authority from any person, such offender shall, notwithstanding the pretence of any such authority, be deemed, adjudged and taken to be a pirate, felon, and robber, and on being thereof convicted, shall suffer death."(a)

"Piracy, according to the law of nations, is incurred by depredations on or near the sea, without authority from any prince or state. "It is piracy, says Sir Leoline Jenkins, not only when a man robs without any commission at all, but when, having a commission, he despoils those whom he is not warranted to fight or meddle with, such I mean, as are *de ligeantia vel amicitia* of that prince or state, which hath given him his commission. Thus if a man having the commission of letters of reprisal against the Spaniards, commits intentionally depredations against the French, or any other people, the guilt of piracy is incurred. But, according to the judgments of our domestic tribunals, a bare assault, without taking or pillaging something away, does not constitute this crime; tho' Molloy pretends, that by

(a) Laws U. S. Ch. 9, Sect. 8 and 9.

the law of nations it is otherwise. Yet it does not seem necessary, that any person should be on board the pillaged vessel.

If these violations of property be perpetrated by any national authority, they are the commencement of a public war; if without that sanction, they are acts of piracy."



## CHAP. XII.

### OF ACCESSARIES TO PIRACY, &c.

#### *BEFORE THE FACT.*

"Every person who shall, either upon the land or the seas, knowingly and wittingly aid and assist, procure, command, counsel or advise any person or persons, to do or commit any murder or robbery, or other piracy aforesaid, upon the seas, which shall affect the life of such person, and such person or persons shall thereupon do or commit any such piracy or robbery, then all and every such person so as aforesaid aiding, assisting, procuring, commanding, counselling or advising the same, either upon the land or the sea, shall be, and they are hereby declared, deemed and adjudged to be accessary to such piracies before the fact, and every such person being thereof convicted, shall suffer death." (a)

An accessary, is the person who is not the chief actor, nor present when the crime was committed, but in some way concerned in it, either before or after. An accessary before the fact, is he who counsels, procures, or commands the crime to be committed, but is not present when the act is done: and the procuring may be by the intervention of a third person. To counsel or command another to commit a crime, renders one accessary to all that ensues upon that unlawful act: but not to any other distinct act. If one commands another to kill a third person, and he commits a robbery, the person commanding the murder, is not accessary to the robbery: but if he commands the killing to be done in a particular manner, and it is done in a different, he is an accessary to the fact, because it is substantially the same crime.

(a) Laws U. S. vol. 1. ch. 9, sect. 10.

An accessary after the fact, is where a person knowing the crime to be committed, receives, relieves, comforts, or assists the criminal. Any assistance to prevent his being apprehended, tried or punished, makes a person an accessary. As furnishing a horse to escape his pursuers, money, food, or any shelter to conceal him : or by open force or violence, to rescue or protect him, to convey instruments to him, to enable him to break goal, or to bribe the goaler to let him escape : but merely to relieve him by clothes or other necessaries in goal is no offence ; because the crime consists in doing some act to prevent the criminal from being brought to justice. The crime must be complete when the assistance is given. Thus if one wounds another, and before his death, a person receives him, he is not accessary to the crime. But where the crime is completed, no relationship will justify the receiving of the offender, knowing the crime to have been committed, except it be a wife, who may receive and conceal her husband, because she is presumed to act under his coercion. But a husband may not receive his wife, a parent his child, a master his servant, and so of every other connection. This rule of the common law, seems to bear hard upon some of the degrees of relation. It would be cruel to oblige the father, to refuse to admit the son into his house, or to become his accuser, when he had committed a crime which he abhorred from his heart. But where the feelings of affection do not impel a person to befriend a criminal, this law ought to be executed with the utmost rigor, and it would be a great check upon the commission of crimes, to convince every body, that the receiving, aiding, and concealing a criminal knowingly, subjected them to the same punishment as the criminal. ■

In treason there can be no accessaries, but all are principals. In manslaughter there can be no accessaries before the fact, because the crime is committed suddenly, without provocation. In all crimes of the lowest kind there can be no accessaries, neither can there be in trespasses, but all who are in any measure guilty, shall be deemed principals : because the law will not descend to distinguish the different degrees of guilt in the lowest crimes. Accessa-

ries are punished in the same manner as principals, and the reason of making the distinction, is for the purpose of ascertaining the nature and denomination of crimes: that the accused may better know how to make their defence, and because no person can be tried, as accessary till the principal is convicted, or at least must be tried with him. A person indicted as accessary and acquitted, may afterwards be indicted as principal, and a person acquitted as principal, may be indicted as accessary after the fact.

---

CHAP. XIII.

F O R G E R Y.

This, at common law, is an offence in falsely and fraudulently making or altering any matter of record, or any other authentic matter of a public nature; as a parish register, or any deed, will, privy seal, certificate of holy orders, protection of a parliament man, (and the like.) 1 *Haw.* 182. 2 *Bac. Abr.*

With respect to writings of an inferior nature, as private letters, and such like, the counterfeiting of them is not properly forgery; therefore, in some cases, it may be the safest way to prosecute such offenders for a misdemeanor, as cheats: for on account of the uncertainty of opinions concerning proper forgeries at common law, indictments are generally brought upon some statutes, and very seldom at common law. But if the indictment is at common law, and the offender is convicted, he may be pilloried, fined, and imprisoned. *Wood, b. 3. c. 3.* 1 *Haw.* 184.

By the laws of the U. States, "any person or persons who shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly act or assist in the false making, altering, forging or counterfeiting any certificate, indent, or other public security of the United States, or shall utter, put off, or offer, or cause to be uttered, put off or offered in pay-

ment or for sale any such false, forged, altered or counterfeited certificate, indent or other public security, with intention to defraud any person, knowing the same to be false, altered, forged or counterfeited, and shall be thereof convicted, every such person shall suffer death.”(a)

We may be allowed to question the policy of punishing this offence with death. In most of the States, it is punished by *confinement* at hard labour, or by fine and imprisonment, *only as a misdemeanor*—and when we come to the class of offences against the laws of the United States not punishable with death, we shall find this same offence when perpetrated, with intent to defraud *the Bank of the U. States*, punished only by fine and imprisonment. It is to be observed, that the State-Courts have, in general, a concurrent jurisdiction, with those of the U. States, over this crime; and it has happened, that persons charged with the offence described in the foregoing section, have been indicted and tried in the State-Courts, in order more effectually to prevent the culprit from eluding deserved punishment. For it is well known, that juries will make every presumption, and avail themselves of every legal subterfuge in favour of life. But where they are satisfied, that a few years of confinement at hard labour is the utmost punishment the accused can undergo, they will fairly decide on his innocence or guilt, and remit him to a penalty proportioned to his offence.

---

#### CHAP. XIV.

#### RESCUE OF PERSONS,

##### CONVICTED OF CAPITAL OFFENCES.

The next offence, punishable with death, is thus described in the 23d section of the “act (b) for the punishment of crimes against the United States”—“That if any person or persons, shall by force set at liberty, or rescue any person who shall be found guilty of treason, murder, or any other capital crime, or rescue any person convicted of any

(a) Laws U. S. vol 1, ch. 9, sect. 14.....(b) sect. 23,

of the said crimes, going to execution, or during execution, every person so offending, and being thereof convicted, shall suffer death."

By the English law "Rescue is the forcibly and knowingly freeing another from an arrest or imprisonment; and it is generally the same offence in the stranger so rescuing, as it would have been in a gaoler to have *voluntarily* permitted an escape. A rescue therefore of one apprehended for felony, is felony; for treason, treason; and for a misdemeanor, a misdemeanor also. But here likewise, as upon voluntary escapes, the principal must first be attainted or receive judgment before the rescuer can be punished: and for the same reason; because perhaps in fact it may turn out that there has been no offence committed."

#### CHAP. XV.

##### ROBBING THE MAIL, &c.

By the law "establishing the post office of the U. States, if any person shall rob any carrier of the mail of the U. States, or other person entrusted therewith, of such mail, or of part thereof, such offender or offenders shall, on conviction, be publicly whipped, not exceeding forty lashes, and be imprisoned not exceeding ten years; and if convicted a second time of a like offence, he or they shall suffer death: Or if in effecting such robbery of the mail, the first time, the offender shall much wound the person having custody thereof, or put his life in jeopardy, by the use of dangerous weapons, such offender or offenders shall suffer death."<sup>(a)</sup>

#### CHAP. XVI.

*Debasing the Public Coin, &c.*—By the "act establishing a Mint, and regulating the Coins of the United States" "if any of the gold or silver coins which shall be struck or coined at the said mint, shall be debased or made worse as to the proportion of fine gold or fine silver therein contained, or shall be of less weight or value than the same ought to be pursuant to the directions of this act, through

(a) Laws U. S. Ch. 149, Sect. 15.

the default or with the connivance of any of the officers or persons who shall be employed at the said mint, for the purpose of profit or gain, or otherwise with a fraudulent intent, and if any of the said officers or persons shall embezzle any of the metals which shall at any time be committed to their charge for the purpose of being coined, or any of the coins which shall be struck or coined at the said mint, every such officer or person who shall commit any or either of the said offences, shall be deemed guilty of felony, and shall suffer death.”(a)

By the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, “ If any citizen or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians, in amity with the United States, such offender, on being thereof convicted, shall suffer death.”(b)

---

CHAP. XVII.

OF CRIMES AND MISDEMEANORS,

NOT PUNISHABLE WITH DEATH; AND OF COURSE BAILABLE BY THE JUDGES OF INFERIOR COURTS AND JUSTICES OF THE PEACE.

This class embraces offences, the punishment of which is *fine* and *imprisonment*, and in some cases, say the laws, “ confinement at hard labour”—We shall take them in the order in which they stand in the laws of Congress.

SECT. I.

*Misprision of Treason*—The first offence of this description is *Misprision of Treason*.

MISPRISION (from the French word *Mépris*, signifying contempt or neglect) is either *negative* or *positive*. The former, is when a party conceals what by law, he is enjoined and bound to reveal—the latter where he commits what by law is forbidden.

At Common law *Misprision of Treason*, consists in *knowing* of a treason, although the party do not engage in it or

(a) Laws U. S. vol. 2, ch. 16, sect. 19.

(b) Laws U. S. vol. 6, ch. 13, sect. 6.

consent to it, and in concealing, or in not revealing it in convenient time. (a) Every one apprized of a treason is bound to reveal it as soon as convenient to some magistrate—but if there be any probable circumstances of assent, as if a man goes to a treasonable meeting, knowingly and being at such meeting, once by accident, and hearing a treasonable conspiracy—meets a second time and hear more, without disclosing the same to some person in authority, the law deems this an assent, and the concealer becomes guilty as the principal of high treason. But the rigor of the Common Law in regard to this crime, is greatly mitigated by the laws of the United States. In the act of Congress, this offence is thus described :

“ If any person or persons, having knowledge of the commission of any of the treasons aforesaid, shall conceal and not as soon as may be, disclose and make known the same to the President of the United States, or some one of the judges thereof, or to the President or Governor of a particular state, or some one of the judges or justices thereof, such person or persons on conviction shall be adjudged guilty of misprision of treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.” (b)

#### SECT. II.

*Rescue of the bodies of Convicts.*—By sect. 4, of this act, the Courts of the United States, before whom persons are convicted of capital offences are authorized to direct the bodies of such offenders to be delivered to a surgeon for dissection—and by section 5, “if any person or persons shall, after such execution had, by force rescue or attempt to rescue the body of such offender out of the custody of the marshal or his officers, during the conveyance of such body to any place for dissection as aforesaid; or shall by force rescue or attempt to rescue such body from the house of any surgeon, where the same shall have been deposited, in pursuance of this act; every person so offending, shall be liable to a fine not exceeding one hundred dollars, and an imprisonment not exceeding twelve months.” (c)

(a) 3 Inst. 36.

(b) Laws U. S. vol. 1, ch. 9, sect. 2. (c) Sect. 4.

SECT. III.

*Misprison of Felony.*—“If any person or persons having knowledge of the actual commission of the crime of wilful murder or other felony, upon the high seas, or within any fort, arsenal, dock-yard, magazine, or other place or district of country, under the sole and exclusive jurisdiction of the United States, shall conceal, and not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, on conviction thereof, such person or persons shall be adjudged guilty of misprison of felony, and shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars.”(a)

SECT. IV.

*Of Manslaughter.*—“If any person or persons shall within any fort, arsenal, dock-yard, magazine, or other place or district of country, under the sole jurisdiction of the United States, commit the crime of man-slaughter, and shall be thereof convicted, such person or persons shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars.”(b)

The term “*Manslaughter*” being a term of precise legal meaning, can only be understood by a recurrence to the English law. From that only, can the American magistrate form a correct idea of the circumstances that will constitute this crime as distinguished from *wilful murder*.—It is of some importance to know which amounts to the one crime, or to the other—as in the former he can admit to bail, and in the latter he cannot.

*Manslaughter* is defined to be the unlawful killing of another, without any kind of malice, and may be either voluntary, upon a sudden quarrel; or involuntary, in the commission of some unlawful act.

First, for the *voluntary* branch, if two persons fight upon a sudden quarrel, and one kills the other, it is man-

(a) Laws U. S. vol. 1, chap. 9, sect. 6.

(b) ----- sect. 7.

slaughter, and it is equally so, if, on such a quarrel, they each fetch their sword, and go immediately out into a field and fight, this being construed a continued heat of the same passion. So, if a man be greatly exasperated, as by pulling his nose, or some other great indignity, and instantly kills the aggressor, it would be manslaughter: for, there being no necessity to kill the assailant in self-preservation, it could not be deemed *se defendendo*. But in all homicides, on provocation, if there be time for the passion to cool, and reason to interpose, such as agreeing to go out the next day, and the person so provoked should kill the aggressor afterwards, it would be held a deliberate revenge and murder. If a man finds another in the act of adultery with his wife, and kills him instantly, it is manslaughter, but it is so low a degree of the crime, that in a case of this kind, the court ordered the burning to be lightly inflicted, as there could not be a great provocation.

*Involuntary* manslaughter arises from the commission of an unlawful act, or a lawful act done in an unlawful manner. If a man in boxing or cudgelling with another, kills his antagonist, it is manslaughter, because the act of boxing or cudgelling is unlawful. If a workman flings a stone or piece of timber from a house-top, into the street, and kill a man below, it may be accident, manslaughter, or murder, according to the circumstances. If he did it in a country village, where few passengers are passing, calling out to all people to have a care, it would be deemed an accident; but was such a thing to happen in London or other populous town, where numbers are passing and re-passing, it would be manslaughter, even though he gave loud warning; but again should he know of their passing and give no warning at all, he would be adjudged guilty of murder, it being malice against all mankind. In short, where voluntary killing happens in consequence of an unlawful act, it will be either manslaughter or murder, according to the circumstances of the act done, if it is in the prosecution of a felonious intent, or in its consequence, tended to bloodshed, it would be murder; but was no more intended than a trespass, it will be only manslaughter.

## SECT. V.

*Of accessaries after the fact, to Piracy or Robbery*—“after any murder, felony, robbery, or other piracy whatsoever aforesaid, is or shall be committed by any pirate or robber, every person who knowing that such pirate or robber has done or committed any such piracy or robbery, shall on the land or at sea receive, entertain or conceal any such pirate or robber, or receive or take into his custody any ship, vessel, goods or chattels, which have been by any such pirate or robber piratically and feloniously taken, shall be, and are hereby declared, deemed and judged to be accessory to such piracy or robbery, after the fact; and on conviction thereof, shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars.”(a)

## SECT. VI.

*Confederacy to become pirates*—“If any seaman or other person shall commit manslaughter upon the high seas, or confederate or attempt or endeavour to corrupt any commander, master, officer or mariner, to yield up or to run away with any ship or vessel, or with any goods, wares, or merchandize, or to turn pirate, or to go over to or confederate with pirates, or in any wise trade with any pirate knowing him to be such, or shall furnish such pirate with any ammunition, stores or provisions of any kind, or shall fit out any vessel knowingly, and with a design to trade with or supply or correspond with any pirate or robber upon the seas; or if any person or persons shall any ways consult, combine, confederate or correspond with any pirate or robber on the seas, knowing him to be guilty of any such piracy or robbery; or if any seaman shall confine the master of any ship or other vessel, or endeavour to make a revolt in such ship; such person or persons so offending, and being thereof convicted, shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars.”(b)

(a) Laws U.S. vol. 1, ch. 9, sect. 11.

(b) ----- sect. 12.

## SECT. VII.

*Of Maiming.*—“If any person or persons, within any of the places upon the land under the sole and exclusive jurisdiction of the United States, or upon the high seas, in any vessel belonging to the United States, or to any citizens thereof, on purpose and of malice aforethought, shall unlawfully cut off the ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, cut off the nose or a lip, or cut off or disable any limb or members of any person, with intention in so doing to maim or disfigure such person in any the manners before mentioned, then and in every such case the person or persons so offending, their counsellors, aiders and abettors (knowing of and privy to the offence aforesaid) shall on conviction, be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.”<sup>(a)</sup>

At Common Law, Mayhem or Maiming, consists in *violently* depriving a man of the use of such of his members, as render him less able to defend himself, and annoy his adversary; such as castration; disabling a man's hand or finger; or striking out his eye or fore-tooth: the punishment for which at Common Law is only fine and imprisonment; but castration is held to be felony. Cutting off his ear or nose, as they do not weaken a man, are not considered as mayhem at Common Law.

—\*—

 SECT. VIII.

*Of stealing or falsifying Records, &c.*—“If any person shall feloniously steal, take away, alter, falsify, or otherwise avoid any record, writ, process, or other proceedings in any of the courts of the United States, by means whereof any judgment shall be reversed, made void, or not take effect, or if any person shall acknowledge or procure to be acknowledged in any of the courts aforesaid, any recognizance, bail or judgment, in the name or names of any other person or persons not privy or consenting to the same, every such person or persons on conviction thereof, shall be fined not exceeding five thousand dollars, or be impri-

(a) Laws U. S. vol. 1, ch. 9, sect. 13

soned not exceeding seven years, and whipped not exceeding thirty-nine stripes. *Provided nevertheless*, That this act shall not extend to the acknowledgement of any judgment or judgments by any attorney or attorneys, duly admitted for any person or persons against whom any such judgment or judgments shall be had or given.”(a)

---

SECT. IX.

*Of Larceny*—“ If any person within any of the places under the sole and exclusive jurisdiction of the United States, or upon the high seas, shall take and carry away, with an intent to steal or purloin the personal goods of another ; or if any person or persons, having at any time hereafter the charge or custody of any arms, ordnance, ammunition, shot, powder, or habiliments of war belonging to the United States, or of any victuals provided for the victualling of any soldiers, gunners, marines or pioneers, shall for any lucre or gain, or wittingly, advisedly, and of purpose, to hinder or impede the service of the United States, embezzle, purloin or convey away any of the said arms, ordnance, ammunition, shot or powder, habiliments of war, or victuals, that then and in every of the cases aforesaid, the person or persons so offending, their counsellors, aiders and abettors (knowing of and privy to the offences aforesaid) shall, on conviction, be fined not exceeding the fourfold value of the property so stolen, embezzled or purloined ; the one moiety to be paid to the owner of the goods, or the United States, as the case may be, and the other moiety to the informer and prosecutor, and be publicly whipped, not exceeding thirty-nine stripes.”(b)

The offence here described is at common law, defined to be *the taking and carrying away of the personal goods of another*. Taking, here implies without the owner's consent ; therefore no delivery of the goods from the owner to the offender upon trust, can ground a larceny. If I lend a man a horse to go a certain distance with, and he rides away with it ; or if I send goods by a carrier, and he does not deliver them, this is not, in either case, larceny ; but if the

(a) Laws U. S. vol. 1, ch. 9, sect 15.....(b) sect. 16.

carrier opens the package I fend by him, and robs me of part ; or if he delivers the goods according to the directions, and then takes them away, he is guilty of larceny.

To constitute larceny, there must not only be a *taking*, but a *carrying away*, and a bare removal of the things stolen is a sufficient carrying ; as if a guest stealing goods out of an inn, had removed them from his chamber in his way out. This taking and carrying away must also be *felonious* ; for should a servant take his master's horse without his knowledge, and bring it home again, or should a neighbour take another's plough, which he finds in the field, and use and return it ; or should a landlord distrain for rent when none is due, these would be trespasses only, but not felonies. The usual discovery of a felonious intent, is where it is clandestinely done, or where the party, being charged with the fact, denies it.

The felonious taking and carrying away must also be of the *personal* goods of another, not any part of his *real* property, or it cannot be larceny by the Common Law.

Stealing of writings belonging to a real estate is no felony, as appertaining to the freehold, but a trespass only.

Taking wild animals, unreclaimed, such as deer, hares, conies, from a forest, chase, or warren, fish from an open river or pond, or wild fowl from their natural liberty, comes not under the construction of larceny, at Common Law ; but if they are reclaimed or confined, and may serve for food, as deer in an enclosed park, fish in a trunk, pheasants in a mew, stealing them is larceny.

Stealing any valuable domestic animal, as horses, and other beasts of draught, and animals serving for food, as neat and other cattle, swine, poultry and the like, and their produce while living, as milk or wool, is larceny ; and, the flesh of animals, (whether wild or tame, serving for food,) when killed ; but stealing animals, not serving for food, as dogs, cats, &c. and other creatures kept for pleasure, (though the owner may maintain a civil action against those who steal them,) does not amount to larceny.

## SECT. X.

*Receiving stolen goods.*—Receiving stolen goods, *knowing them to be stolen*, is the next offence made punishable by the laws of the U. States, as a misdemeanour, “If any person or persons within any part of the jurisdiction of the United States as aforesaid, shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbour or conceal any felons or thieves, knowing them to be so, he or they being of either of the said offences legally convicted, shall be liable to the like punishments as in the case of larceny before are prescribed.”(a)

Receivers of stolen goods, knowing them to be stolen, are deemed accessory to the theft and felony, and are punishable accordingly, *with the principal*, or *after the principal is convicted* : and such receivers may be prosecuted for a misdemeanour, and punished by fine and imprisonment, though the principal felon be not *before* taken, so as to be prosecuted and convicted.”

## SECT. XI.

*Perjury and subornation of Perjury.*—Perjury and subornation of Perjury, are the next offences in order—they are thus described in the act of Congress ;

“ If any person shall wilfully and corruptly commit perjury, or shall by any means procure any person to commit corrupt and wilful perjury, on his or her oath or affirmation in any suit, controversy, matter or cause depending in any of the courts of the United States, or in any deposition taken pursuant to the laws of the United States, every person so offending, and being thereof convicted, shall be imprisoned not exceeding three years, and fined not exceeding eight hundred dollars; and shall stand in the pillory for one hour, and be thereafter rendered incapable of giving testimony in any of the courts of the United States, until such time as the judgment so given against the said offender shall be reversed.”(b)

(a) Laws U. S. vol. 1, ch. 9, sect. 17.....(b) sect. 18.

It is provided afterwards, that in prosecutions for either of these offences, the substance of the charge only need be set forth.

In the foregoing section, two distinct offences are described—1. The commission of the crime of perjury—and 2. *suborning* or procuring another to commit it.

In regard to the first, “Though commonly considered, says Dr. Woodeson “as a crime against *public justice* in its nature and essence, it is a direct violation of religious sentiment, abusing the name of the creator to purposes of fraud.”

It is defined by Sir Ed. Coke, (a) “to be a crime committed when a *lawful* oath is administered, in some *judicial* proceeding, to a person who swears *wilfully, absolutely and falsely*, in a matter *material* to the issue or point in question. The law takes no notice of any perjury but such as is committed in some court of justice, having power to administer an oath; or before some magistrate or proper officer, invested with a similar authority, in some proceedings relative to a civil suit or a criminal prosecution: for it esteems all other oaths unnecessary at least, and therefore will not punish the breach of them. For which reason it is much to be questioned, how far any magistrate is justifiable in taking a voluntary *affidavit* in any extrajudicial matter, as is now too frequent upon every petty occasion: since it is more than possible, that by such idle oaths a man may frequently *in foro conscientiae* incur the guilt, and at the same time evade the temporal penalties, of perjury. The perjury must also be corrupt, (that is, committed *malo animo*) wilful, positive, and absolute; not upon surprise, or the like: it also must be in some point material to the question in dispute; for if it only be in some trifling collateral circumstance, to which no regard is paid, it is no more penal than in the voluntary extrajudicial oaths before-mentioned.”

By the act for the better government of the Navy of the United States, (b) “every person who shall commit wilful perjury on examination on oath or affirmation before such

(a) 4 Bl. Com. 137.

(b) 5 vol. 119, Laws U. S.

court, (viz. a Navy-General-Court-Martial) or who shall corruptly procure, or suborn any person to commit such wilful perjury, shall and may be prosecuted by indictment or information, *in any court of justice of the United States*, and shall suffer such penalties as are authorized by the laws of the United States in case of perjury or the subornation thereof. And in every prosecution for perjury or the subornation thereof under this act, it shall be sufficient to set forth the offence charged on the defendant, without setting forth the authority by which the court was held, or the particular matters brought or intended to be brought before the said court.

---

SECT. XII.

*Of false swearing.*—Related to the offence described in the preceding section, are several cases of *false swearing* which by different acts of Congress, are punished in the same manner as the crime of wilful and corrupt perjury.

The act (a) “providing for the relief of persons imprisoned for debts due to the U. States,” directs the insolvent to make application in writing, to the Secretary of the Treasury, at any time *after* commitment, who may thereupon cause an examination to be made of the circumstances of the debtor, either by the *oath or affirmation of the debtor himself*, or otherwise—on which the Secretary may take an assignment of all the debtor’s property for the use of the United States.

By the second section “If any person shall falsely take an oath or affirmation under this act, he shall be deemed guilty of perjury, and be subject to the pains and penalties provided in the third section of an act, intitled “an act for the relief of persons imprisoned for debt.”

The act here referred to, was passed on the 28th March, 1796, and was limited to continue in force for three years. It does not appear to have been expressly and *wholly revived* by any subsequent act; but the third section of it which relates to the offence of *false swearing* was revived by the clause above quoted—that section is in these words: (b) “If

(a) 4 vol. p. 122, Laws U. S.

(b) Laws U. S. 3 vol. 337.

any person shall falsely take the oath or affirmation aforesaid, such person shall be deemed guilty of perjury, and upon conviction thereof, shall suffer the pains and penalties in that case provided. And the court, upon the motion of the creditor, shall re-commit the debtor to the prison from whence he was liberated, there to be detained for the said debt, in the same manner as if such oath or affirmation had not been taken."—which section is re-enacted verbatim in the (a) act for the relief of persons imprisoned for debt, passed on the 6th January, 1800.

By an act, "entitled an act, supplementary to an act, entitled "an act for the relief of persons imprisoned for debt," the President of the Senate, the Speaker of the House of Representatives, a chairman of a committee of the whole, or a chairman of a select committee of either House, shall be empowered to administer oaths or affirmations to witnesses, in any case under their examination."—And "if any person shall wilfully, absolutely and falsely swear or affirm, touching any matter or thing material to the point in question, whereto he or she shall be thus examined, every person so offending, and being thereof duly convicted, shall be subjected to the pains, penalties and disabilities, which by law are prescribed for the punishment of the crime of wilful and corrupt perjury."

On the 16th February, 1792, an act passed, entitled, "an act, (b) concerning certain Fisheries of the U. States, and for the Regulation and Government of the Fishermen employed therein;" which was limited in its duration to seven years, but having expired, was afterwards revived, (c) and continued in operation for 10 years longer.

By the 8th section of the act first mentioned "any person who shall declare falsely in any oath or affirmation required by this act, being duly convicted thereof in any court of the United States, having jurisdiction of such offence, shall suffer the same penalties as are provided for false swearing or-affirming, by the act before-mentioned,

(a) Laws U. S. vol 5, p. 9.  
(c) 5 vol. Laws U. S. p. 24.

(b) Laws U. S. 2 vol. p. 15.

and to be in like manner sued for, recovered and appropriated."

The "act *before-mentioned*" is the "act to provide more effectually for the collection of the duties imposed by law, on the goods, wares and merchandizes, imported into the U. States, and on the tonnage of ships or vessels."

By the sixty-sixth section of which act, (a) "In all cases where an oath is required from a master or other person having command of a ship or vessel, or from an owner or consignee of goods, wares and merchandize, his or her factor or agent, if the person so swearing shall swear falsely, such person shall, on indictment and conviction thereof, be punished by fine or imprisonment, or both, in the discretion of the court before whom the conviction shall be had, so as the fine shall not exceed one thousand dollars, and the term of imprisonment shall not exceed twelve months."

#### SECT. XIII.

*Of Bribery.*—The next offence described in the act of Congress, for the punishment of certain crimes against the United States, is Bribery.

By the English law this offence is "classified under the head of those against *public justice*, and is "when a judge, or other person concerned in the administration of justice, takes any undue reward to influence his behaviour in his office." (b)

By the twenty-first section of the law of Congress above referred to, "If any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present or reward, or any promise, contract, obligation or security, for the payment or delivery of any money, present or reward, or any other thing to obtain or procure the opinion, judgment or decree of any judge or judges of the United States, in any suit, controversy, matter or cause depending before him or them, and shall be thereof convicted, such person or persons so giving, promising, contracting or securing to be given, paid or delivered, any sum

(a) Laws U. S. vol. 1, p. 237.

(b) 4 Bl. Com. 139.

or sums of money, present, reward or other bribe as aforesaid, and the judge or judges who shall in any wise accept or receive the same, on conviction thereof shall be fined and imprisoned at the discretion of the court; and shall forever be disqualified to hold any office of honor, trust or profit under the United States."

In this clause two distinct offences are described—1. the *giving, promising, &c.* of a bribe to any judge or judges of the United States—and 2, the *acceptance* of such bribe by the said judge, &c.

By this clause it does not appear to have been the intention of Congress, to render the mere *offer* of a reward—or the *attempt to bribe* a judge &c. punishable under this act, though certainly such an offence is liable to punishment at Common Law.

However, by the "act to regulate the collection of duties on imports and tonnage," (a) "If any officer of the customs shall directly or indirectly take or receive any bribe, reward or recompence, for conniving, or shall connive at any false entry of any ship or vessel, or of any goods, wares or merchandise, and shall be convicted thereof, every such officer or other person shall forfeit and pay a sum not less than two hundred, nor more than two thousand dollars for each offence; and any person giving or offering any bribe, recompence or reward for any such deception, collusion or fraud, shall forfeit and pay a sum not less than two hundred dollars, nor more than two thousand dollars for each offence."—Here not only the *acceptance* of a bribe by a custom-house officer, but the *offer* of one, by any person, is declared to be an offence punishable by law.

#### SECT. XIV.

*Obstruction of Process*.—The next offence in order, under the laws of Congress, is the obstructing of process either in civil or criminal cases, which exists where "any persons shall knowingly and wilfully obstruct, and resist or oppose any officer of the United States, in serving

(a) Laws U. S. vol. 4, p. 427.

or attempting to serve or execute any mesne process, or warrant, or any rule or order of any of the courts of the United States, or any other legal or judicial writ or process whatsoever, or shall assault, beat or wound any officer, or other person duly authorized in serving or executing any writ, rule, order, process or warrant aforesaid every person so knowingly and wilfully offending in the premises, shall on conviction thereof, be imprisoned not exceeding twelve months, and fined not exceeding three hundred dollars." (a)

[*Any mesne Process,*] so called, as distinguished from *process of execution*—that is, all process that issues from the commencement of a suit, or of a prosecution, until the judgment of the court or magistrate.

[*Or Warrant*].—This no doubt, extends to all cases in which the inferior state courts, or justices of peace, while carrying into effect any authority vested in them by the laws of Congress, shall issue a warrant either against a criminal, or in civil cases; and the execution of such *warrant* shall be *obstructed*—the person or persons guilty of this offence will be considered as punishable under the words of this section.

[*Any officer or other person duly authorized*].—These words appear to recognize an authority in judicial or executive magistrates to appoint *special agents* to execute "any writ, rule, order, process, or warrant," all opposition to whom, while in the discharge of this duty, appears to be equally unlawful, and liable to punishment, as if the same were directed against a sheriff, marshal, or constable, duly appointed and commissioned.

By the English law, the obstruction of process is considered as a high offence against public justice—but more particularly so, when it is an obstruction of an arrest upon *criminal* process. In such case it has been holden, that it makes the party opposing such arrest, *particeps criminis*, that is, an *accessary* in felony, and a *principal* in treason. (b)

(a) Laws U. S. 1 vol. p. 109, sect. 22..... (b) 1 Hawk. 121.

## SECT. XV.

*Of Rescue as a misdemeanor*—The next offences in order, under the act of Congress, are—1. The rescue of any person committed for a capital offence, prior to conviction—2. The rescue of any person or persons committed for or convicted of an offence not capital; which offences are thus described. (b)

“If any person shall by force set at liberty, or rescue any person who before conviction shall stand committed for any of the capital offences aforesaid—or if any person or persons shall by force set at liberty, or rescue any person committed for or convicted of any other offence against the United States, every person so offending, shall, on conviction, be fined not exceeding five hundred dollars, and imprisoned not exceeding one year.”

## SECT. XVI.

*Of suing Ambassadors or other public Ministers*—“If any writ or process shall at any time hereafter be sued forth or prosecuted by any person or persons, in any of the courts of the United States, or in any of the courts of a particular state or by any judge or justice therein respectively, whereby the person of any ambassador or other public minister of any foreign prince or state, authorized and received as such by the President of the United States, or any domestic or domestic servant of any such ambassador or other public ministers, may be arrested or imprisoned, or his or their goods or chattles be distrained, seized or attached, such writ or process shall be deemed and adjudged to be utterly null and void to all intents, construction and purposes whatsoever.”

And by the twenty-fifth section it is declared, “That in case any person or persons shall sue forth or prosecute any such writ or process, such person or persons, and all attorneys or solicitors prosecuting or soliciting in such case, and all officers executing any such writ or process, being thereof convicted, shall be deemed violaters of the laws of nations, and disturbers of the public repose, and imprisoned

(a) Laws U. S. Ch. 9, Sect. 23.

not exceeding three years, and fined at the discretion of the court.”(a)

[*Other public Ministers, &c.*].—Must no doubt, extend to Consuls, Charges des Affaires, Secretaries of Legation, and general Commercial Agents, if “authorized and received as such by the President of the U. States.”

---

SECT. XVII.

*Violation of safe conducts.*—The last offence declared by the “act of Congress for the punishment of certain crimes against the United States,” is where “any person shall violate any safe-conduct or passport duly obtained and issued under the authority of the United States, or shall assault, strike, wound, imprison, or in any other manner infract the law of nations, by offering violence to the person of an ambassador or other public minister, such person so offending on conviction, shall be imprisoned not exceeding three years, and fined at the discretion of the court.”

It is, however, a matter of importance, for all judicial magistrates, before whom a complaint may be made for offences against any of the laws of Congress, to pay attention to the thirty-second section of this act,(b) which is in the following words :

“That no person or persons shall be prosecuted, tried or punished for treason or other capital offence aforesaid, wilful murder or forgery excepted, unless the indictment for the same shall be found by a grand jury within three years next after the treason or capital offence aforesaid shall be done or committed; nor shall any person be prosecuted, tried or punished for any offence not capital, nor for any fine or forfeiture under any penal statute, unless the indictment or information for the same shall be found or instituted within two years from the time of committing the offence, or incurring the fine or forfeiture aforesaid: *Provided*, That nothing herein contained shall extend to any person or persons fleeing from justice.

(a) Laws U. S. vol. 1, ch. 9, sect. 28. .... (b) Laws U. S. vol. 1, p. 113.

Such are the offences which the first Congress held under the Constitution of the United States, thought it necessary to declare and forbid—Although by this act the judges of the inferior state courts and justices of the peace throughout the union, are authorized to issue process to bring offenders against the laws of the United States to justice; although, in certain cases, they may admit them to bail, and bind over witnesses to appear, and prosecute in the courts of the U. States; yet in this act, no authority is given to any but to the *judges of the Federal Courts* to try and *punish* the crimes therein described.

But at subsequent sessions of the national legislature it was found necessary to declare and forbid, under certain pains and penalties, sundry other offences, which grew out of the peculiar circumstances in which the national government was placed. In order to give effect to these acts, it was deemed necessary, in many cases, to give an *express cognizance* of the offences so declared, to the *courts and magistrates of the individual states*.

What these other offences are, and how punishable, it will be proper to state in the order, in which they stand in the laws of Congress.

---

## CHAP. XVIII.

### OFFENCES AGAINST NEUTRALITY.

By an act passed on the 5th June, 1794, entitled, “an act (a) in addition to the act for the punishment of certain crimes against the United States,” the following offences were declared :

#### SECT. I.

*Punishment of persons accepting certain commissions*—“any citizen of the United States shall, within the territory or jurisdiction of the same, accept and exercise a commission to serve a foreign prince or state in war, by land or sea, the person so offending shall be deemed guilty of a

(a) Laws U. S. vol. 3, p. 22.

high misdemeanor, and shall be fined not more than two thousand dollars, and shall be imprisoned not exceeding three years."

SECT. II.

*On enlisting, &c. to go beyond jurisdiction of U. States—*

"If any person shall within the territory or jurisdiction of the United States, enlist or enter himself, or hire or retain another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the U. States, with intent to be enlisted or entered in the service of any foreign prince or state as a soldier; or as a marine or seaman on board of any vessel of war, letter of marque, or privateer, every person so offending shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding one thousand dollars, and be imprisoned not exceeding three years. *Provided*, That this shall not be construed to extend to any subject or citizen of a foreign prince or state, who shall transiently be within the United States, and shall on board of any vessel of war, letter of marque or privateer, which, at the time of its arrival within the United States, was fitted and equipped as such, enlist or enter himself, or hire or retain another subject or citizen of the same foreign prince or state, who is transiently within the United States, to enlist or enter himself to serve such prince or state on board such vessel of war, letter of marque or privateer, if the United States shall then be at peace with such prince or state. *And provided further*, That if any person so enlisted, shall, within thirty days after such enlistment, voluntarily discover, upon oath, to some *justice of the peace*, or other civil magistrate, the person or persons by whom he was so enlisted, so as that he or they may be apprehended and convicted of the said offence; such person so discovering the offender or offenders, shall be indemnified from the penalty prescribed by this act."

H

## SECT. III.

*Punishment on fitting out ships of war, or issuing certain commissions—*“ If any person shall, within any of the ports, harbours, bays, rivers, or other waters of the United States, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly be concerned in the furnishing, fitting out or arming of any ship or vessel, with intent that such ship or vessel shall be employed in the service of any foreign prince or state, to cruise or commit hostilities upon the subjects, citizens or property of another foreign prince or state, with whom the United States are at peace, or shall issue or deliver a commission within the territory or jurisdiction of the United States, for any ship or vessel, to the intent that she may be employed as aforesaid, every such person so offending, shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court in which the conviction shall be had, so as the fine to be imposed shall in no case be more than five thousand dollars, and the term of imprisonment shall not exceed three years, and every such ship or vessel, with her tackle, apparel and furniture, together with all materials, arms, ammunition and stores, which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of any person who shall give information of the offence, and the other half to the use of the United States.”

## SECT. IV.

*Of increasing or augmenting the force of any ship.*—“ If any person shall within the territory or jurisdiction of the United States, encrease or augment, or procure to be encreased or augmented, or shall be knowingly concerned in encreasing or augmenting the force of any ship of war, cruiser or other armed vessel which at the time of her arrival within the United States, was a ship of war, cruiser or armed vessel in the service of a foreign prince or state, or belonging to the subjects or citizens of such prince or state, the same being at war with another foreign prince or state with whom the nited States are at peace, by

adding to the number or size of the guns of such vessel prepared for use, or by the addition thereto of any equipment solely applicable to war, every such person so offending shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be fined and imprisoned at the discretion of the court, in which the conviction shall be had, so as that such fine shall not exceed one thousand dollars, nor the term of imprisonment be more than one year."

---

SECT. V.

*Punishment on persons setting on foot certain expeditions—*  
 "If any person shall within the territory or jurisdiction of the United States, begin or set on foot, or provide or prepare the means for any military expedition or enterprise to be carried on from thence against the territory or dominions of any foreign prince or state with whom the United States are at peace, every such person so offending, shall, upon conviction, be adjudged guilty of a high misdemeanor, and shall suffer fine and imprisonment at the discretion of the court in which the conviction shall be had, so as that such fine shall not exceed three thousand dollars, nor the term of imprisonment be more than three years."

From the express manner in which the District Courts are authorized in the sixth section, "to take cognizance of complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof;" it would seem that the State Courts are not excluded from a jurisdiction over the other offences described in this act.

This law was limited in its duration to two years; but by an act (a) passed the 14th April, 1800, it was made perpetual.

---

SECT. VI.

*Privateering against friendly nations or citizens of the United States—*The disposition manifested by many of our ci-

(a) 5 vol. Laws U. S. p. 128.

tizens to engage in privateering during the late war between France and England, in the armed ships of the former, against the commerce of the latter, induced Congress to pass the law of the 14th June, 1797, by which, "If any citizen or citizens of the United States, shall, without the limits of the same, fit out and arm, or attempt to fit out and arm, or procure to be fitted out and armed, or shall knowingly aid, or be concerned in the furnishing, fitting out or arming, any private ship or vessel of war, with intent that such ship or vessel shall be employed to cruize or commit hostilities, upon the subjects, citizens, or property of any prince or state with whom the United States are at peace, or upon the citizens of the United States or their property, or shall take the command of, or enter on board of, any such ship or vessel for the intent aforesaid, or shall purchase an interest in any vessel so fitted out and armed, with a view to share in the profits thereof, such person or persons, so offending, shall, on conviction thereof, be adjudged guilty of a high misdemeanor, and shall be punished by a fine not exceeding ten thousand dollars, and imprisonment not exceeding ten years: And the trial for such offence, if committed without the limits of the United States, shall be in the district where the offender shall be apprehended or first brought.

"But nothing in the foregoing act shall be construed to prevent the prosecution or punishment of treason, or any piracy defined by a treaty or other law of the United States."<sup>(a)</sup>

---

CHAP. XIX.

OF FRAUDS,

AGAINST THE BANK OF THE UNITED STATES.

The next offence declared by the laws of Congress, is described in an act, entitled, an "an act, to prevent frauds, committed on the Bank of the U. States, by which, "If any person shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged or counterfeited, or willingly aid or assist in falsely making,

(a) Laws U. S. vol. 4, ch. 1.

altering forging or counterfeiting any bill or note issued by order of the president, directors and company of the bank of the United States, and signed by the president, and countersigned by the cashier thereof, or any order or check on the said cashier or corporation, for the payment of money, with intention to defraud the said corporation, or any other body politic or person, or shall utter or publish, as true, any false, altered forged or counterfeited bill or note issued by order of the president, directors and company of the bank of the United States, and signed by the president, and countersigned by the cashier thereof, or any order or check on the said cashier or corporation, for the payment of money, with intention to defraud the said corporation, or any other body politic or person, knowing the same to be falsely altered, forged or counterfeited, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted, according to the due course of law, shall be sentenced to be imprisoned and kept at hard labour for a period not less than three years, nor more than ten years, or shall be imprisoned not exceeding ten years, and fined not exceeding five thousand dollars: Provided, that nothing herein contained shall be construed to deprive the *courts of the individual States* of a jurisdiction under the laws of the several States over the offences declared punishable by this act "(a)

---

CHAP. XX.

OF UNAUTHORIZED NEGOTIATIONS WITH FOREIGN POWERS.

In the year 1798, when in consequence of the depredations on the commerce of the U. States by French cruisers, and the refusal of the French government to make compensation for past injuries, or to restrain their cruisers from future spoliation; the United States and France, were brought into a state of *partial war*—and when from every circumstance there was reason to believe, that an *open and general war* would shortly commence between the two powers, an American gentleman of property and combi-

(a) Laws U. S. vol. 4, p. 252.

deration, undertook a voyage to France, and is said to have held an informal and unauthorized intercourse with the French Directory, relative to the subjects in controversy, between the American and French governments. As Congress could not, constitutionally, pass an ex-post-facto law, for the punishment of this transaction; and as no law forbidding such an intercourse *then* existed, it was thought necessary for the support of the rights, the dignity, and interests of the union, that a law forbidding a similar transaction, should be immediately passed.—Accordingly, on the 30th of January, an act was passed, entitled, “an act for the punishment of certain crimes therein specified,” declaring, that (a) “If any person, being a citizen of the United States, whether he be actually resident, or abiding within the United States, or in any foreign country, shall without the permission or authority of the government of the United States, directly or indirectly, commence or carry on, any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof, with an intent to influence the measures or conduct of any foreign government, or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or defeat the measures of the government of the United States; or if any person, being a citizen of, or resident within the United States, and not duly authorized, shall counsel, advise, aid or assist in any such correspondence, with intent, as aforesaid, he or they shall be deemed guilty of a high misdemeanor, and on conviction before *any court of the United States having jurisdiction thereof*, shall be punished by a fine not exceeding five thousand dollars, and by imprisonment during a term not less than six months, nor exceeding three years : Provided always, That nothing in this act contained shall be construed to abridge the right of individual citizens of the U. States to apply, by themselves, or their lawful agents, to any foreign government, or the agents thereof, for the redress of any injuries in relation to person or property which such individuals may have sustained from such government, or any of its agents, citizens or subjects.”

(a) Laws U. S. vol. 4, p. 243.

## CHAP. XXI.

Were we now to proceed to the consideration of the offences against the United States in the order of time in which they were declared by Congress, those under the post-office law would next present themselves. But as it will perhaps be more eligible to consider these together and in connection, we proceed to other misdemeanors, punishable by information or indictment in the Courts of the United States.

## SECT. I.

*Enticing workmen of the United States*—On the 7th May, 1803, an act (a) passed for “the regulation of public arsenals and magazines” by which, “If any person shall procure, or entice any artificer or workman, retained or employed in any arsenal or armory of the United States, to depart from the same during the continuance of his engagement, or avoid or break his contract with the United States, or who after due notice of the engagement of any such workman or armorer, in any arsenal or armory, shall, during the continuance of such engagement, return, hire, or in any wise employ, harbour, or conceal such artificer or workman, the person so offending shall, upon conviction, be fined at the discretion of the court not exceeding fifty dollars, or be imprisoned for any term not exceeding three months.”

## SECT. II.

*Serving on board vessels in the Slave Trade*.—On the 10th May, 1800, an act (b) passed, “in addition to an act, intitled an act, to prohibit the carrying on the Slave Trade of the United States, to any foreign place or country,” by the second section of which it is made “unlawful for any citizen of the United States, or other person residing therein, to serve on board any vessel of the United States employed or made use of in the transportation or carrying of slaves from one foreign country or place to another; and any such citizen or other person, voluntarily serving as aforesaid, shall be liable to be indicted there-

(a) Laws U. S. vol. 5, p. 147, sect. 2.

(b) ----- 168, sect. 2.

for, and on conviction thereof, shall be liable to a fine not exceeding two thousand dollars, and be imprisoned not exceeding two years."

By the 5th section of this act, "the district and circuit courts of the United States shall have cognizance of all acts and offences against the prohibitions herein contained."

Whether by this section Congress intended to give the Circuit and District Courts, the *exclusive* cognizance of the offences prohibited by this act, is not clear; there can be no question however, but that the Judges of the State Courts and Justices of the Peace, have authority to commit or bail offenders against this act; and to compel witnesses to appear and prosecute in the Circuit or District Courts of the United States.

\*  
CHAP. XXII.

OF ALIEN ENEMIES.

The following "act respecting alien enemies was passed at a time when we were in expectation of an open and general war, taking place between France and the U. States. As there is no limitation of its existence, and as the execution of it, is expressly committed to the "*Courts of each State, having criminal jurisdiction,*" it is proper that it should be copied entire.

By this law, (b) "whenever there shall be a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government, and the President of the United States shall make public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being males of the age of fourteen years and upwards, who shall be within the United States, and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies. And the President of the U.

(a) Laws U. S. vol. 5, p. 169, sect. 5.

(b) ----- 4, - 162

United States shall be, and he is hereby authorized, in any event, as aforesaid, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, towards the aliens who shall become liable, as aforesaid; the manner and degree of the restraint to which they shall be subject, and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those, who, not being permitted to reside within the U. States, shall refuse or neglect to depart therefrom; and to establish any other regulations which shall be found necessary in the premises and for the public safety: Provided, That aliens resident within the United States, who shall become liable as enemies, in the manner aforesaid, and who shall not be chargeable with actual hostility, or other crimes against the public safety, shall be allowed, for the recovery, disposal, and removal of their goods and effects, and for their departure, the full time which is, or shall be stipulated by any treaty, where any shall have been between the United States, and the hostile nation or government, of which they shall be natives, citizens, denizens or subjects: and where no such treaty shall have existed, the President of the United States may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality."

---

## SECT. II.

*Courts of the United States authorized to receive complaints, arising under this Act.*—“After any proclamation shall be made as aforesaid, it shall be the duty of the several courts of the United States, and of each state having criminal jurisdiction, and of the several judges and justices of the courts of the United States, and they shall be, and are hereby respectively, authorized upon complaint, against any alien or alien enemies, as aforesaid, who shall be resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the

President of the United States shall and may establish in the premises, to cause such alien or aliens to be duly apprehended and conveyed before such court, judge or justice; and after a full examination and hearing on such complaint, and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States, or to give sureties of their good behaviour, or to be otherwise restrained, conformably to the proclamation or regulations which shall and may be established as aforesaid, and may imprison, or otherwise secure such alien or aliens, until the order which shall and may be made, as aforesaid, shall be performed."

---

SECT. III.

*The duty of Marshals, &c.*—"It shall be the duty of the marshal of the district in which any alien enemy shall be apprehended, who by the President of the U. S. or by order of any court, judge, or justice, as aforesaid, shall be required to depart, and to be removed, as aforesaid, to provide therefor, and to execute such order, by himself or his deputy, or other discreet person or persons to be employed by him, by causing a removal of such alien out of the territory of the United States; and for such removal, the marshal shall have the warrant of the President of the United States, or of the court, judge, or justice ordering the same, as the case may be."

---

CHAP. XXIII.

OFFENCES AGAINST THE POST-OFFICE ACT.

---

By art. I. sect. 8, of the Constitution of the United States, Congress are "empowered to establish Post-Offices and Post-Roads." To give operation and effect to this power several laws have successively been passed. The last general act on this subject, embracing all the provisions of prior acts that were deemed necessary, was passed on the 2d of

March, 1799. It is entitled "an act to establish the Post-Office of the United States." By this act, the execution of the powers given by Congress, is expressly confided to the *Judicial magistrates of the several states*, in the words following:—"All causes of action arising under this act may be sued, and all offenders against this act, may be prosecuted, before the *justices of the peace, magistrates, and other judicial courts of the several states, and of the several territories of the United States*, they having competent jurisdiction by the laws of such states or territories, to the trial of claims and demands of as great value, and of prosecution: where the punishments are of as great extent; and such justices, magistrates, or judiciary, shall take cognizance thereof, and proceed to judgment and execution as in other cases."

By the 22d section, all suits for the recovery of debts or balances due to the general post-office against persons refusing to account and pay over monies due to the United States, are to be in the name of the "Post-Master General of the United States."

By the same section, "certified copies under the seal of the general post-office, of the accounts-current of the several postmasters, after the same shall have been examined and adjusted at that office, shall be admitted as evidence in all suits brought by the Postmaster-General for the recovery of balances or debts due from postmasters, and in like manner copies of such accounts-current as are lodged in the office of the Register of the Treasury, certified by the Register under the seal of his office, shall be admitted as evidence."

By the twenty-fourth section, "all pecuniary penalties and forfeitures incurred under this act, shall be, one half for the use of the person or persons informing and prosecuting for the same, and the other half to the use of the United States."

We now proceed to consider the *offences* against the provisions of this act—They are made punishable in different ways: 1. By death; 2. By fine and imprisonment; 3. By pecuniary forfeitures.

## SECT. I.

*Offences punishable capitally.*—These we have already (a) noticed under the head of “ crimes punishable with *death* in which judges of inferior state courts and justices of the peace may *arrest* and *imprison*, but *not* admit to *bail*.” The offence there described is only punishable with *death* when committed a *second* time. In the *first* instance it is punishable by any court of oyer and terminer, or court of general criminal jurisdiction, with “ lashes” not exceeding forty and imprisonment not exceeding ten years.”

## SECT. II.

*Of misdemeanors punishable by fine and imprisonment.*—The next class of offences under this act punishable by fine and imprisonment are more numerous.

1. The first case is where “ any person employed in any of the departments of the general post-office, shall unlawfully detain, delay or open any letter, packet, bag or mail of letters, with which he shall be entrusted, or which shall have come to his possession, and which are intended to be conveyed by post, or if any such person shall secrete, embezzle or destroy any letter or packet entrusted to him as aforesaid, and which shall not contain any security for, or assurance relating to money, as herein-after described, every such offender, being thereof duly convicted, shall, for every such offence, be fined, not exceeding three hundred dollars, or imprisoned, not exceeding six months, or both, according to the circumstances and aggravations of the offence.”

2. “ If any person employed as aforesaid, shall secrete, embezzle, or destroy any letter, packet, bag or mail letters, with which he shall be entrusted, or which shall have come to his possession, and are intended to be conveyed by post, containing any bank note, or bank post-bill, bill of exchange, warrant of the treasury of the United States, note of assignment of stock in the funds, letters of attorney for receiving annuities or dividends,

(a) See ante, p. 35.

or for selling stock in the funds, or for receiving the interest thereof, or any letter of credit, or note for, or relating to payment of monies, or any bond or warrant, draft, bill or promissory note whatsoever, for the payment of money; or if any such person, employed as aforesaid, shall steal or take any of the same out of any letter, packet, bag or mail of letters, that shall come to his possession, he shall, on conviction for any such offence, be publicly whipped, not exceeding forty stripes, and be imprisoned not exceeding ten years."

3. By the fifteenth section of this act it is declared, that where "any person shall *attempt* to rob the mail of the United States, by falling upon the person having custody thereof, shooting at him or horses, or threatening him with dangerous weapons, and the robbery is not effected, every such offender, on conviction thereof, shall be punished by whipping, not exceeding thirty lashes, or with imprisonment, not exceeding two years, or with both, according to the discretion of the court before whom such conviction is had."

4. And by another part of the same section, "if any person shall steal the mail, or shall steal or take from or out of any mail, or from or out of any post-office, any letter or packet, or if any person shall take the mail, or any letter or packet therefrom or from any post-office, whether with or without the consent of the person having custody thereof, and shall open, embezzle, or destroy any such mail, letter or packet, the same containing any article of value, or evidence of any debt, due, demand, right or claim, or if any person shall, by fraud or deception, obtain from any person having custody thereof, any mail, letter or packet, containing any article of value, or evidence thereof, such offender or offenders, on conviction thereof, shall be whipped, not exceeding thirty lashes, or imprisoned, not exceeding two years, or both, at the discretion of the court before whom such conviction is had." By the *proviso* annexed to this section, "every person who shall be imprisoned by a judgment of court under the 14th and 15th sections

of this act, shall be kept at hard labor during the period of such imprisonment."

5. By a clause in the twentieth section, "if any person shall take or steal any packet, bag or mail of news-papers, from or out of any post-office, or from any person having custody thereof, such person shall, on conviction, be imprisoned, not exceeding three months for every such offence, to be kept at hard labour, during the period of such imprisonment."

---

### SECT. III.

*Of offences punishable by pecuniary forfeitures.*—The third description of offences against the Post-office law are punishable only by a fine or forfeiture.

1. The first offences of this kind are described in the third section of the above mentioned act in these words, where "any person shall knowingly and wilfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same, he shall upon conviction, for every such offence, pay a fine not exceeding one hundred dollars."

2. Where "any ferryman shall, by wilful negligence or refusal to transport the mail across any ferry, delay the same, he shall forfeit and pay for each half hour that the same shall be so delayed, a sum not exceeding ten dollars."

3. Where "any post-master, or any other person authorized by the postmaster-general to receive the postage of letters, shall fraudulently demand or receive any rate of postage, or gratuity, or reward, other than is provided by this act, for the postage of letters or packets, on conviction thereof, he shall forfeit for every such offence, one hundred dollars, and shall be rendered incapable of holding any office or appointment under the U. States."

4. Where "any person, other than the Postmaster-General, or his deputies, or persons by them employed, shall be concerned in setting up or maintaining any foot or horse post, stage-waggon, or other stage carriage, on

any established post-road, or from one post-town to another post-town on any road adjacent or parallel to an established post-road, or any packet-boat or other vessel, to ply regularly from one place to another between which a regular communication by water shall be established by the United States, and shall receive any letter or packet, other than newspapers, magazines, or pamphlets, and carry the same by such foot or horse post, stage-waggon, or other stage-carriage, packet-boat, or vessel, excepting only such letter or letters as may be directed to the owner or owners of such conveyance, and relating to the same, or to the person to whom any package or bundle in such conveyance is intended to be delivered, every person so offending shall forfeit, for every such offence, the sum of fifty dollars: *Provided*, that it shall be lawful for any person to send letters or packets by a special messenger."

5. By the thirteenth section of this act, "the deputy postmasters, and other agents of the Postmaster-General, shall duly account and answer to him, for all way letters which shall come to their hands." "And if any postmaster, or other agent of the Postmaster-General, shall neglect so to account, he or they so offending, shall, on conviction thereof, forfeit, for every such offence, a sum not exceeding fifty dollars."

6. Where "any person employed in any of the departments of the general post-office, shall unlawfully detain, delay or open any letter, packet, bag or mail of letters, with which he shall be entrusted, or which shall have come to his possession, and which are intended to be conveyed by post, or if any such person shall secrete, embezzle or destroy any letter or packet entrusted to him as aforesaid, and which shall not contain any security for, or assurance relating to money, as herein-after described, every such offender, being thereof duly convicted, shall, for every such offence, be fined, not exceeding three hundred dollars, or imprisoned, not exceeding six months, or both, according to the circumstances and aggravations of the offence."

7. And " if any person concerned in carrying the mail of the United States, shall collect, receive, or carry any letter or packet, or shall cause or procure the same to be done, contrary to this act, every such offender shall forfeit and pay, for every such offence, a sum not exceeding fifty dollars."

8. By a clause of the fifteenth section of this act, " if any person shall take any letter or packet, not containing any article of value or evidence thereof out of a post-office, or shall open any letter or packet which shall have been in a post-office, or in the custody of a mail carrier, before it shall have been delivered to the person to whom it is directed, with design to obstruct the correspondence, to pry into another's business, or secrets, or shall secrete, embezzle or destroy any such mail, letter or packet, such offender, upon conviction, shall pay for every such offence a sum not exceeding one hundred dollars."

9. By section eighteen, where " any person shall frank letters other than those written by himself, or by his order, on the business of his office, he shall, on conviction thereof, pay a fine of ten dollars."

10. Where " any person shall counterfeit the hand writing or frank of any person, or cause the same to be done in order to evade the payment of postage, each person so offending shall pay for every such offence fifty dollars."

11. By the twentieth section of this act, " if any person employed in any department of the post-office shall improperly detain, delay, embezzle or destroy any newspaper, or shall permit any other to do the like, or shall open or permit any other to open any mail or packet of newspapers not directed to the office where he is employed, he shall, on conviction thereof, forfeit a sum not exceeding fifty dollars for every such offence."

12. " And if any other person shall open any mail or packet of newspapers, or shall embezzle or destroy the same, not being directed to himself, or not being authorized to receive and open the same, he shall on conviction

thereof, pay a sum not exceeding twenty dollars for every such offence."

13. By the same section it is provided, that "if any person shall enclose or conceal a letter or other thing, or any memorandum in writing in a newspaper, or among any package of newspapers, which he shall have delivered into any post-office, or to any person for that purpose, in order that the same may be carried by post, free of letter postage, he shall forfeit the sum of five dollars for every such offence: and the letter, newspaper, package, memorandum, or other thing, shall not be delivered to the person to whom it is directed, until the amount of single letter postage is paid for each article of which the package shall be composed."

Such are the offences declared by the law establishing the Post office of the United States, and which are made cognizable by the courts, or the magistrates of the several states. There is one instance and only one under this law, in which the remedy prescribed by congress is, an *action on the case*—It is where "any postmaster, or other person, who shall receive and open, or dispatch mails, shall neglect to render accounts thereof for one month after the time, and in the form and manner prescribed by law, and by the Postmaster-General's instructions conformable therewith, he shall forfeit double the value of the postages which shall have arisen at the same office in any equal portion of time previous or subsequent thereto; or in case no accounts shall have been rendered at the time of trial of such case, then such sum as the court and jury shall estimate equivalent thereto, to be recovered by the Postmaster-General in an action on the case."

By the twenty-ninth section of this act it is provided, that "in all suits for causes arising under this act, the court shall proceed to trial, and render judgment the first term after such suit shall be commenced: *Provided always*, That whenever service of the process shall not have been made twenty days at least previous to the return day of such term, the defendant shall be entitled to one continuance, if the court on the statement of such defendant shall

K

judge it expedient: *Provided also*, That if the defendant in such suits shall make affidavit that he has a claim against the general post-office, not allowed by the Postmaster-General, although submitted to him conformable to the regulations of the post-office, and shall specify such claim in the affidavit, and that he could not be prepared for the trial at such term for want of evidence, the court in such case, being satisfied in those respects, may grant a continuance until the next succeeding term."

And by the twenty-sixth section, "That the postmasters, and the persons employed in the transportation of the mail, shall be exempt from militia duties, and serving on juries, or any fine or penalty for neglect thereof."



## CHAP. XXIV.

### OF PENALTIES UNDER THE LAW TO PROHIBIT THE SLAVE-TRADE.

We now proceed to the consideration of other offences made penal by the laws of congress, and cognizable by the courts of the several states, but where the punishment is by pecuniary forfeitures to "be sued for or prosecuted," and not by fine or imprisonment, on *criminal process*. Of this description are the offences declared by that wise and humane act, (a) passed on the 22d March, 1794, "to prohibit the carrying on of the *slave trade*, from the United States, to any place or country."

#### SECT. I.

*Forfeiture of ship, &c.*—By this act, "no citizen or citizens of the United States, or foreigner, or any person coming into, or residing within the same, shall, for himself or any other person whatsoever, either as master, factor or owner, build, fit, equip, load or otherwise prepare, any ship or vessel, within any port or place of the said United

(a) Laws of the U. S. vol. iii. chap. xi.

States, nor shall cause any ship or vessel to sail from any port or place within the same, for the purpose of carrying on any trade or traffic in slaves, to any foreign country; or for the purpose of procuring, from any foreign kingdom, place, or country, the inhabitants of such kingdom, place or country, to be transported to any foreign country, port or place whatever, to be sold or disposed of, as slaves: And if any ship or vessel shall be so fitted out, as aforesaid, for the said purposes, or shall be caused to sail, so as aforesaid, every such ship or vessel, her tackle, furniture, apparel, and other appurtenances, shall be forfeited to the United States; and shall be liable to be seized, prosecuted and condemned, in any of the circuit courts or district court for the district, where the said ship or vessel may be found and seized."

---

SECT. II.

*Forfeiture on persons aiding, &c.*—"All and every person, so building, fitting out, equipping, loading, or otherwise preparing, or sending away, any ship or vessel, knowing, or intending, that the same shall be employed in such trade or business, contrary to the true intent and meaning of this act, or any ways aiding or abetting therein, shall severally forfeit and pay the sum of two thousand dollars, one moiety thereof to the use of the United States, and the other moiety thereof to the use of him or her who shall sue for and prosecute the same."

---

SECT. III.

*Forfeiture on contravening, &c.*—"If any citizen or citizens of the United States shall, contrary to the true intent and meaning of this act, take on board, receive or transport any such persons, as above described in this act, for the purpose of selling them as slaves, as aforesaid, he or they shall forfeit and pay, for each and every person so received on board, transported, or sold as aforesaid, the sum of two hundred dollars, to be recovered in any court of the United States proper to try the same; the one moiety

thereof to the use of the United States, and the other moiety to the use of such person or persons, who shall sue for and prosecute the same."



## CHAP. XXV.

### OF PENALTIES UNDER THE ACTS FOR THE ENCOURAGEMENT OF LEARNING.

#### SECT. I.

*Copy right secured to authors for 14 years.*—In a short time after the organization of the general government, congress found it highly expedient, with a view to the encouragement of learning, to secure the copies of "maps, charts, and books, to the authors and proprietors of such copies," for a certain period of time. Accordingly on the 31st of May, 1790, they passed an act (*a*) for the purpose, from and after the passing of which, "the author and authors of any map, chart, book or books already printed within the United States, being a citizen or citizens thereof, or resident within the same, his or their executors, administrators or assigns, who hath or have not transferred to any other person the copy-right of such map, chart, book or books, share or shares thereof; and any other person or persons, being a citizen or citizens of these U. States, or residents therein, his or their executors, administrators or assigns, who hath or have purchased or legally acquired the copy-right of any such map, chart, book or books, in order to print, reprint, publish or vend the same, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the term of fourteen years from the recording the title thereof in the clerk's office, as is herein after directed: And that the author and authors of any map, chart, book or books already made and composed, and not printed or published, or that shall hereafter

(*a*) Laws of the U. S. vol. III. p. 118.

be made and composed, being a citizen or citizens of these United States, or resident therein, and his or their executors, administrators or assigns, shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books, for the like term of fourteen years from the time of recording the title thereof in the clerk's office as aforesaid. And if, at the expiration of the said term, the author or authors, or any of them, be living, and a citizen or citizens of these United States, or resident therein, the same exclusive right shall be continued to him or them, his or their executors, administrators or assigns, for the further term of fourteen years: *Provided*, he or they shall cause the title thereof to be a second time recorded or published in the same manner as is herein after directed, and that within six months before the expiration of the first term of fourteen years aforesaid."

---

SECT. II.

*Penalties for printing, selling, &c. by other persons.*—This act further provides, "That if any other person or persons, from and after the recording the title of any map, chart, book or books, and publishing the same as aforesaid, and within the times limited and granted by this act, shall print, reprint, publish, or import, or cause to be printed, reprinted, published, or imported from any foreign kingdom or state, any copy or copies of such map, chart, book or books, without the consent of the author or proprietor thereof, first had and obtained in writing, signed in the presence of two or more credible witnesses; or knowing the same to be so printed, reprinted, or imported, shall publish, sell, or expose to sale, or cause to be published, sold, or exposed to sale, any copy of such map, chart, book or books, without such consent first had and obtained in writing as aforesaid, then such offender or offenders shall forfeit all and every copy and copies of such map, chart, book or books, and all and every sheet and sheets, being part of the same, or either of them, to the author or proprietor of such map, chart, book or books, who shall forthwith destroy the same:

And every such offender or offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or their possession, either printed or printing, published, imported or exposed to sale, contrary to the true intent and meaning of this act, the one moiety thereof to the author or proprietor of such map, chart, book or books who shall sue for the same, and the other moiety thereof, to and for the use of the United States, to be recovered by action of debt in any court of record in the U. States wherein the same is cognizable. Provided always, That such action be commenced within one year after the cause of action shall arise, and not afterwards."

---

### SECT. III.

*Conditions on which the benefit of this act shall be obtained.—*

By the third section of this act, "no person shall be entitled to the benefit of this act, in cases where any map, chart, book or books, hath or have been already printed and published, unless he shall first deposit, and in all other cases, unless he shall before publication deposit a printed copy of the title of such map, chart, book or books, in the clerk's office of the district court where the author or proprietor shall reside: And the clerk of such court is hereby directed and required to record the same forthwith, in a book to be kept by him for that purpose, in the words following, (giving a copy thereof to the said author or proprietor, under the seal of the court, if he shall require the same.) "District of \_\_\_\_\_ to wit: *Be it remembered,* That on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the independence of the United States of America, A. B. of the said district, hath deposited in this office the title of a map, chart, book or books, (as the case may be) the right whereof he claims as author or proprietor, (as the case may be) in the words following, to wit: [here insert the title] in conformity to the act of the congress of the United States, intitled, "An Act for the encouragement of learning, by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the

times therein mentioned." C. D. clerk of the district of  
 .” For which the said clerk shall be entitled to receive sixty cents from the said author or proprietor, and sixty cents for every copy under seal actually given to such author or proprietor as aforesaid. And such author or proprietor shall, within two months from the date thereof, cause a copy of the said record to be published in one or more of the newspapers printed in the United States, for the space of four weeks.” And, “within six months after publication he is to deliver or cause to be delivered to the Secretary of State a copy of the same to be preserved in his office.”

---

#### SECT. IV.

*Penalty for publishing manuscripts without consent of the authors.*—By the sixth section of this act, “Any person or persons who shall print or publish any manuscript, without the consent and approbation of the author or proprietor thereof, first had and obtained as aforesaid, (if such author or proprietor be a citizen of, or resident in these U. States) shall be liable to suffer and pay to the said author or proprietor all damages occasioned by such injury, to be recovered by a special action on the case founded upon this act, *in any court having cognizance thereof.*” And, “if any person or persons shall be sued or prosecuted for any matter, act or thing done under or by virtue of this act, he or they may plead the general issue, and give the special matter in evidence.”

---

#### SECT. V.

*Additional requisites prescribed for persons claiming to be authors or proprietors of maps, charts or books.*—By an act (a) passed on the 29th of April, 1802, supplementary to the foregoing it is further provided, “That every person who shall, from and after the first day of January, 1803, claim to be the author or proprietor of any maps, charts, book or books,

(a) Laws of the U. S. vol. vi. p. 115.

and shall thereafter seek to obtain a copy-right of the same agreeable to the rules prescribed by law, before he shall be entitled to the benefit of the act, entitled "an act for the encouragement of learning by securing the copies of maps, charts, and books, to the authors and proprietors of such copies, during the time therein mentioned," he shall in addition to the requisites enjoined in the third and fourth sections of said act, if a book or books, give information by causing the copy of the record, which, by said act he is required to publish in one or more of the newspapers, to be inserted at full length in the title page or in the page immediately following the title of every such book or books; and if a map or chart, shall cause the following words to be impressed on the face thereof, viz. "*Entered according to act of congress the*            *day of*            18            [here insert the date when the same was deposited in the office] *by A. B. of the state of*            [here insert the author's or proprietor's name and the state in which he resides.]"

---

#### SECT. VI.

*Same rules, prescribed with respect to persons who shall invent and design, engrave, etch or work historical or other prints.—* By the second section of this act, "From and after the first day of January, 1803, every person being a citizen of the U. States, or resident within the same, who shall invent and design, engrave, etch or work, or from his own works and inventions, shall cause to be designed and engraved, etched or worked, any historical or other print or prints, shall have the sole right and liberty of printing, re-printing, publishing and vending such print or prints, for the term of fourteen years from the recording the title thereof in the clerk's office, as prescribed by law for maps, charts, book or books: *Provided*, he shall perform all the requisites in relation to such print or prints, as are directed in relation to maps, charts, book or books, in the third and fourth sections of the act to which this is a supplement, and shall moreover cause the same entry to be truly engraved on such plate, with the name of the proprietor, and printed on every such print or

prints as is herein before required to be made on maps or charts."

---

SECT. VII.

*Penalties for engraving, etching or working, or copying and selling a print or prints, without the consent of the owner or owners in writing.*—By the third section of this act, "If any print-seller or other person whatsoever, from and after the said first of January, 1803, within the time limited by this act, shall engrave, etch or work, as aforesaid, or in any other manner copy or sell, or cause to be engraven, etched, copied or sold, in the whole or in part, by varying, adding to, or diminishing from the main design, or shall print, re-print, or import for sale, or cause to be printed, re-printed, or imported for sale, any such print or prints, or any parts thereof, without the consent of the proprietor or proprietors thereof, first had and obtained, in writing, signed by him or them respectively, in the presence of two or more credible witnesses; or knowing the same to be so printed or re-printed, without the consent of the proprietor or proprietors, shall publish, sell, or expose to sale or otherwise, or in any other manner dispose of any such print or prints, without such consent first had and obtained, as aforesaid, then such offender or offenders shall forfeit the plate or plates on which such print or prints are or shall be copied, and all and every sheet or sheets (being part of or whereon such print or prints are or shall be copied or printed) to the proprietor or proprietors of such original print or prints, who shall forthwith destroy the same; and further, that every such offender or offenders shall forfeit one dollar for every print which shall be found in his, her, or their custody; either printed, published, or exposed to sale, or otherwise disposed of, contrary to the true intent and meaning of this act, the one moiety thereof to any person who shall sue for the same, and the other moiety thereof to and for the use of the United States, to be recovered in any court having competent jurisdiction thereof."

L

## SECT. VIII.

*Penalties for publishing maps, charts, books or prints, but in the way prescribed by law.*—And by the last section of this act, “if any person or persons from and after the the passing of this act, shall print or publish any map, chart, book or books, print or prints, who have not legally acquired the copy-right of such map, chart, book or books, print or prints, and shall, contrary to the true intent and meaning of this act, insert therein or impress thereon that the same has been entered according to the act of congress, or words purporting the same, or purporting that the copy-right thereof has been acquired; every person so offending shall forfeit and pay the sum of one hundred dollars, one moiety thereof to the person who shall sue for the same, and the other moiety thereof to, and for the use of the United States, to be recovered by action of debt in *any court of record in the United States*, having cognizance thereof. *Provided always*, That in every case for forfeitures therein before given, the action be commenced within two years from the time the cause of action may have arisen.”

## CHAP. XXVI.

## OF THE NATURALIZATION OF ALIENS.

On the 26th March, 1790, congress passed their first act on this subject. Under this act, two years residence in the United States, possessing a fair moral character, taking the oath to support the constitution of the United States, &c. were the requisites to entitle an alien to all the privileges of a citizen of the United States.

As this act appeared to be opening too wide a door for the admission of foreigners, congress on the 29th of January, 1795, passed a second act, repealing the former. By this they rendered it necessary that an alien should reside at least *five years* in the United States, after expressing his

desire to become a citizen, before some court of the United States, and renouncing his allegiance to every foreign power, renouncing his title (if of the order of nobility), and taking an oath to support the constitution of the United States.

In addition to these provisions congress on the 18th of June, 1798, passed an act supplementary to the one last passed, by which no alien was permitted to enjoy the privileges of citizenship, until after having declared his intention to become a citizen *five years* prior to his admission, as such, and proved his having resided for *fourteen years* within the United States, and *five years* within the state in which he requests admission to the rights and privileges of citizenship. But all the provisions of these acts were annulled and superceded by the act (a) of the 14th April, 1802, whether wisely and for the true interest of the United States, or not, future experience must determine.

---

SECT. I.

*An alien may become a citizen of the United States.*—By this act, “ Any alien being a free white person, may be admitted to become a citizen of the United States, or any of them, on the following conditions, and not otherwise :

*First,* That he shall have declared, on oath or affirmation, before the supreme, superior, district or circuit court of some one of the states, or of the territorial districts of the United States, or a circuit or district court of the United States, three years at least, before his admission, that it was bona fide his intention to become a citizen of the United States, and to renounce for ever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof such alien may, at the time, be a citizen or subject.

*Secondly,* That he shall, at the time of his application to be admitted, declare on oath or affirmation, before some

(a) Laws U. S. vol. vi. p. 74.

one of the courts aforesaid, that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

*Thirdly*, That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and it shall further appear to their satisfaction, that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: *Provided*, That the oath of the applicant shall, in no case, be allowed to prove his residence.

*Fourthly*, That in case the alien, applying to be admitted to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites make an express renunciation of his title or order of nobility in the court to which his application shall be made, which renunciation shall be recorded in the said court: *Provided*, That no alien who shall be a native citizen, denizen or subject of any country, state or sovereign, with whom the United States shall be at war, at the time of his application, shall be then admitted to be a citizen of the United States: *Provided also*, That any alien who was residing within the limits, and under the jurisdiction of the United States, before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts aforesaid, that he has resided two years, at least, within and under the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath, or affirmation,

that he will support the constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty, whereof he was before a citizen or subject: and moreover, on its appearing to the satisfaction of the court, that during the said term of two years, he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, shall have borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his moreover making in the court an express renunciation of his title or order of nobility, before he shall be entitled to such admission: all of which proceedings, required in this proviso to be performed in the court, shall be recorded by the clerk thereof: and provided also, that any alien who was residing within the limits, and under the jurisdiction of the United States at any time between the said twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight, may, within two years after the passing of this act, be admitted to become a citizen, without a compliance with the first condition above specified."

---

## SECT. II.

*Mode of naturalization prescribed.*—"In addition to the directions aforesaid, all free white persons, being aliens, who may arrive in the United States after the passing of this act, shall, in order to become citizens of the United States, make registry, and obtain certificates, in the following manner, to wit: every person desirous of being naturalized shall, if of the age of twenty-one years, make report of himself; or if under the age of twenty-one years, or held in service, shall be reported by his parent, guardian, master or mistress, to the clerk of the district court of the

district where such alien or aliens shall arrive, or to some other court of record of the United States, or of either of the territorial districts of the same, or of a particular state; and such report shall ascertain the name, birth, place, age, nation and allegiance of each alien, together with the country whence he or she migrated, and the place of his or her intended settlement: and it shall be the duty of such clerk, on receiving such report, to record the same in his office, and to grant to the person making such report, and to each individual concerned therein, whenever he shall be required, a certificate under his hand and seal of office of such report and registry; and for receiving and registering each report of an individual or family, he shall receive fifty cents; and for each certificate granted pursuant to this act, to an individual or family, fifty cents: and such certificate shall be exhibited to the court by every alien who may arrive in the United States, after the passing of this act, on his application to be naturalized, as evidence of the time of his arrival within the United States."

---

#### SECT. III.

*What courts are to be considered as capable of naturalizing aliens.*—“And as doubts have arisen whether certain courts of record in some of the states, are included within the description of district or circuit courts: *Be it further enacted,* That every court of record in any individual state, having common law jurisdiction, and a seal and clerk or prothonotary, shall be considered as a district court within the meaning of this act; and every alien, who may have been naturalized in any such court, shall enjoy, from and after the passing of the act, the same rights and privileges, as if he had been naturalized in a district or circuit court of the United States.

---

#### SECT. IV.

*Children of persons naturalized under certain laws to be citizens of the United States.*—“The children of persons duly naturalized under any of the laws of the United States, or

who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the said states, under the laws thereof, being under the age of twenty-one years, at the time of their parent's being so naturalized or admitted to the rights of citizenship, shall, if dwelling in the United States, be considered as citizens of the United States, and the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: *Provided*, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States: *Provided also*, That no person heretofore proscribed by any state, or who have been legally convicted of having joined the army of Great-Britain, during the late war, shall be admitted a citizen, as aforesaid, without the consent of the legislature of the state in which such person was proscribed."



## CHAP. XXVII.

### OF FUGITIVES FROM JUSTICE.

In the constitution of the United States, article iv. section 2, is the following provision—"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." (a)

#### SECT. I.

*Fugitives from justice how to be apprehended and secured.*—  
In pursuance of this constitutional provision an act (b) of congress, passed on the 12th February, 1793, declaring

(a) Laws U. S. vol. I. p. 17. .... (b) Laws U. S. vol. ii. p. 165.

“ That whenever the executive authority of any state in the union, or of either of the territories north-west or south of the river Ohio, shall demand any person as a fugitive from justice, of the executive authority of any such state or territory to which such persons shall have fled, and shall moreover produce the copy of an indictment found, or an affidavit made before a magistrate of any state or territory as aforesaid, charging the person so demanded, with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged, fled, it shall be the duty of the executive authority of the state or territory to which such person shall have fled, to cause him or her to be arrested and secured, and notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear : But if no such agent shall appear within six months from the time of the arrest, the prisoner may be discharged. And all costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the state or territory making such demand, shall be paid by such state or territory.”

---

## SECT. II.

*Penalty on persons rescuing them.*—“ Any agent appointed as aforesaid, who shall receive the fugitive into his custody, shall be empowered to transport him or her to the state or territory from which he or she shall have fled. And if any person or persons shall by force set at liberty, or rescue the fugitive from such agent while transporting, as aforesaid, the person or persons so offending shall, on conviction, be fined not exceeding five hundred dollars, and be imprisoned not exceeding one year ”

Connected with this is the twenty-seventh article of the treaty of amity, commerce and navigation, concluded between the United States and Great-Britain, on the 19th of

November, 1794; which, by the sixth article of the constitution of the United States is to have the same force and obligation as a law of the United States.

By this article (*a*) of the said treaty it is "agreed," that the King of Great-Britain and the United States, "on mutual requisitions made by them respectively, or by their respective ministers or officers, authorized to make the same, will deliver up to justice all persons, who, being charged with murder, or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality, as, according to the laws of the place, wherethe fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expense of such apprehension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive."

In order to carry into operation the foregoing act of Congress, and article of the treaty with Great-Britain, there is no judicial magistrate in the U. States, who may not regularly be called on—and under his oath to support the constitution of the United States, he will be bound to execute the authority above given, or be liable to a prosecution for the *non feasant* of an official duty..

But every judge of a court, or justice of the peace, who may be called on to carry into effect the provisions of the foregoing acts, and the article of the treaty with Great-Britain, is to *decide on the evidence*, necessary to authorize proceedings against any person charged with escaping from justice. In this, however, they are bound to exercise a sound legal discretion. If from circumstances it should appear that they had been influenced by partial or corrupt motives, they would be liable to a prosecution. But, if on evidence laid before them, and due consideration, they are not satisfied, 1. that the *crime* alledged was actually committed, or 2. that the person charged is the *identical person* guilty of the crime in question; in either of

[a] Laws of the U. S. vol. ii. p. 497.

these cases they would be authorized in refusing their aid in carrying into effect the provisions of the article of the constitution, and the law of the United States, or the article of the treaty above referred to.



## CHAP. XXVIII.

### OF FUGITIVES FROM LABOUR.

The system of domestic slavery which, unfortunately for the interests of humanity, and of the U. States, obtains so generally in the southern part of the union, introduced into our constitutional charter the following provision: "No person held to service or labour 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 labour; but shall be delivered up on claim of the party to whom such service or labour may be due." (a)

#### SECT. I.

*Penalty on obstructing claimants of fugitives from labour.*— In pursuance of this provision the law (b) of congress above referred to in sections third & fourth enacts, "That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent and attorney in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, his agent or attorney, when so arrested pursuant to the authority herein given or declared; or shall harbour or conceal such person after notice that he or she was a fugitive from labour, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant,

(a) Laws of the U. S. vol. i. p. 17. art. 4. sec. 2.

(b) ..... VOL. II. P. 166-7.

by action of debt, *in any court proper to try the same*; favouring moreover to the person claiming such labour or service, his right of action for or on account of the said injuries or either of them."

In the execution of the authority above given, it might, perhaps, be well to observe the following particulars :

1. That on application of the owner of a run-away slave, or if his agent, a judicial magistrate is *bound* to issue his warrant to apprehend and secure the said slave.

2. He must, however, have "*satisfactory*" evidence of the *identity* of such slave, and of the ownership of the person, in behalf of whom the said slave is claimed.

3. That in the first instance, every person claiming to be the *agent* of another, is entitled to credit; but if any doubt should arise on this point, time should be allowed by the magistrate for the production of satisfactory evidence.

4. Where after the production of such proof as was satisfactory, a magistrate commits a slave to custody for safe keeping; he is not authorized to liberate him, unless there is such a deficiency of proof, after reasonable time being allowed to produce full evidence, as would not authorise the said magistrate in granting the certificate directed by this act.

5. [*In any court proper to try the same,*] must mean any *state-court* having cognizance of actions for any debt or demand amounting to five hundred dollars or more.



## CHAP. XXIX.

### OF PROCEEDINGS BY OR AGAINST SEAMEN IN THE MERCHANT'S SERVICE.

On the 20th of July, 1790, congress passed the "act (a) for the government and regulation of seamen in the merchant's service." In order to carry into effect the provi-

(a) Laws of the U. S. vol. I. p. 134.

sions of this law, it was found necessary to give large authority to the judges of the inferior state-courts, and to justices of the peace. What this authority is, will best appear in the very words of the legislature.

---

SECT. I.

*Master and mariners in the merchant's service to execute a shipping agreement.*—By the first section of this act, "Every master or commander of any ship or vessel bound from a port in the United States to any foreign port, or of any ship or vessel of the burthen of fifty tons or upwards, bound from a port in one state, to a port in any other than an adjoining state, shall, before he proceed on such voyage, make an agreement in writing or in print, with every seaman or mariner on board such ship or vessel (except such as shall be apprentice or servant to himself or owners) declaring the voyage or voyages, term or terms of time, for which such seaman or mariner shall be shipped. And if any master or commander of such ship or vessel shall carry out any seaman or mariner (except apprentices or servants as aforesaid) without such contract or agreement being first made and signed by the seamen and mariners, such master or commander shall pay to every such seaman or mariner the highest price or wages which shall have been given at the port or place where such seaman or mariner shall have been shipped, for a similar voyage, within three months next before the time of such shipping: *Provided* such seaman or mariner shall perform such voyage; or if not, then for such time as he shall continue to do duty on board such ship or vessel; and shall moreover forfeit twenty dollars for every such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and such seaman or mariner, not having signed such contract, shall not be bound by the regulations, nor subject to the penalties and forfeitures contained in this act."

## SECT. II.

*Penalty on the seaman for non performance of such agreement.*

—“ At the foot of every such contract, there shall be a memorandum in writing, of the day and the hour on which such seamen or mariners, who shall so ship and subscribe, shall render themselves on board, to begin the voyage agreed upon. And if any such seaman or mariner shall neglect to render himself on board the ship or vessel, for which he has shipped, at the time mentioned in such memorandum, and if the master, commander, or other officer of the ship or vessel, shall on the day on which such neglect happened, make an entry in the log-book of such ship or vessel, of the name of such seaman or mariner, and shall in like manner note the time that he so neglected to render himself (after the time appointed); every such seaman or mariner shall forfeit for every hour which he shall so neglect to render himself, one day's pay, according to the rate of wages agreed upon, to be deducted out of his wages. And if any such seaman or mariner shall wholly neglect to render himself on board of such ship or vessel, or having rendered himself on board, shall afterwards desert and escape, so that the ship or vessel proceed to sea without him, every such seaman or mariner shall forfeit and pay to the master, owner or consignee of the said ship or vessel, a sum equal to that which shall have been paid to him by advance at the time of signing the contract, over and besides the sum so advanced, both which sums shall be recoverable in any court, or before *any justice or justices of any state, city, town or county* within the United States, which, by the laws thereof, have cognizance of debts of equal value, against such seaman or mariner, or his surety or sureties, in case he shall have given surety to proceed on the voyage.”

## SECT. III.

*What proceedings to be had in case the vessel proves leaky, &c.*

—“ If the mate or first officer under the master, and a majority of the crew of any ship or vessel, bound on a voyage to any foreign port, shall, after the voyage is begun (and

before the ship or vessel shall have left the land) discover that the said ship or vessel is too leaky, or is otherwise unfit in her crew, body, tackle, apparel, furniture, provisions or stores, to proceed on the intended voyage, and shall require such unfitness to be enquired into, the master or commander shall upon the request of the said mate (or other officer) and such majority, forthwith proceed to or stop at the nearest or most convenient port or place where such enquiry can be made, and shall there apply to the judge of the district court, if he shall there reside, or if not, to some *justice of the peace of the city, town and place*, taking with him two or more of the said crew who shall have made such request; and thereupon such *judge or justice* is hereby authorized and required to issue his precept directed to three persons in the neighbourhood, the most skilful in maritime affairs that can be procured, requiring them to repair on board such ship or vessel, and to examine the same in respect to the defects and insufficiencies complained of, and to make report to him the said *judge or justice*, in writing under their hands, or the hands of two of them, whether in any, or in what respect the said ship or vessel is unfit to proceed on the intended voyage: and what addition of men, provisions or stores, or what repairs or alterations in the body, tackle or apparel will be necessary; and upon such report the said judge or justice shall adjudge and determine, and shall endorse on the said report his judgment, whether the said ship or vessel is fit to proceed on the intended voyage; and if not, whether such repairs can be made or deficiencies supplied where the ship or vessel then lies, or whether it be necessary for the said ship or vessel to return to the port from whence she first sailed, to be there refitted; and the master and crew shall in all things conform to the said judgment; and the master or commander shall in the first instance, pay all the costs of such view, report and judgment, to be taxed and allowed on a fair copy thereof, certified by the said *judge or justice*. But if the complaint of the said crew shall appear upon the said report and judgment, to have been without foundation, then the said master, or the owner or consignee of such

ship or vessel, shall deduct the amount thereof, and of reasonable damages for the detention (to be ascertained by the said *judge or justice*) out of the wages growing due to the complaining seamen or mariners. And if after such judgment, such ship or vessel is fit to proceed on her intended voyage, or after procuring such men, provisions, stores, repairs or alterations as may be directed, the said seamen or mariners, or either of them, shall refuse to proceed on the voyage, it shall and may be lawful for any *justice of the peace* to commit by warrant under his hand and seal, every such seaman or mariner (who shall so refuse) to the common gaol of the county, there to remain without bail or mainprize, until he shall have paid double the sum advanced to him at the time of subscribing the contract for the voyage, together with such reasonable costs as shall be allowed by the said *justice*, and inserted in the said warrant, and the surety or sureties of such seaman or mariner (in case he or they shall have given any) shall remain liable for such payment; nor shall any such seaman or mariner be discharged upon any writ of habeas corpus or otherwise, until such sum be paid by him or them, or his or their surety or sureties, for want of any form or commitment, or other previous proceedings. *Provided*, That sufficient matter shall be made to appear, upon the return of such habeas corpus, and an examination then to be had, to detain him for the causes herein before assigned."

---

SECT. IV.

*Penalty for harbouring runaway seamen.*—"If any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof before any court in the city, town or country where he, she or they may reside, shall forfeit and pay *ten dollars for every day* which he, she or they shall continue so to harbor or secrete such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States; and no sum exceeding one dollar, shall be recoverable from

any seaman or mariner by any one person, for any debt contracted during the time such seaman or mariner shall actually belong to any ship or vessel, until the voyage for which such seaman or mariner engaged shall be ended."

---

SECT. V.

*Penalty on a mariner's absenting himself from duty, &c.—*  
 "If any seaman or mariner, who shall have subscribed such contract as is herein before described, shall absent himself from on board the ship or vessel in which he shall so have shipped, without leave of the master or officer commanding on board; and the mate, or other officer having charge of the log-book, shall make an entry therein of the name of such seaman or mariner, on the day on which he shall so absent himself, and if such seaman or mariner shall return to his duty within forty-eight hours, such seaman or mariner shall forfeit three days pay for every day which he shall so absent himself, to be deducted out of his wages: but if any seaman or mariner shall absent himself for more than forty-eight hours at one time, he shall forfeit all the wages due to him, and all his goods and chattles which were on board the said ship or vessel, or in any store where they may have been lodged at the time of his desertion, to the use of the owners of the ship or vessel, and moreover shall be liable to pay to him or them all damages which he or they may sustain by being obliged to hire other seamen or mariners in his or their place, and such damages shall be recovered with costs, in any court or before any justice or justices having jurisdiction of the recovery of debts to the value of ten dollars or upwards."

---

SECT. VI.

*When and at what port a seaman may demand his wages, &c.—*  
 "Every seaman or mariner shall be entitled to demand and receive from the master or commander of the ship or vessel to which they belong, one third part of the wages which shall be due to him at every port where such

ship or vessel shall unlade and deliver her cargo before the voyage be ended, unless the contrary be expressly stipulated in the contract: and as soon as the voyage is ended, and cargo or ballast be fully discharged at the last port of delivery, every seaman or mariner shall be entitled to the wages which shall be then due according to his contract: and if such wages shall not be paid within ten days after such discharge, or if any dispute shall arise between the master and seamen or mariners touching the said wages, it shall be lawful for the judge of the district where the said ship or vessel shall be, or in case his residence be more than three miles from the place, or of his absence from the place of his residence, then, for any judge or justice of the peace, to summon the master of such ship or vessel to appear before him, to shew cause why process should not issue against such ship or vessel, her tackle, furniture and apparel, according to the course of admiralty-courts, to answer for the said wages: and if the master shall neglect to appear, or appearing, shall not shew that the wages are paid, or otherwise satisfied or forfeited, and if the matter in dispute shall not be forthwith settled, in such case the judge or justice shall certify to the clerk of the court of the district, that there is sufficient cause of complaint whereon to found admiralty process, and thereupon the clerk of such court shall issue process against the said ship or vessel, and the suit shall be proceeded on in the said court, and final judgment be given according to the course of admiralty-courts in such cases used; and in such suit all the seamen or mariners (having cause of complaint of the like kind against the same ship or vessel) shall be joined as complainants; and it shall be incumbent on the master or commander to produce the contract and log-book, if required, to ascertain any matter in dispute; otherwise the complainants shall be permitted to state the contents thereof, and the proof of the contrary shall lie on the master or commander; but nothing herein contained shall prevent any seaman or mariner from having or maintaining any action at common law for the recovery of his wages, or from immediate process out of any court having admiralty jurisdiction, wherever

N

any ship or vessel may be found, in case she shall have left the port of delivery where her voyage ended, before payment of the wages, or in case she shall be about to proceed to sea before the end of the ten days next after the delivery of her cargo or ballast."

---

SECT. VII.

*How to proceed against a mariner deserting his vessel, &c.*  
 —“If any seaman or mariner, who shall have signed a contract to perform a voyage, shall at any port or place, desert, or shall absent himself from such ship or vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of the peace within the United States (upon complaint of the master) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear by due proof that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction or common gaol of the city, town or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the said master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seaman or mariner.”

---

SECT. VIII.

*Penalty on the master of a vessel not providing a medicine chest, &c.*—“Every ship or vessel belonging to a citizen or citizens of the United States, of the burthen of one hundred and fifty tons or upwards, navigated by ten or more persons in the whole, and bound on a voyage without the limits of the United States, shall be provided with a chest of medicines, put up by some apothecary of known reputation, and accompanied by directions for administering

the same; and the said medicines shall be examined by the same or some other apothecary, once at least in every year, and supplied with fresh medicines in the place of such as shall have been used or spoiled; and in default of having such medicine-chest so provided, and kept fit for use, the master or commander of such ship or vessel shall provide and pay for all such advice, medicine, or attendance of physicians, as any of the crew shall stand in need of in case of sickness at every port or place where the ship or vessel may touch or trade at during the voyage, without any deduction from the wages of such sick seaman or mariner."

---

SECT. IX.

*Penalty for vessels crossing the Atlantic, not having sufficient stores, &c.*—"Every ship or vessel, belonging as aforesaid, bound on a voyage across the Atlantic ocean, shall, at the time of leaving the last port from whence she sails, have on board, well secured under deck, at least sixty gallons of water, one hundred pounds of salted flesh meat, and one hundred pounds of wholesome ship-bread, for every person on board such ship or vessel, over and besides such other provisions, stores and live-stock as shall by the master or passengers be put on board, and in like proportion for shorter or longer voyages; and in case the crew of any ship or vessel, which shall not have been so provided, shall be put upon short allowance in water, flesh or bread, during the voyage, the master or owner of such ship or vessel shall pay to each of the crew, one day's wages beyond the wages agreed on for every day they shall be so put to short allowance, to be recovered in the same manner as their stipulated wages."

---

SECT. X.

*Forfeiture of wages.*—By the second section of the foregoing act we perceive, that where there has been a written agreement between a master and seaman, and a memorandum in writing at the foot of the same, specifying the day

and hour at which a seaman shall render himself on board his vessel, and he neglects to render himself in conformity with his agreement, then for *every hour* after the time appointed he is to forfeit *one day's wages*.

After so rendering himself on board a vessel, should he then desert her, so that she proceeds to sea without him, he is then to forfeit "a sum equal to that which shall have been paid him, *besides* the sum which has actually been paid him at the time of signing his agreement."

By the fifth section of the above act of Congress, if a seaman shall absent himself, without leave of the master or mate, after signing the shipping articles, but shall return within forty-eight hours, he is then to forfeit only three days wages, for each day of absence; but if he shall absent himself for *more* than forty-eight hours at one time, he is then to forfeit not only the whole amount of wages then due him, but all his goods and chattles on board the said vessel, or in any store, where they may have been lodged at the time of his desertion, together with all the damages arising from hiring another seaman, to be recovered before any justice of the peace with costs.

Should a seaman after entering with one master of a vessel, ship himself with another, this would be considered as an act of desertion; and if the captain, with whom the second engagement was made, knew of the first, he would be liable to damages for an act so unwarrantable and so prejudicial to the interests of trade.

Besides the cases enumerated in the above act of Congress there are others in which a seaman is liable to a forfeiture of wages, as 1. in case a seaman is guilty of piracy; 2. where the vessel in which he has shipped is either lost, or taken by enemies or pirates; but if, there is a *recapture* from an enemy, in that case the sailors right to wages revives.

And in cases of forfeiture by loss of the vessel, although she may have arrived at a port of destination, if she is afterwards lost in sailing from that to a *port of delivery*, the sailors wages are lost also.

But the general rule is, that "freight is the mother of

wages;" wherever, therefore, goods are conveyed by the owner and delivered, as freight would arise, wages must accrue; so that although the vessel be lost and the goods saved, or a part of them, the seaman is entitled to a proportionate rate of wages.

If the ship unlade, wages are due, and that whether at a port of necessity or of destination. And if a vessel be lost in consequence of some fault of the owners, as by a seizure for debt, or contraband goods on board, wages are due up to the time of seizure unless where by positive institution, they are involved in the forfeiture of the ship.

---

## CHAP. XXX.

### OF PROCEEDINGS IN REGARD TO INDIANS.

---

On the 3d March, 1799, an act of Congress passed "To regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers;" the continuance of which was limited to three years. Which act, (a) on the 30th March, 1802, with very few alterations was re-enacted and made perpetual.

By the fifteenth section of this law, a cognizance of all offences *not* punishable with *death*, is given to the *counsy courts of quarter sessions*, in the several territorial districts, mentioned in the said act, who are invested with like power "to *bear and determine* the same, as the supreme or superior courts of the several states, or circuit court of the United States possess, to hear and determine offences, the punishment of which is *death*, any law to the contrary notwithstanding."

---

### SECT. I.

By this act a certain boundary line between the territory, belonging to the Indians, and that of the United States, is directed to be "clearly established, and distinctly mark-

(a) Laws U. S. vol. vj. chap. 13.

ed in all such places as the President of the United States shall deem necessary, and in such manner as he shall direct, to-wit: Beginning at the mouth of the Cayahoga river on Lake Erie, and running thence up the same to the portage between that and the Tuscaroras branch of the Muskingum; thence, down that branch, to the crossing place above Fort-Laurence; thence westwardly to a fork of that branch of the Great Miami river running into the Ohio, at or near which fork stood Laromie's store, and where commences the portage, between the Miami of the Ohio and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westwardly course to Fort-Recovery, which stands on a branch of the Wabash; thence south-westwardly, in a direct line to the Ohio, so as to intersect that river, opposite the mouth of Kentucky or Cuttaw river; thence down the said river Ohio, to the tract of one hundred and fifty thousand acres, near the rapids of the Ohio, which has been assigned to General Clarke, for the use of himself and his warriors; thence around the said tract, on the line of the said tract, till it shall again intersect the said river Ohio; thence down the same to a point opposite the high lands or ridge between the mouth of the Cumberland and Tennessee rivers; thence south-eastwardly on the said ridge, to a point, from whence a south-west line will strike the mouth of Duck river; thence, still eastwardly on the said ridge, to a point forty miles above Nashville; thence north-east to Cumberland river; thence up the said river to where the Kentucky road crosses the same; thence to the Cumberland mountain, at the point of Campbell's line; thence in a south-westwardly direction along the foot of the Cumberland mountain to Emory's river; thence down the same to its junction with the river Clinch; thence down the river Clinch to Hawkins's line; thence along the same to a white oak, marked one mile tree; thence south fifty-one degrees west, three hundred and twenty-eight chains, to a large ash tree on the bank of the river Tennessee, one mile below south-west point; thence up the north-east margin of the river Tennessee (not including islands) to the Wild Cat Rock, below Tellico

block-house; thence in a direct line to the Militia spring, near the Maryville road leading from Tellico; thence from the said spring to the Chilhowee mountain by a line so to be run as will leave all the farms on Nine-mile creek to the northward and eastward of it, and to be continued along the Chilhowee mountain until it strikes Hawkins's line; thence along the said line to the great Iron mountains; and from the top of which a line to be continued in a south-eastwardly course to where the most southern branch of Little river crosses the divisional line to Tugaloo river; thence along the South-Carolina Indian boundary to and over the Oconna mountain, in a south-west course to Tugaloo river; thence in a direct line to the top of Currahee mountain, where the Creek line passes it; thence to the head or source of the main south branch of the Oconee river, called the Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with Oakmulgee, which forms the river Altamaha; thence down the middle of the said Altamaha, to the old line on the said river; and thence along the said old line to the river St. Mary's: *Provided always*, That if the boundary line between the said Indian tribes and the United States shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act shall be construed to apply to the said line so to be varied, in the same manner, as said provisions apply, by force of this act, to the boundary line herein before recited."

---

## SECT. II.

*Line not to be crossed.*—"If any citizen of, or other person resident in, the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range on any lands allotted or secured by treaty with the United States, to any Indian

tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months."

SECT. III.

*No one to go into the Indian country without a passport, &c.*  
"If any such citizen or other person, shall go into any country which is allotted, or secured by treaty as aforesaid, to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the governor of some one of the United States, or the officer of the troops of the United States, commanding at the nearest post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months."

SECT. IV.

*Offences in the Indian territory, how punishable.*—"If any such citizen, or other person, shall go into any town, settlement or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass or any other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any state, against a citizen of the United States; or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed: and if such offender shall be enabled to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the treasury of the United States: *Provided nevertheless,* That no such Indian shall be entitled to any payment out of the treasury of the United States,

for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence."

---

SECT. V.

*No settlement or survey to be made.*—"If any such citizen, or other person, shall make a settlement on any lands belonging, or secured, or granted by treaty with the United States, to any Indian tribe, or shall survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit a sum not exceeding *one thousand dollars*, and suffer imprisonment, not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary, to remove from lands, belonging or secured by treaty, as aforesaid, to any Indian tribe, any such citizen, or other person, who has made, or shall hereafter make, or attempt to make a settlement thereon."

---

SECT. VI.

Declares an offence which is punishable with death. (a)

---

SECT. VII.

*Traders must have a licence.*—"No such citizen, or other person, shall be permitted to reside at any of the towns, or hunting camps, of any of the Indian tribes as a trader, without a licence under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licences for that purpose : which superintendent, or person authorized, shall, on application, issue such licence, for a term not exceeding two years, to such trader, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such licence, or by

(a) See ante p. 39.

the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions, as are, or shall be made for the government of trade and intercourse with the Indian tribes: and the superintendant, or person issuing such licence, shall have full power and authority to recall the same, if the person so licenced shall transgress any of the regulations, or restrictions, provided for the government of trade and intercourse with the Indian tribes; and shall put in suit such bonds as he may have taken, on the breach of any condition therein contained."

---

SECT. VIII.

*Goods of unlicenced traders forfeited, &c.*—"Any such citizen or other person, who shall attempt to reside in any town or hunting camp, of any of the Indian tribes, as a trader, without such licence, shall forfeit all the merchandize offered for sale to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days."

---

SECT. IX.

*Articles which shall not be purchased from Indians.*—"If any such citizen, or other person, shall purchase, or receive of any Indian, in the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of cloathing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days."

---

SECT. X.

*Horses not to be bought or sold without licence.*—"No such citizen, or other person, shall be permitted to purchase any horse of an Indian, or of any white man in the Indian ter-

ritory, without special licence for that purpose; which licence, the superintendant, or such other person as the President shall appoint, is hereby authorized to grant on the same terms, conditions and restrictions, as other licences are to be granted under this act: and any such person, who shall purchase a horse or horses, under such licence, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country, shall make a particular return to the superintendant, or other person, from whom he obtained his licence, of every horse purchased by him, as aforesaid; describing such horses, by their colour, height, and other natural or artificial marks, under the penalty contained in their respective bonds. And every such person, purchasing a horse or horses, as aforesaid, in the Indian country, without a special licence, shall for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit a sum not exceeding *one hundred dollars*, and be imprisoned not exceeding thirty days. And every person, who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licenced, as above, to purchase the same, shall forfeit the value of such horse."

---

SECT. XI.

*Agents of the public not to trade.*—"No agent, superintendent, or other person authorized to grant a licence to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse to, or from any Indian, excepting for and on account of the United States: and any person offending herein, shall forfeit a sum not exceeding *one thousand dollars*, and be imprisoned not exceeding twelve months."

---

SECT. XII

*No purchases from Indians but under treaties.*—"No purchase, grant, lease, or other conveyance, of lands, or any title or claim thereto, from any Indian, or nation, or tribe

of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention, directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine not exceeding *one thousand dollars*, and imprisonment not exceeding twelve months: *Provided nevertheless*, That it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made, for the claims to lands within such state, which shall be extinguished by the treaty."

---

SECT. XIII.

*President authorized to use the means of civilizing the Indians.*

"In order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, that the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum."

---

SECT. XIV.

*Means of redress prescribed for transgression of Indians.—*

"If any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any state or territory inhabited by citi-

zens of the United States, and there take, steal or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney or agent, to make application to the superintendant, or such other person as the President of the United States, shall authorize for that purpose; who upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendant or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken, as shall be proper to obtain satisfaction, for the injury: and in the mean time, in respect to the property so taken, stolen or destroyed, the United States shall guarantee to the party injured, an eventual indemnification: *Provided always*, That if such injured party, his representative, attorney or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided also*, That nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any state or district, of any Indian having so offended: *And provided further*, That it shall be lawful for the President of the United States, to deduct such sum or sums, as shall be paid for the property taken, stolen or destroyed by any such Indian, out of the annual stipend, which the United States are bound to pay to the tribe, to which such Indian shall belong."

## SECT. XV.

*What courts have jurisdiction in these cases.*—“ The superior court in each of the said territorial districts, and the circuit courts, and other courts of the United States of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be apprehended, or, agreeably to the provisions of this act, shall be brought for trial, shall have, and are hereby invested with full power and authority to hear and determine all crimes, offences and misdemeanors, against this act; such courts proceeding therein in the same manner, as if such crimes, offences and misdemeanors had been committed within the bounds of their respective districts: and in all cases where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States, in their respective districts, shall have, and are hereby invested with like power to hear and determine the same, any law to the contrary notwithstanding: And in all cases, where the punishment shall be death, it shall be lawful for the governor of either of the territorial districts where the offender shall be apprehended, or into which he shall be brought for trial, to issue a commission of oyer and terminer to the superior judges of such district, who shall have full power and authority to hear and determine all such capital cases, in the same manner as the superior courts of such district have in their ordinary sessions; and when the offender shall be apprehended, or brought for trial into any of the United States, except Kentucky or Tennessee, it shall be lawful for the President of the United States, to issue a like commission to any one or more judges of the supreme court of the United States, and the judge of the district, in which such offender may have been apprehended or shall have been brought for trial; which judges or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial and judgment, in the same manner as such

circuit court might or could do. And the district courts of Kentucky, Tennessee and Maine shall have jurisdiction of all crimes, offences and misdemeanors committed against this act, and shall proceed to trial and judgment in the same manner, as the circuit courts of the United States."

---

SECT. XVI.

*Persons crossing the line and going into the Indian country contrary to this act, how to be dealt with.*—"It shall be lawful for the military force of the U. States to apprehend every person who shall, or may be found in the Indian country over and beyond the said boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest, convenient and safe route, to the civil authority of the United States, in some one of the three next adjoining states or districts, to be proceeded against in due course of law: *Provided*, That no person, apprehended by military force as aforesaid, shall be detained longer than five days after the arrest, and before removal. And all officers or soldiers who may have any such person or persons in custody, shall treat them with all the humanity which the circumstances will possibly permit; and every officer and soldier who shall be guilty of mal-treating any such person, while in custody, shall suffer such punishment as a court martial shall direct: *Provided*, That the officer having custody of such person or persons shall, if required by such person or persons, conduct him or them to the nearest judge of the supreme or superior court of any state, who, if the offence is bailable, shall take proper bail if offered, returnable to the district court next to be holden in said district, which bail the said judge is hereby authorized to take, and which shall be liable to be estreated as any other recognizance for bail in any court of the United States; and if said judges shall refuse to act, or the person or persons fail to procure satisfactory bail, then the said person or persons are to be proceeded with according to the directions of this act."

SECT. XVII.

*Violators of this law, if found within the United States, how punishable.*—“ If any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial, in the same manner, as if such crime or offence had been committed within such state or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized, as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.”

SECT. XVIII.

*How penalties are to be fixed.*—“ The amount of fines, and duration of imprisonment, directed by this act as a punishment for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court, before whom the trials shall be had; and that all fines and forfeitures, which shall accrue under this act, shall be one half to the use of the informant, and the other half to the use of the United States; except where the prosecution shall be first instituted on behalf of the United States; in which case the whole shall be to their use.”

CHAP. XXXI.

OF THE ADMINISTRATION OF CERTAIN OATHS PRESCRIBED  
BY SUNDRY ACTS OF CONGRESS.

SECT. I.

*Oath to support the constitution of the United States.*—By the first act (a) of the first congress, the members of the

(a) Laws of the U. S. vol. I. p. 26.

several state legislatures, and all executive and judicial officers of the several states, are required before they proceed to execute the duties of their respective offices, to take the following oath or affirmation: "I, A. B. do solemnly swear" (or affirm as the case may be) "that I will support the constitution of the United States," which oath may be administered by any person or persons who by a law of the state shall be authorized to administer the oaths of office. And the person or persons so administering the aforesaid oath as by the act required, are to cause a record or certificate thereof to be made in the same manner as by the law of the state he or they shall be directed to record or certify the oath of office."

---

SECT. II.

*Oath or affirmation before whom to be taken.*—By a law passed on the 21st of February, 1793, to promote the progress of useful arts, &c. entitled an act, (a) "Every inventor, before he can receive a patent, shall swear or affirm, that he does verily believe, that he is the true inventor or discoverer of the art, machine, or improvement, for which he solicits a patent, which oath or affirmation may be made before any person authorized to administer oaths." And by an act (b) passed on the 17th April, 1800, designed to extend the privilege of obtaining patents to aliens, and to the legal representatives of inventors, "All and singular the rights and privileges given, intended or provided, to citizens of the United States, respecting patents for new inventions, discoveries, and improvements, by the act intituled "an act to promote the progress of useful arts, and to repeal the act heretofore made for that purpose," shall be, and hereby are extended and given to all aliens who at the time of petitioning in the manner prescribed by the said act, shall have resided for two years within the United States, which privileges shall be obtained, used, and enjoyed, by such persons, in as full and ample manner, and under the same conditions, limitations and restrictions, as

(a) Laws U. S. vol. ii. p. 211..... (b) Laws U. S. vol. v. p. 84.

by the said act is provided and directed in the case of citizens of the United States. *Provided always*, That every person petitioning for a patent for any invention, art or discovery, pursuant to this act, shall *make oath or affirmation before some person duly authorized to administer oaths*, before such patent shall be granted, that such invention, art or discovery hath not, to the best of his or her knowledge or belief, been known or used either in this or any foreign country; and that every patent which shall be obtained pursuant to this act, for any invention, art or discovery, which it shall afterwards appear had been known or used previous to such application for a patent, shall be utterly void."

---

SECT. III.

*Collectors oath.*—By the act (a) to regulate the collection of duties on imports and tonnage, "All officers and persons to be appointed pursuant to this act, before they enter upon the duties of their respective offices, shall severally take and subscribe an oath or affirmation, diligently and faithfully to execute the duties of their said offices respectively, which oath or affirmation shall be of the form and tenor following, to wit:

I (A. B.) having been appointed (collector or other officer as the case be) of the (district or port of) do solemnly sincerely, and truly (swear or affirm) that I will diligently and faithfully execute the duties of the said office of

and will use the best of my endeavours to prevent and detect frauds in relation to the duties imposed by the laws of the United States; I further (swear or affirm) that I will support the constitution of the United States.

(Sworn or affirmed and subscribed, this                      day  
of                      before me,

And the oath or affirmation aforesaid, if taken by a collector, may be taken before any magistrate authorized to administer oaths within the district to which he belongs; but if taken by another officer, shall be taken before the collector.

(a) Laws U. S. vol. iv. p. 311.

of his district; and being certified under the hand and seal of the person by whom the same shall have been administered, shall, within three months thereafter be transmitted to the Comptroller of the Treasury, in default of taking of which oath, or transmitting a certificate thereof, the party failing shall *forfeit and pay two hundred dollars, to be recovered with cost of suit in any court of competent jurisdiction, to the use of the United States.*"

---

SECT. IV.

*Deputy marshal's oath.*—By an act (a) passed on the 28th of February, 1799, "When a deputy marshal, who shall be duly appointed by the marshal of any district, shall reside and be more than twenty miles from the place where the district judge of such district shall reside and be, the oath of office required of such deputy, before he enters on the discharge thereof, may be administered and taken by and before any judge or justice of any state court within the same district, or before any justice of the peace, having authority therein, and being certified by him, to the said district judge, shall be as effectual as if administered or taken before such district judge."

---

SECT. V.

*Officers of the post-office to take an oath.*—By the act (b) to establish the Post-office of the United States, "The post-master-general, and all other persons employed in the general post-office, or in the care, custody, or conveyance of the mail, shall, previous to entering upon the duties assigned to them, or the execution of their trusts, and before they shall be entitled to receive any emolument therefor, respectively take and subscribe the following oath or affirmation, before some magistrate, and cause a certificate thereof to be filed in the general post-office, "I, A. B. do swear (or affirm, as the case may be) that I will faithfully perform all the duties required of me, and abstain from

(a) Laws of the U. S. vol. iv. p. 274.—(b) Laws of the U. S. vol. iv. p. 506.



of his district; and being certified under the hand and seal of the person by whom the same shall have been administered, shall, within three months thereafter be transmitted to the Comptroller of the Treasury, in default of taking of which oath, or transmitting a certificate thereof, the party failing shall *forfeit and pay two hundred dollars*, to be recovered with cost of suit in *any court of competent jurisdiction*, to the use of the United States."

---

SECT. IV.

*Deputy marshal's oath.*—By an act (a) passed on the 28th of February, 1799, "When a deputy marshal, who shall be duly appointed by the marshal of any district, shall reside and be more than twenty miles from the place where the district judge of such district shall reside and be, the oath of office required of such deputy, before he enters on the discharge thereof, may be administered and taken by and before *any judge or justice of any state court* within the same district, or before *any justice of the peace*, having authority therein, and being certified by him, to the said district judge, shall be as effectual as if administered or taken before such district judge."

---

SECT. V.

*Officers of the post-office to take an oath.*—By the act (b) to establish the Post-office of the United States, "The postmaster-general, and all other persons employed in the general post-office, or in the care, custody, or conveyance of the mail, shall, previous to entering upon the duties assigned to them, or the execution of their trusts, and before they shall be entitled to receive any emolument therefor, respectively take and subscribe the following oath or affirmation, *before some magistrate*, and cause a certificate thereof to be filed in the general post-office, "I, A. B. do swear (or affirm, as the case may be) that I will faithfully perform all the duties required of me, and abstain from

(a) Laws of the U. S. vol. iv. p. 274.—(b) Laws of the U. S. vol. iv. p. 506.

every thing forbidden by the law in relation to the establishment of the post-office and post-roads within the U. States." And every person who shall be in any-manner employed in the care, custody, conveyance or management of the mail, shall be subject to all pains, penalties and forfeitures for violating the injunctions, or neglecting the duties required of him by the laws relating to the establishment of the post-office and post roads, whether such person shall have taken the oath or affirmation above prescribed or not."



## CHAP. XXXII.

### OF PENALTIES UNDER THE ACT RELATIVE TO THE FISHERIES OF THE UNITED STATES.

On the 16th of February, 1792, congress passed an act (*a*) concerning certain fisheries of the United States, and for the regulation and government of the seaman employed therein."

The existence of this act was limited to seven years from the time of passing, but by a subsequent act (*b*) passed on the 12th of April, 1800, it was "continued for *ten* years from the 3d of March, 1800, and until the end of the session of congress next ensuing the expiration of that term."

By the act first mentioned various penalties and forfeitures are imposed on the commission or omission of certain things therein stated, which penalties and forfeitures by the 2d section of this law, are "to be sued for, recovered and appropriated in like manner as forfeitures and penalties are to be sued for, recovered and appropriated for any breach of the act (*c*) for the collection of the duties on imposts and tonnage in the United States."

(*a*) Laws of the U. S. vol. ii. p. 15. — (*c*) Laws of the U. S. vol. iv. p. 427.

(*b*) ~~—————~~ v. p. 84.

## SECT. I.

*Penalty for deceit in obtaining the allowance made by this act.*—By this second section of the act first above mentioned, it is provided that on the last of December, annually, “There shall be paid to the owner of every fishing boat or vessel of more than five tons, and less than twenty tons, or to his agent, or lawful representative, by the collector of the district where such boat or vessel may belong; the sum of one dollar upon every ton admeasurement of such boat or vessel; which allowance shall be accounted for as part of the proceeds of the fares of said boat or vessel, and shall accordingly be so divided among all persons interested therein: *Provided however,* That this allowance shall be made only to such boats or vessels as shall have actually been employed at sea in the cod fishery for the term of four months at the least of the preceding season: *And provided also,* That such boat or vessel shall have landed in the course of said preceding season, a quantity of fish not less than twelve quintals for every ton of her admeasurement; the said quantity of fish to be ascertained when dried and cured fit for exportation, and according to the weight thereof, as the same shall weigh at the time of delivery when actually sold; which account of the weight, with the original adjustment and settlement of the fare or fares among the owners and fishermen, together with a written account of the length, breadth and depth of said boat or vessel, and the time she has actually been employed in the fishery in the preceding season, shall in all cases be produced and sworn or affirmed to, before the said collector of the district, in order to entitle the owner, his agent or lawful representative, to receive the allowance aforesaid. And if at any time within one year after payment of such allowance, it shall appear that any fraud or deceit has been practised in obtaining the same, the boat or vessel upon which such allowance shall have been paid, if found within the district aforesaid, shall be *forfeited*; otherwise the owner or owners having practised such fraud or deceit, shall forfeit and pay *one hundred dollars.*”

## SECT. II.

*Owners of fishing vessels how to proceed to obtain the allowances granted by this act* —“No ship or vessel of twenty tons or upwards, employed as aforesaid, shall be entitled to the allowance granted by this act, unless the skipper or master thereof shall, before he proceeds on any fishing voyage, make an agreement in writing or in print, with every fisherman employed therein, excepting only any apprentice or servant of himself or owner; and in addition to such terms of shipment as may be agreed on, shall in such agreement express whether the same is to continue for one voyage or for the fishing season, and shall also express that the fish or the proceeds of such fishing voyage or voyages which may appertain to the fishermen, shall be divided among them in proportion to the quantities or number of said fish they may respectively have caught; which agreement shall be endorsed or countersigned by the owner of such fishing vessel, or his agent: And if any fisherman having engaged himself for a voyage or for the fishing season, in any fishing vessel, and signed an agreement therefor as aforesaid, shall thereafter and while such agreement remains in force and to be performed, desert or absent himself from such vessel, without leave of the master or skipper thereof, or of the owner or his agent, such deserter shall be liable to the same penalties (a) as deserting seamen or mariners are subject to, in the merchant's service, and may in the like manner, and upon the like complaint and proof, be apprehended and detained; and all costs of process and commitment if paid by the master or owner, shall be deducted out of the share of fish, or proceeds of any fishing voyage to which such deserter had or shall become entitled. And any fisherman, having engaged himself as aforesaid, who shall during such fishing voyage, refuse or neglect his proper duty on board the fishing vessel, being thereto ordered or required by the master or skipper thereof, or shall otherwise resist his just commands, to the hindrance or detriment of such voyage, beside being answer-

(a) See before p. 94.

able for all damages arising thereby, shall *forfeit* to the use of the owner of such vessel, his share of the allowance, which shall be paid upon such voyage as is herein granted."

---

SECT. III.

*Proceedings against fishing vessels for wages.*—By the fifth section of this act, "Where an agreement or contract shall be so made and signed, for a fishing voyage or for the fishing season, and any fish which may have been caught on board such vessel during the same, shall be delivered to the owner or to his agent, for cure, and shall be sold by the said owner or agent, such vessel shall for the term of six months after such sale, be liable and answerable for the skipper's and every other fisherman's share of such fish, and may be proceeded against in the same form, and to the same effect as any other vessel is by law liable, and may be proceeded against for the wages of seamen or mariners in the merchant's service. And upon such process for the value of a share or shares of the proceeds of fish delivered and sold as aforesaid, it shall be incumbent on the owner or his agent, to produce a just account of the sales and division of such fish according to such agreement or contract, otherwise the said vessel shall be answerable upon such process for what may be the highest value of the share or shares demanded. But in all cases, the owner of such vessel or his agent, appearing to answer to such process, may offer thereupon his account of general supplies made for such fishing voyage, and of other supplies therefor made, to either of the demandants, and shall be allowed to produce evidence thereof in answer to their demands respectively, and judgment shall be rendered upon such process, for the respective balances, which upon such an enquiry shall appear: *Provided always*, That when process shall be issued against any vessel liable as aforesaid, if the owner thereof or his agent will give bond to each fisherman in whose favour such process shall be instituted, with sufficient security, to the satisfaction of *two justices of the peace*, one of whom shall be named by such owner or agent,

and the other by the fisherman or fishermen pursuing such process; or if either party shall refuse, then the justice first appointed shall name his associate; with condition to answer and pay whatever sum shall be recovered by him or them on such process, there shall be an immediate discharge of such vessel: *Provided*, That nothing herein contained shall prevent any fisherman from having his action at common law, for his share or shares of fish, or the proceeds thereof as aforesaid."

The penalties for swearing or affirming falsely in regard to any thing required by this act, by the eighth section of the same, are on conviction thereof, in any court of the United States having jurisdiction of the offence, to be the same as those prescribed in the act for the collection of duties on impost and tonnage.

---

## CHAP. XXXIII.

### OF PENALTIES UNDER THE ACT FOR ENROLLING VESSELS EMPLOYED IN THE COASTING TRADE AND FISHERIES.

#### SECT. I.

*On what conditions collectors may enroll vessels.*—On the 18th February, 1793, congress passed "an act (a) for enrolling and licensing ships or vessels to be employed in the coasting trade, and fisheries, and for regulating the same."

The first and second sections of this act direct what shall be deemed ships or vessels of the United States, what requisites they shall possess in order to obtain enrolment, and what shall be the form of enrolment.

The third section provides, "That it shall and may be lawful for the collectors of the several districts, to enroll and licence any ship or vessel, that may be registered, upon such registry being given up, or to register any ship or vessel, that may be enrolled, upon such enrolment and license being given up. And when any ship or vessel shall be in

(a) Laws U. S. vol. ii. p. 168.

any other district, than the one to which she belongs, the collector of such district, on the application of the master or commander thereof, and upon his taking an oath or affirmation, that according to his best knowledge and belief, the property remains, as expressed in the register or enrolment proposed to be given up, and upon his giving the bonds required for granting registers, shall make the exchanges aforesaid; but in every such case, the collector, to whom the register, or enrolment and licence may be given up, shall transmit the same to the register of the treasury; and the register, or enrolment and licence, granted in lieu thereof, shall, within ten days after the arrival of such ship or vessel within the district, to which she belongs, be delivered to the collector of the said district, and be by him cancelled. And if the said master or commander shall neglect to deliver the said register or enrolment and licence, within the time aforesaid, he shall *forfeit one hundred dollars.*"

The fourth section relates to the mode of obtaining a licence for vessels to be employed in the coasting trade and fisheries, and prescribes the form of such licence.

---

#### SECT. II.

*How far licences shall be deemed in force.*—"No licence, granted to any ship or vessel, shall be considered in force, any longer than such ship or vessel is owned, and of the description set forth in such licence, or for carrying on any other business or employment, than that for which she is specially licenced, and if any ship or vessel be found with a forged or altered licence, or making use of a licence granted for any other ship or vessel, such ship or vessel, with her tackle, apparel, and the cargo found on board her, shall be *forfeited.*"

---

#### SECT. III.

*Forfeiture of certain vessels not complying with this act.*—"After the first day of May, 1793, every ship or vessel of twenty tons or upwards (other than such as are registered)

Q

found trading between district and district, or between different places in the same district, or carrying on the fishery, without being enrolled and licenced, or if less than twenty tons, and not less than five tons, without a licence, in manner as is provided by this act, such ship or vessel, if laden with goods, the growth or manufacture of the United States only (distilled spirits excepted) or in ballast, shall pay the same fees and tonnage in every port of the United States, at which she may arrive, as ships or vessels not belonging to a citizen or citizens of the United States, and if she have on board any articles of foreign growth or manufacture, or distilled spirits, other than sea-stores, the ship or vessel, together with her tackle, apparel and furniture, and the lading found on board, shall be *forfeited*: *Provided*, however, if such ship or vessel be at sea, at the expiration of the time, for which the licence was given, and the master of such ship or vessel shall swear or affirm that such was the case, and shall also within forty-eight hours after his arrival deliver to the collector of the district in which he shall first arrive the licence which shall have expired, the forfeiture aforesaid shall not be incurred, nor shall the ship or vessel be liable to pay the fees and tonnage aforesaid."

---

#### SECT. IV.

*Vessels before proceeding on a foreign voyage to give up enrollment and obtain register.*—The seventh section of this act directs the collectors to number the licences granted in pursuance of this law, and by the eighth section, "If any ship or vessel, enrolled or licenced, as aforesaid, shall proceed on a foreign voyage, without first giving up her enrollment and licence, to the collector of the district comprehending the port, from which she is about to proceed on such foreign voyage, and being duly registered by such collector, every such ship or vessel, together with her tackle, apparel and furniture, and the goods, wares and merchandize, so imported therein, shall be liable to *seizure and forfeiture*: *Provided always*, if the port, from which such ship or vessel is about to proceed on such foreign

voyage, be not within the district, where such ship or vessel is enrolled, the collector of such district shall give to the master of such ship or vessel a certificate, specifying that the enrolment and licence of such ship or vessel is received by him, and the time when it was so received; which certificate shall afterwards be delivered by the said master to the collector, who may have granted such enrolment and licence."

---

SECT. V.

*Forfeiture on neglecting to give up licence about to expire.*— By the ninth section, "The licence, granted to any ship or vessel, shall be given up to the collector of the district, who may have granted the same, within three days after the expiration of the time, for which it was granted, in case such ship or vessel be then within the district, or if she be absent, at that time, within three days after her first arrival within the district afterwards, or if she be sold out of the district, within three days after the arrival of the master within any district, to the collector of such district taking his certificate therefor; and if the master thereof shall neglect, or refuse to deliver up the licence, as aforesaid, he shall *forfeit fifty dollars*; but if such licence shall have been previously given up to the collector of any other district, as authorized by this act, and a certificate thereof under the hand of such collector, be produced by such master, or if such licence be lost, or destroyed, or unintentionally mislaid, so that it cannot be found, and the master of such ship or vessel shall make and subscribe an oath or affirmation, that such licence is lost, destroyed, or unintentionally mislaid, as he verily believes, and that the same, if found, shall be delivered up, as is herein required, then the aforesaid penalty shall not be incurred. And if such licence shall be lost, destroyed, or unintentionally mislaid, as aforesaid, before the expiration of the time, for which it was granted, upon the like oath or affirmation being made and subscribed by the master of such ship or vessel, the said collector is hereby authorized and required, upon applica-

tion being made therefor, to licence such ship or vessel anew."

---

SECT. VI.

*Penalty for a vessel not having her name painted on her stern.*  
 —The tenth section of this law directs in what cases owners may cancel their licences and obtain new ones; and by the eleventh, "Every licenced ship or vessel shall have her name, and the port to which she belongs, painted on her stern, in the manner as is provided for registered ships or vessels, and if any licenced ship or vessel be found, without such painting, the owner or owners thereof shall pay *twenty dollars.*"

---

SECT. VII.

*Penalty for not reporting a change of master, &c.*—"When the master of any licenced ship or vessel, ferry boats excepted, shall be changed, the new master, or, in case of his absence, the owner or one of the owners thereof, shall report such change to the collector residing at the port where the same may happen, if there be one, otherwise, to the collector residing at any port, where such ship or vessel may next arrive, who, upon the oath or affirmation of such new master, or in case of his absence, of the owner or one of the owners, that he is a citizen of the United States, and that such ship or vessel shall not, while such licence continues in force, be employed in any manner, whereby the revenue of the United States may be defrauded, shall endorse such change on the licence, with the name of the new master; and when any change shall happen, as aforesaid, and such change shall not be reported, and the endorsement made of such change, as is herein required, such ship or vessel, found carrying on the coasting trade or fisheries, shall be subject to pay the same fees and tonnage, as a vessel of the United States, having a register, and the said new master shall *forfeit and pay the sum of ten dollars.*"

## SECT. VIII.

*Penalty for the master of a coasting vessel not exhibiting his licence to an officer of the customs.*—By the thirteenth section of this act, “ It shall be lawful, at all times, for any officer concerned in the collection of the revenue, to inspect the enrolment or licence of any ship or vessel; and if the master of any such ship or vessel shall not exhibit the same, when thereunto required by such officer, he shall pay one hundred dollars.”

## SECT. IX.

*Duty of masters of licenced coasting vessels, having on board distilled spirits, &c.*—By the fourteenth section of this law, “ The master or commander of every ship or vessel licenced for carrying on the coasting trade, destined from a district in one state, to a district in the same, or an adjoining state on the sea coast, or on a navigable river, having on board, either distilled spirits in casks exceeding five hundred gallons, wine in casks exceeding two hundred and fifty gallons, or in bottles exceeding one hundred dozens, sugar in casks or boxes exceeding three thousand pounds, tea in chests or boxes exceeding five hundred pounds, coffee in casks or bags exceeding one thousand pounds, or foreign merchandize in packages, as imported, exceeding in value four hundred dollars, or goods, wares or merchandize, consisting of such enumerated or other articles of foreign growth or manufacture, or of both, whose aggregate value exceeds eight hundred dollars, shall, previous to the departure of such ship or vessel, from the port where she may then be, make out and subscribe duplicate manifests of the whole of such cargo on board such ship or vessel, specifying in such manifests, the marks and numbers of every cask, bag, box, chest or package containing the same, with the name and place of residence of every shipper and consignee, and the quantity shipped by and to each, and if there be a collector or surveyor, residing at such port, or within five miles thereof, he shall deliver such manifests to the collector, if there be one, otherwise to the surveyor,

before whom he shall swear or affirm, to the best of his knowledge and belief, that the goods therein contained were legally imported, and the duties thereupon paid or secured, or if spirits distilled within the United States, that the duties thereupon have been paid or secured, whereupon the said collector or surveyor shall certify the same on the said manifests, one of which he shall return to the said master, with a permit, specifying thereon, generally, the lading on board such ship or vessel, and authorizing him to proceed to the port of his destination. And if any ship or vessel, being laden and destined, as aforesaid, shall depart from the port where she may then be, without the master or commander having first made out and subscribed duplicate manifests of the lading on board such ship or vessel, and in case there be a collector or surveyor residing at such port, or within five miles thereof, without having previously delivered the same to the said collector or surveyor, and obtaining a permit, in manner as is herein required, such master or commander shall *pay one hundred dollars.*"

---

SECT. X.

*Penalty for certain omissions in a master, &c.*—"The master or commander of every ship or vessel licenced for carrying on the coasting trade, having on board, either distilled spirits in casks exceeding five hundred gallons, wine in casks exceeding two hundred and fifty gallons, or in bottles exceeding one hundred dozens, sugar in casks or boxes exceeding three thousand pounds, tea in chests or boxes exceeding five hundred pounds, coffee in casks or bags exceeding one thousand pounds, or foreign merchandize in packages, as imported, exceeding in value four hundred dollars, or goods, wares or merchandize, consisting of such enumerated or other articles of foreign growth or manufacture, or of both, whose aggregate value exceeds eight hundred dollars, and arriving from a district in one state, at a district in the same or an adjoining state on the sea-coast, or on a navigable river, shall, previous to the unloading of any part of the cargo of such ship or vessel,

deliver to the collector, if there be one, or if not, to the surveyor residing at the port of her arrival, or if there be no collector or surveyor residing at such port, then to a collector or surveyor, if there be any such officer, residing within five miles thereof, the manifest of the cargo, certified by the collector or surveyor of the district from whence she sailed (if there be such manifest) otherwise the duplicate manifests thereof, as is herein before directed, to the truth of which, before such officer, he shall swear or affirm. And if there have been taken on board such ship or vessel, any other or more goods, than are contained in such manifest or manifests, since her departure from the port, from whence she first sailed, or if any goods have been since landed, the said master or commander shall make known and particularize the same to the said collector or surveyor, or if no such goods have been so taken on board or landed, he shall so declare, to the truth of which he shall swear or affirm: Whereupon, the said collector or surveyor shall grant a permit for unlading a part, or the whole of such cargo, as the said master or commander may request. And if there be no collector or surveyor, residing at, or within five miles of the said port of her arrival, the master or commander of such ship or vessel may proceed to discharge the lading from on board such ship or vessel, but shall deliver to the collector or surveyor, residing at the first port, where he may next afterwards arrive, and within twenty-four hours of his arrival, the manifest or manifests aforesaid, noting thereon the times when, and places where, the goods, therein mentioned, have been unladen, to the truth of which, before the said last mentioned collector or surveyor, he shall swear or affirm; and if the master or commander of any such ship or vessel, being laden as aforesaid, shall neglect or refuse to deliver the manifest or manifests, at the times, and in the manner, herein directed, he shall pay *one hundred dollars.*"

---

SECT. XI.

*Forfeiture for certain neglect in a master, &c.*—"The master or commander of every ship or vessel, licenced for car-

rying on the coasting trade, and being destined from any district of the United States, to a district other than a district in the same, or an adjoining state, on the sea-coast, or on a navigable river, shall, previous to her departure, deliver to the collector residing at the port where such ship or vessel may be, if there is one, otherwise to the collector of the district comprehending such port, or to a surveyor within the district, as the one or the other may reside nearest to the port at which such ship or vessel may be, duplicate manifests of the whole cargo on board such ship or vessel, or if there be no cargo on board, he shall so certify, and if there be any distilled spirits, or goods, wares or merchandize, of foreign growth or manufacture on board, other than what may, by the collector, be deemed sufficient for sea-stores, he shall specify in such manifests, the marks and numbers of every cask, bag, box, chest or package, containing the same, with the name, and place of residence, of every shipper and consignee of such distilled spirits, or goods of foreign growth or manufacture, and the quantity shipped by, and to each, to be by him subscribed, and to the truth of which, he shall swear or affirm; and shall also swear or affirm before the said collector or surveyor, that such goods, wares, or merchandize, of foreign growth or manufacture, were, to the best of his knowledge and belief, legally imported, and the duties thereupon, paid or secured; or if spirits distilled within the United States, that the duties thereupon, have been duly paid or secured; upon the performance of which, and not before, the said collector or surveyor shall certify the same on the said manifests; one of which he shall return to the master, with a permit, thereto annexed, authorizing him to proceed to the port of his destination. And if any such ship or vessel shall depart from the port where she may then be, having distilled spirits, or goods, wares or merchandize, of foreign growth or manufacture on board, without the several things herein required, being complied with, the master thereof shall *forfeit one hundred dollars*; or if the lading be of goods, the growth or manufacture of the United States only, or if such ship or vessel have no cargo, and she depart without

the several things herein required, being complied with, the said master shall *forfeit and pay fifty dollars.*"

SECT. XII.

*Forfeitures for certain omissions, &c.*—“The master or commander of every ship or vessel, licenced to carry on the coasting trade, arriving at any district of the United States, from any district, other than a district in the same, or an adjoining state on the sea coast, or on a navigable river, shall deliver to the collector residing at the port where she may arrive, if there be one, otherwise to the collector or surveyor in the district comprehending such port, as the one, or the other, may reside nearest thereto, if the collector or surveyor reside at a distance not exceeding five miles, within twenty-four hours, or if at a greater distance, within forty-eight hours next after his arrival; and previous to the unlading any of the goods brought in such ship or vessel, the manifest of the cargo (if there be any) certified by the collector or surveyor of the district from whence she last sailed, and shall make oath or affirmation, before the said collector or surveyor, that there was not, when he sailed from the district where his manifest was certified, or has been since, or then is, any more, or other goods, wares or merchandize of foreign growth or manufacture, or distilled spirits (if there be any, other than sea-stores, on board such vessel) than is therein mentioned; and if there be no such goods, he shall so swear or affirm; and if there be no cargo on board, he shall produce the certificate of the collector or surveyor of the district from whence she last sailed, as aforesaid, that such is the case: Whereupon such collector or surveyor shall grant a permit for unlading the whole, or part of such cargo (if there be any) within this district, as the master may request; and where a part only of the goods, wares and merchandize, of foreign growth or manufacture, or of distilled spirits, brought in such ship or vessel, is intended to be landed, the said collector or surveyor shall make an endorsement of such part, on the back of the manifest, specifying the articles to be landed; and shall return such

R

manifest to the master, endorsing also thereon, his permission for such ship or vessel, to proceed to the place of her destination; and if the master of such ship or vessel shall neglect or refuse to deliver the manifest, (or if she has no cargo, the certificate) within the time herein directed, he shall *forfeit one hundred dollars, and the goods wares and merchandize of foreign growth or manufacture, or distilled spirits, found on board, or lauded from such ship or vessel, not being certified, as is herein required, shall be forfeited, and if the same shall amount to the value of eight hundred dollars, such ship or vessel, with her tackle, apparel and furniture, shall be also forfeited.*"

---

SECT. XIII.

*Penalty for certain neglects, &c.*—“ Nothing in this act contained shall be so construed, as to oblige the master or commander of any ship or vessel, licenced for carrying on the coasting trade, bound from a district in one state to a district in the same, or an adjoining state on the sea coast, or on a navigable river, having on board goods, wares or merchandize, of the growth, product or manufacture of the United States only (except distilled spirits) or distilled spirits, not more than five hundred gallons, wine in casks not more than two hundred and fifty gallons, or in bottles not more than one hundred dozens, sugar in casks or boxes not more than three thousand pounds, tea in chests or boxes not more than five hundred pounds, coffee in casks or bags not more than one thousand pounds, or foreign merchandize in packages as imported, of not more value than four hundred dollars, or goods wares and merchandize, consisting of such enumerated or other articles of foreign growth or manufacture, or of both, whose aggregate value shall be not more than eight hundred dollars, to deliver a manifest thereof, or obtain a permit, previous to her departure, or on her arrival within such district, to make any report thereof; but such master shall be provided with a manifest, by him subscribed, of the lading, of what kind soever, which was on board such ship.

or vessel, at the time of his departure from the district from which she last sailed, and if the same, or any part of such lading consists of distilled spirits, or goods, wares and merchandize, of foreign growth or manufacture, with the marks and numbers of each cask, bag, box, chest or package, containing the same, with the name of the shipper and consignee of each; which manifest shall be by him exhibited, for the inspection of any officer of the revenue, when, by such officer, thereunto required; and shall also inform such officer, from whence such ship or vessel last sailed, and how long she has been in port, when by him so interrogated. And if the master of such ship or vessel shall not be provided, on his arrival within any such district, with a manifest, and exhibit the same, as is herein required, if the lading of such ship or vessel consist wholly of goods, the produce or manufacture of the United States (distilled spirits excepted) he shall *forfeit twenty dollars*, or if there be distilled spirits or goods, wares, or merchandize, of foreign growth or manufacture, on board, excepting what may be sufficient for sea-stores, he shall *forfeit forty dollars*; or if he shall refuse to answer the interrogatories truly, as is herein required, he shall *forfeit the sum of one hundred dollars*. And if any of the goods laden on board such ship or vessel, shall be of foreign growth or manufacture, or of spirits distilled within the United States, so much of the same, as may be found on board such ship or vessel, and which shall not be included in the manifest exhibited by such master, shall be *forfeited*."

---

#### SECT. XIV.

*Forfeitures declared.*—"By the nineteenth section, "It shall and may be lawful for the collector of the district of Pennsylvania, to grant permits for the transportation of goods, wares or merchandize of foreign growth or manufacture, across the state of New-Jersey, to the district of New-York, or across the state of Delaware, to any district in the state of Maryland or Virginia; and for the collector of the district of New-York, to grant like permits for

the transportation across the state of New-Jersey; and for the collector of any district of Maryland or Virginia, to grant like permits for the transportation across the state of Delaware, to the district of Pennsylvania: *Provided*, That every such permit shall express the name of the owner, or person sending such goods, and of the person or persons, to whom such goods shall be consigned, with the marks, numbers and description of the packages, whether bale, box, chest, or otherwise, and the kind of goods contained therein, and the date, when granted; and the owner or person sending such goods, shall swear or affirm, that they were legally imported, and the duties thereupon paid or secured: *And provided also*, That the owner or consignee of all such goods, wares and merchandize, shall within twenty-four hours after the arrival thereof, at the place to which they were permitted to be transported, report the same, to the collector of the district where they shall so arrive, and shall deliver up the permit accompanying the same, and if the owner or consignee aforesaid, shall neglect or refuse to make due entry of such goods within the time, and in the manner herein directed, all such goods, wares and merchandize shall be subject to *forfeiture*; and if the permit granted shall not be given up within the time limited for making the said report, the person or persons to whom it was granted, neglecting or refusing to deliver it up, shall *forfeit fifty dollars for every twenty-four hours it shall be withheld afterwards*: *Provided*, That where the goods, wares and merchandize, to be transported in manner aforesaid, shall be of less value than eight hundred dollars, the said oath and permit shall not be deemed necessary, nor shall the owner or consignee be obliged to make report to the collector of the district where the said goods, wares and merchandize shall arrive."

---

SECT. XV.

*Registered vessels employed in going from district to district subject to certain regulations in section sixteenth and seven-*

*teenth of this act.*—“ When any ship or vessel of the United States, registered according to law, shall be employed in going from any one district in the United States, to any other district, such ship or vessel, and the master or commander thereof, with the goods she may have on board, previous to her departure from the district where she may be, and also, upon her arrival in any other district, shall be subject (except as to the payment of fees) to the same regulations, provisions, penalties and forfeitures, and the like duties are imposed on like officers, as is provided by the sixteenth and seventeenth section of this act, for ships or vessels licenced for carrying on the coasting trade: *Provided however,* that nothing herein contained, shall be construed to extend to registered ships or vessels of the United States, having on board goods, wares and merchandize of foreign growth or manufacture, brought into the United States in such ship or vessel from a foreign port, and on which the duties have not been paid or secured, according to law.”

#### SECT. XVI.

*Forfeiture prescribed.*—“ When any ship or vessel, licenced for carrying on the fishery, shall be intended to touch and trade at any foreign port or place, it shall be the duty of the master, commander, or owner, to obtain permission for that purpose, from the collector of the district where such ship or vessel may be, previous to her departure, and the master or commander of every such ship or vessel, shall deliver like manifests, and make like entries, both of the ship or vessel, and of the goods, wares or merchandize on board, within the same time, and under the same penalty, as by the laws of the United States are provided for ships or vessels of the United States arriving from a foreign port. And if any ship or vessel, licenced for carrying on the fisheries, shall be found within three leagues of the coast, with goods, wares or merchandize of foreign growth or manufacture, exceeding the value of five hundred dollars, without having such permission, as is herein directed, such ship or

vessel, together with the goods, wares or merchandize of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture."

---

SECT. XVII.

*Penalty for a certain neglect of the master of a vessel.*—  
 "The master or commander of every ship or vessel, employed in the transportation of goods from district to district, that shall put into port, other than the one to which she was bound, shall within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from and to which he is bound with an account of his lading; and if the master of such ship or vessel shall neglect or refuse to do the same, he shall forfeit twenty dollars."

---

SECT. XVIII.

*Forfeiture declared, &c.*—“The master or commander of every foreign ship or vessel, bound from a district in the United States, to any other district within the same, shall in all cases, previous to her departure from such district, deliver to the collector of such district, duplicate manifests of the lading on board such ship or vessel, if there be any, or if there be none, he shall declare that such is the case, and to the truth of such manifests or declaration, he shall swear or affirm, and also obtain a permit from the said collector, authorizing him to proceed to the place of his destination. And the master or commander of every such ship or vessel, on his arrival within any district, from any other district, shall in all cases, within forty-eight hours after his arrival, and previous to the unloading any goods from on board such ship or vessel, deliver to the collector of the district where he may have arrived, a manifest of the goods laden on board such ship or vessel, if any there be, or if in ballast only, he shall so declare, and to the truth of which manifest or declaration, he shall swear or affirm; and also, that such

manifest contains an account of all the goods, wares and merchandize which were on board such ship or vessel, at the time, or have been since her departure from the place, from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed. And if the master or commander of any such ship or vessel, shall neglect or refuse complying with any of the requirements herein made, he shall *forfeit one hundred dollars: Provided always, That nothing herein contained shall be construed as affecting the payment of tonnage, or any other requirements which such ships or vessels are now subject to by the present existing laws of the United States.*"

---

SECT. XIX.

*Revenue officers may go on board vessels without their districts.*—"It shall be lawful for any officer of the revenue, to go on board of any ship or vessel, whether she shall be within or without his district, and the same to inspect, search and examine, and if it shall appear that any breach of the laws of the United States has been committed, whereby such ship or vessel, or the goods, wares and merchandize on board, or any part thereof, is, or are liable to forfeiture, to make seizure of the same."

---

SECT. XX.

*Forfeiture on recording enrolment, &c. contrary to this act.*—"In every case where a forfeiture of any ship or vessel, or of any goods, wares or merchandize shall accrue, it shall be the duty of the collector, or other proper officer, who shall give notice of the seizure of such ship or vessel, or of such goods, wares or merchandize, to insert in the same advertisement, the name or names, and the place or places of residence of the person or persons, to whom any such ship or vessel, goods, and merchandize belonged, or were consigned, at

the time of such seizure, if the same shall be known to him." "And every collector who shall knowingly make any record of enrolment or licence of any ship or vessel, and every other officer, or person, appointed by, or under them, who shall make any record, or grant any certificate, or other document whatever, contrary to the true intent and meaning of this act, or shall take any other, or greater fees, than are by this act allowed, or shall receive for any service performed pursuant to this act, any reward or gratuity, and every surveyor or other person appointed to measure ships or vessels, who shall wilfully deliver to any collector, or naval-officer, a false description of any ship or vessel, to be enrolled or licenced, in pursuance of this act, shall upon conviction of any such neglect or offence, *forfeit* to the United States *five hundred dollars*, and be rendered incapable of serving in any office of trust or profit under the United States. And if any person authorized and required by this act, in respect to his office, to perform any act or thing required by this act, shall wilfully neglect or refuse to do and perform the same, according to the true intent and meaning of this act, such person on being duly convicted thereof, if not hereby subject to the penalty and disqualifications aforesaid, shall *forfeit and pay the sum of five hundred dollars for the first offence, and a like sum for the second offence, and shall from thence forward, be rendered incapable of holding any office of trust or profit under the United States.*"

---

SECT. XXI.

*Penalty on swearing falsely and counterfeiting or falsifying enrolment.*—"If any person or persons, shall swear or affirm to any of the matters herein required to be verified, knowing the same to be false, such person or persons shall suffer the like pains and penalties as shall be incurred by persons committing wilful and corrupt perjury. And if any person or persons shall forge, counterfeit, erase, alter or falsify any enrolment, licence, certificate, permit or other document mentioned or required in this act, to be

granted by any officer of the revenue, such person or persons so offending, shall *forfeit five hundred dollars.*"

---

SECT. XXII.

*Penalty for obstructing the execution of this act.*—"If any person or persons shall assault, resist, obstruct, or hinder any officer in the execution of this act, or of any other act or law of the United States, herein mentioned, or of any of the powers or authorities vested in him by this act, or any other act or law, as aforesaid, all and every person and persons so offending, shall for every such offence, for which no other penalty is particularly provided, *forfeit five hundred dollars.*"

---

SECT. XXIII.

*Penalty for transferring vessels to foreigners, &c.*—"If any licenced ship or vessel shall be transferred in whole, or in part, to any person who is not at the time of such transfer, a citizen of, and resident within the United States, or if any such ship or vessel shall be employed in any other trade than that for which she is licenced, or shall be found with a forged or altered licence, or one granted for any other ship or vessel, every such ship or vessel, with her tackle, apparel and furniture, and the cargo found on board her, shall be *forfeited.*" "And in all cases where the whole or any part of the lading, or cargo on board any ship or vessel, shall belong bona-fide to any person or persons other than the master, owner, or mariners of such ship or vessel, and upon which the duties shall have been previously paid or secured according to law, shall be exempted from any forfeiture under this act, any thing therein contained to the contrary notwithstanding."

## CHAP. XXXIV.

OF PENALTIES UNDER THE ACT FOR THE COLLECTION  
OF DUTIES ON IMPOST AND TONNAGE.

By the act (a) of Congress passed on the second of March 1799, entitled "an act to regulate the collection of duties on imposts and tonnage," it is provided (b) "that all penalties accruing by any breach of this act, shall be sued for, recovered with cost of suit in the name of the United States of America," not exclusively in the district or circuit courts of the United States, or in the *superior* state courts, but in "any court competent to try the same."

In the construction of these words some difficulty might possibly have existed, had they not been unequivocally explained by the second section of the act, (c) "to provide for mitigating or remitting the forfeitures, penalties and disabilities accruing," under this and some other acts of Congress, in which they are expressly extended to suits before "the judicial courts of the several states."

Hence it may often happen in cases in which the provisions of this law are violated, and where the residence of the district judge is remote; or where peculiar circumstances may prevent his holding court or attending to the duties of his office, that suits may to advantage be brought for penalties or forfeitures incurred under this act, before some of the inferior state courts. In cases of this description it will be a matter of no small importance, that the magistrates composing these courts should know precisely in what instances, and to what an extent parties may subject themselves to the forfeitures and penalties imposed by this and other acts of a similar nature.

## SECT. I.

The first seventeen sections of this act, declare the districts into which the United States are to be divided; and the ports of entry and delivery in the same res-

(a) Laws U. S. vol. 4. ch. 128.....(b) Sec. 39.  
(c) .....Vol. 3. p. 404.

pectively. In the eighteenth section congress prescribes in what ports vessels are to be entered, and their cargoes reported and delivered; to what particular ports the unloading of vessels of the United States shall be restricted. And "in case any goods, wares or merchandize, transported under permits and for which receipts shall have been given as aforesaid, shall not be transported and delivered to the collector or surveyor of the port of entry or delivery, to which the same shall be consigned by the permits aforesaid, the dangers of the seas and unavoidable accidents only excepted, or if any lock, fastening or seal placed on the said goods, wares or merchandize, shall be broken or destroyed, the lighter or vessel employed in transporting the same shall be forfeited, and the master thereof shall *forfeit and pay a sum not exceeding five hundred dollars, with costs of suit.*"

#### SECT. II.

By the nineteenth section of this act, vessels bound to certain ports of delivery, are at first to come to at a certain port of entry; and in case of failure, the master of the said vessel is to *forfeit five hundred dollars, with costs of suit.*

The master is also directed to leave manifests of his cargo at certain ports, and to take on board inspectors, on failure of which, he is also liable to a forfeiture of *five hundred dollars with costs of suit*; "one half for the use of the officer with whom the manifests have been deposited, and the other for the use of the collector of the district to which the said vessel may be bound."

#### SECT. III.

*Penalty for not transmitting the oath by collectors, &c.—*

By the twentieth section of this act, a certain prescribed oath (a) is directed to be taken by the collector of every port, and the officers subordinate to him, a certificate of which is to be transmitted to the comptroller of the treasury, under a *penalty of two hundred dollars.*

(a) See before p. 115.

## SECT. IV.

*Penalty for breach of duty by the collector, naval officer or surveyor.*—Section twenty-fifth of this act, marks with precision the respective duties of the collector, naval officer or surveyor of the port, and declares that “if any collector, naval officer or surveyor, shall omit to keep fair and true accounts as aforesaid, or shall refuse to submit forthwith their books, papers and accounts to inspection as aforesaid; or if any collector shall omit or refuse to render his accounts for settlement, for a term exceeding three months after the same shall have been required by the proper officer, in each and every such case the delinquent officer shall forfeit and pay for the use of the United States, one thousand dollars, to be recovered with costs of suit.”

## SECT. V.

*Penalty for not having on board manifests, &c.*—By the twenty-third section of this act, masters of vessels from foreign ports are directed to make out and keep certain reports and manifests of their cargoes, agreeably to a form prescribed in this section. And by section twenty-fourth, “if any goods, wares and merchandize shall be imported or brought into the United States, in any ship or vessel whatever, belonging in the whole or in part to a citizen or citizens, inhabitant or inhabitants of the United States, from any foreign port or place, without having a manifest or manifests on board, agreeably to the directions in the foregoing section, or which shall not be included or described therein, or shall not agree therewith; in every such case the master, or other person having the charge or command of such ship or vessel, shall forfeit and pay a sum of money equal to the value of such goods, not included in such manifest or manifests, and all such merchandize not included in the manifest, belonging or consigned to the master, mate, officers or crew of such ship or vessel, shall be forfeited: *Provided always,* That if it shall be made appear to the satisfaction of the collector, naval officer and surveyor, or to the major part of them,

where those officers are established at any port, or to the satisfaction of the collector alone, where either of the other of the said officers are not established, or to the satisfaction of the court in which a trial shall be had concerning such forfeiture, that no part of the cargo of such ship or vessel had been unshipped, after it was taken on board, except such as shall have been particularly specified and accounted for, in the report of the master or other person having the charge or command of such ship or vessel, and that the manifests had been lost or mislaid, without fraud or collusion, or that the same was or were defaced by accident or incorrect by mistake, in every such case the forfeiture aforesaid shall not be incurred.

---

#### SECT. VI.

*Penalty on not exhibiting manifests, &c.*—Section twenty-fifth of this act, prescribes the duties of masters of vessels on exhibiting their manifests, the form of certificates on the same, &c. And by section twenty-sixth, “if the master or other person having the charge or command of any ship or vessel, laden as aforesaid, and bound to any port or place in the United States, shall not upon his arrival within four leagues of the coast thereof, or within the limits of any district thereof, where the cargo of such ship or vessel, or any part thereof, is intended to be discharged, produce such manifest or manifests as are heretofore required, in writing, to the proper officer or officers upon demand thereof, and also deliver such copy or copies thereof as aforesaid, according to the directions of this act, in each case, or shall not give an account of the true destination of such ship or vessel, which he is hereby required to do, upon request of such officer or officers, or shall give a false account of such destination, in order to evade the production of the said manifest or manifests, the said master or other person having the charge or command of such ship or vessel, shall *forfeit*, for every such neglect, refusal, or offence, a sum not exceeding *five hundred dollars*; and if such

officer or officers first coming on board, in each case, within the distance or limits aforesaid, shall neglect or refuse to certify on the back of such manifest or manifests, the productions thereof, and the delivery of such copy or copies respectively, as are herein before directed to be delivered to such officer or officers; every such officer so neglecting or refusing shall *forfeit and pay the sum of five hundred dollars*. And the officer or officers, who may apply to the master or person having the charge or command of any such ship or vessel, respecting any of the provisions in this and the foregoing sections, and who shall not receive full satisfaction therein, are hereby required to make a return in writing of the name of the vessel and master so offending in any or all of the particulars required, immediately, or as soon after as possible, to the collector of the district to which such ship or vessel shall be considered to be bound."

---

#### SECT. VII.

*Penalty on unloading goods without authority.*—"If after the arrival of any ship or vessel, so laden with goods, as aforesaid, and bound to the United States, within the limits of any of the districts of the United States, or within four leagues of the coast thereof, any part of the cargo of such ship or vessel shall be unladen for any purpose whatever, from out of such ship or vessel as aforesaid, before such ship or vessel shall come to the proper place for the discharge of her cargo, or some part thereof, and shall be there duly authorized by the proper officer or officers of the customs to unlade the same, the master or other person having the charge or command of such ship or vessel, and the mate, or other person next in command, shall respectively *forfeit and pay the sum of one thousand dollars*, for each such offence, and the goods, wares and merchandise, so unladen and unshipped, shall be *forfeited* and lost, except in the case of some unavoidable accident, necessity or distress of weather; of which unavoidable accident, necessity or distress, the master, or other

person having the charge or command of such ship or vessel, shall give notice to, and together with two or more of the officers or mariners (of which the mate or other person next in command shall be one) on board such ship or vessel, shall make proof upon oath before the collector, or other chief officer of the customs of the district within the limits of which such accident, necessity or distress shall happen, or before the collector or other chief officer of the first district of the United States, within the limits of which such ship or vessel shall afterwards arrive, if the said accident, necessity or distress shall have happened not within the limits of any district, but within four leagues of the coast of the United States, which oath the said collector, or other chief officer, is hereby authorized and required to administer."

---

#### SECT. VIII.

*Penalty in aiding in such unloading of goods.*—“ If any goods, wares and merchandise, so unladen from on board any such ship or vessel, shall be put or received into any other ship, vessel, or boat, except in the case of such accident, necessity or distress as aforesaid, to be notified and proved as aforesaid, the said master or other person having the charge or command of any such ship, vessel or boat, into which the said goods, wares or merchandise, shall be so put and received, and every other person aiding and assisting therein, shall forfeit and pay treble the value of the said goods, wares or merchandise, and the ship, boat or vessel, in which they shall be so put, shall be forfeited and lost.

---

#### SECT. IX.

*Penalty on sailing from a district before entry is made.*—“ If any ship or vessel which shall have arrived within the limits of any district of the United States, from any foreign port or place, shall depart, or attempt to depart from the same, unless to proceed on her way to some other interior district to which she may be bound, before report or entry shall have been made by the mas-

ter or other person having the charge or command of such ship or vessel, with the collector of some district of the United States, the said master or other person having such charge or command, shall forfeit and pay the sum of *four hundred dollars*; and it shall be lawful for any collector, naval officer, surveyor, or commander of any of the cutters herein after mentioned, to arrest and bring back, or cause to be arrested and brought back, such ship or vessel, to such port of the United States to which it may be most conveniently done. *Provided*, That if it shall be made to appear by the oath of the said master, or other person having the charge or command of such ship or vessel, and of the person next in command, or other sufficient proof to the satisfaction of the collector of the district, within which such ship or vessel shall afterwards come, or to the satisfaction of the court in which the prosecution for such penalty may be had, that the said departure or attempt to depart, was occasioned by distress of weather, pursuit or duress of enemies, or other necessity, the said penalty shall not be incurred."

---

SECT. X.

*Penalty on not reporting spirits, wines and teas.*—"The master, or other person having the charge or command of any ship or vessel, having on board distilled spirits, wines or teas, shall within forty-eight hours after his arrival as aforesaid, whether the same be at the first port of arrival of such ship or vessel, or not, in addition to the requirements before mentioned, report in writing to the surveyor or officer acting as inspector of the revenue of the port, at which he shall so arrive, the foreign port or place from which he last sailed, the name of his vessel, his own name, the burthen and denomination of such ship or vessel, and whether a ship or vessel of the United States, or to what other nation belonging, together with the quantity, and kinds of spirits, wines and teas on board of the said ship or vessel, particularizing the number of casks, vessels, cases or other packages containing the same, with their

marks and numbers, as also the quantity and kinds of spirits, wines and teas on board such ship or vessel, as sea stores, on pain of forfeiting and paying the sum of five hundred dollars, and of the loss of the spirits so omitted."

In a subsequent part of this section a particular form of report is prescribed, and in case the master or other person having the charge of the vessel in question, fails to make this report, is liable to a penalty of *one thousand dollars*.

---

SECT. XI.

*Penalty on failing to obtain a copy of the first report, &c.*—By the thirty-fourth section of this act, the master of a vessel arriving at a port in one district, but bound for another, is directed to obtain a copy of his report, manifests, &c. And if he "shall fail by his neglect or fault to obtain the said copy of his report, from the collector of the district from which he shall be so about to depart, or of any certificate which he ought to obtain as aforesaid, or shall neglect to produce and shew the same to the collector of any other district, to which the said ship or vessel shall afterwards proceed within the time for that purpose herein before specified, he shall *forfeit and pay*, for every such neglect or omission, *five hundred dollars*."

---

SECT. XII.

*Penalty on the masters of vessels for the neglect of certain duties.*—"In addition to the provisions and requirements aforesaid, it shall be the duty of each and every master, or other person having the charge or command of any ship or vessel, arriving from any foreign port or place, having on board distilled spirits, wines, or teas, other than sea stores, intended to be transported from one port in the United States, to another port in the said United States, whether in the same or in different districts, previous to the departure of such ship or vessel from the port at which she shall first arrive, to apply to the surveyor or officer acting as inspector of the revenue for the port, for a certificate of the quantity and particulars of such spirits, wines, or teas, as

T

shall have been certified, or reported to him to have been imported in such ship or vessel, and of the quantity and particulars of such spirits, wines, or teas, as shall appear to have been landed out of such ship at such port; which certificate the surveyor or inspector of the revenue shall forthwith grant, and the master or person having the charge or command of such ship or vessel, shall, within twenty-four hours after her arrival at the port to which she shall be bound, deliver the said certificate to the surveyor, or person acting as inspector of the revenue of such last mentioned port; and if such ship or vessel shall proceed from one port to another within the United States, with the whole or any part of the spirits, wines or teas brought in her as aforesaid, without having first obtained such certificate, or if within twenty-four hours after her arrival at such other port, the said certificate shall not be delivered to the surveyor or inspector as aforesaid, the master or person having the charge or command of the said ship or vessel, shall in either case, *forfeit the sum of five hundred dollars*, and the spirits, wines or teas on board her shall be *forfeited* and may be seized."

---

#### SECT. XIII.

*Penalty for not making a separate entry of spirits, wines and teas.*—The thirty-seventh section of this law, directs the separate entry of spirits, wines and teas, also the granting of a permit which is to be endorsed, "*Inspected*," by an officer of the customs. "And if the said spirits, wines or teas shall be landed without such endorsement upon the permit granted for that purpose, the master or other person having the charge or command of the ship or vessel from which the same shall have been so landed, shall for every such offence *forfeit and pay the sum of five hundred dollars*, and the spirits, wines or teas so landed shall be *forfeited*."

---

#### SECT. XIV.

*Penalty for defacing marks, &c.*—After providing in the previous sections for marking the casks, chests, &c.

in which spirits, wines and teas are imported, after directing *general* certificates to be given to importers, and *particular* ones to accompany each cask, chest, &c. which certificates on sale are to accompany the articles imported; congress provides in the forty-third section of this act, that the "proprietor, importer, or consignee, or his or her agent, who may receive said certificates, shall upon the sale or delivery of any of the said spirits, wines or teas, deliver to the purchaser or purchasers thereof, the certificate or certificates which ought to accompany the same, on pain of forfeiting the sum of *fifty dollars* for each cask, chest, vessel or case, with which such certificate shall not be delivered: And if any casks, chests, vessels or cases, containing distilled spirits, wines or teas, which by the foregoing provisions ought to be marked and accompanied with certificates, shall be found in the possession of any person unaccompanied with such marks and certificates, it shall be presumptive evidence that the same are liable to *forfeiture*; and it shall be lawful for any officer of the customs or of inspection to seize them as *forfeited*; and if upon the trial in consequence of such seizure, the owner or claimant of the spirits, wines or teas seized, shall not prove that the same were imported into the United States according to law, and the duties thereupon paid or secured, they shall be adjudged to be *forfeited*." And "every person who shall obliterate, counterfeit, alter or deface any mark or number placed by an officer of inspection upon any cask, chest, vessel or case, containing distilled spirits, wines or teas, or any certificate thereof; or who shall sell or in any way alienate or remove any cask, chest, vessel or case, which has been emptied of its contents, before the marks and numbers, set thereon pursuant to the provisions aforesaid, shall have been defaced or obliterated, in presence of an officer of inspection as aforesaid; or who shall neglect or refuse to deliver the certificate issued to accompany the cask, chest, vessel or case, of which the marks and numbers shall have been defaced or obliterated in manner aforesaid,

on being thereto required by an officer of inspection or of the customs, shall for each and every such offence forfeit and pay one hundred dollars, with costs of suit.

---

SECT. XV.

*Penalty on making a false entry of sea-stores, &c.*—By the forty-fifth section, a report of sea-stores is to be made to the collector, and if there should be any excessive quantity of these, they are subject to duty. “And if any other or greater quantity of articles are found on board such ship or vessel as sea stores than are specified in such entry, or if any of the said articles shall be landed without a permit first obtained from the collector and naval officer of the port (where any) for that purpose, all such articles as are not included as aforesaid, in the report or manifest delivered on oath or affirmation, as aforesaid, by the master or other person having the charge or command of such ship or vessel, or which shall be landed without such permit as aforesaid, shall be forfeited, and may be seized; and the master or person having the command of such ship or vessel, shall moreover forfeit and pay treble the amount or value of the articles so omitted or landed.”

---

SECT. XVI.

*Penalty for not entering together with baggage, any articles subject to duty.*—By the forty-sixth section, baggage and mechanical implements are exempted from duty, nevertheless they are to be entered and a permit obtained for landing the same, and “whenever the collector and naval officer (if any) shall think proper so to do, they may and are hereby authorized, in lieu of the provisions and directions before mentioned, to direct the baggage of any person arriving within the United States, to be examined by the surveyor of the port, or an inspector of the customs, and to make a return of the same; and if any articles shall be contained therein, which in their opinion ought not to be exempted from duty, according

to the true intent and meaning of this act, due entry shall be made therefor, and the duties thereon paid or secured to be paid:—*Provided*, That whenever any article or articles subject to duty, according to the true intent and meaning of this act, shall be found in the baggage of any person arriving within the United States, which shall not, at the time of making entry for such baggage, be mentioned to the collector before whom such entry is made by the person making the same, all such articles so found shall be *forfeited*, and the person in whose baggage they shall be found, shall moreover *forfeit and pay treble the value of such articles.*”

---

SECT. XVII.

*Penalty for landing goods by night, &c.*—By the fiftieth section of this act, “no goods, wares or merchandize, brought in any ship or vessel from any foreign port or place, shall be unladen or delivered from such ship or vessel, within the United States but in open day, that is to say, between the rising and setting of the sun, except by special licence from the collector of the port, and naval officer of the same, where there is one, for that purpose, nor at any time without a permit from the collector and naval officer, if any, for such unloading or delivery; and if any goods, wares or merchandise shall be unladen or delivered from any such ship or vessel, contrary to the directions aforesaid, or any of them, the master or person having the charge or command of such ship or vessel, and every other person who shall knowingly be concerned, or aiding therein, or in removing, storing, or otherwise securing the said goods, wares or merchandise, shall *forfeit and pay*, each and severally, the sum of *four hundred dollars* for each offence, and shall be disabled from holding any office of trust or profit under the United States, for a term not exceeding seven years; and it shall be the duty of the collector of the district, to advertise the names of all such persons in a newspaper, printed in the state in which he resides, within twenty days after

each respective conviction; and all goods, wares or merchandise, so unladen or delivered, shall become *forfeited*, and may be seized by any of the officers of the customs; and where the value thereof, according to the highest market price of the same, at the port or district where landed, shall amount to *four hundred dollars*, the vessel, tackle, apparel and furniture, shall be subject to like *forfeiture and seizure*."

---

SECT. XVIII.

*Penalty for removing goods before being weighed.*—By the fifty-first section of this law, "No goods, wares or merchandise, brought in any ship or vessel, from any foreign port or place, requiring to be weighed, gauged, or measured, in order to ascertain the duties thereupon, shall without the consent of the proper officer, be removed from any wharf, or place, upon which the same may be landed or put, before the same shall have been so weighed, gauged or measured, and if spirits, wines, teas or sugars, before the proof or quality and quantity thereof is ascertained and marked thereon, by or under the direction of the proper officer for that purpose; and if any such goods, wares or merchandise shall be removed from such wharf or place, unless with the consent of the proper officer had and obtained, before the same shall have been so weighed, gauged or measured, and if spirits, wines, teas, or sugars, before the proof or quality and quantity shall have been so ascertained and marked, the same shall be *forfeited*, and may be *seized* by any officer of the customs."

---

SECT. XIX.

*Penalty for misbehaviour of inspectors.*—In the fifty-third section of this act various duties are prescribed to the inspectors appointed by the collectors of the customs, and such inspectors are directed "not to quit their stations or places, without the leave of the surveyor of the port first had and obtained for that purpose, who shall appoint another inspector (if he shall judge it necessary) to supply the place of such inspector or inspectors, during his or their

absence; and any inspector, who shall neglect or in any manner act contrary to the duties hereby enjoined, shall for the first offence *forfeit and pay the sum of fifty dollars*, and for the second offence, shall be *displaced*, and be incapable of holding any station of trust or profit under the revenue laws of the United States, for a term not exceeding seven years. And no inspector or inspectors shall perform any other duties or service, on board any ship or vessel, the superintendance of which is committed to him or them, for any person or persons whatever, other than what is required by this act, under the penalty of being disabled from acting any longer as an inspector of the customs; and the wages or compensation of such inspector or inspectors, as may proceed from one district to another, shall be defrayed by the master or person having the charge or command of the ship or vessel committed to his or their care; and every inspector or other officer of the revenue, while performing any duty on board any ship or vessel, not in a port of the United States, discharging her cargo, shall be entitled to receive from the master of such ship or vessel, such provisions and accommodations as are usually supplied to passengers, or as the state and condition of such ship or vessel will admit, on receiving therefor fifty cents per diem; and any master of any ship or vessel, who shall refuse provisions and reasonable accommodations as aforesaid, shall *forfeit and pay one hundred dollars.*"

---

SECT. XX.

*Penalties for certain offences.*—By the fifty-fourth section of this law "It shall be lawful for all collectors, naval officers, surveyors, inspectors, and the officers of the revenue cutters, herein after mentioned, to go on board of ships or vessels in any port of the United States, or within four leagues of the coast thereof, if bound to the United States, whether in or out of their respective districts, for the purposes of demanding the manifests aforesaid, and of examining and searching the said ships or vessels; and the said officers respectively shall have free access to the cabin

and every other part of a ship or vessel; and if any box, trunk, chest, cask or other package shall be found in the cabin, steerage or fore-castle of such ship or vessel, or in any other place separate from the residue of the cargo, it shall be the duty of the said officer to take a particular account of every such box, trunk, chest, cask or other package, and of the marks and numbers thereof, if any there be, and a description thereof, and if he shall judge proper, to put a seal or seals on every such box, trunk, chest, cask or other package; and such an account and description shall be by him forwarded without delay to the collector of the district to which such ship or vessel is bound. And if upon her arrival at the port of her entry, the boxes, trunks, chests, casks, or other packages so described, or any of them, shall be missing, or if the seals put thereon be broken, the master or commander of such ship or vessel shall *forfeit and pay* for every such box, trunk, chest, cask or other package so missing, or of which the seals shall be broken, the sum of *two hundred dollars*. And it shall also be lawful for the inspectors who may be put on board of any ship or vessel, (and they are hereby required and enjoined so to do) to secure after sunset in each evening, or previous to their quitting the ship or vessel, the hatches and other communication with the hold of such ship or vessel, or any other part thereof he or they may judge necessary, with locks or other proper fastenings, which locks or other fastenings shall not be opened, broken, or removed until the morning following, or after the rising of the sun, and in the presence of the inspector or inspectors, by whom the same shall have been so affixed, except by special licence from the collector of the port, and naval officer thereof, if any, for that purpose, first had and obtained. And if the said locks or other fastenings, or any of them shall be broken or removed, during the night or before the said rising of the sun, or without the presence of the said inspector or inspectors, or without such licence first had and obtained, or if any goods or packages shall be clandestinely landed, notice thereof shall be immediately given by the inspector or inspectors, to the collector and

naval officer of the district, port or place, where the vessel may be; and the master, or other person having the charge or command of any such ship or vessel, shall, for each or every of the offences aforesaid, *forfeit and pay the sum of five hundred dollars.*"

SECT. XXI.

*Penalty on the master, when the cargo does not agree with the report or manifest.*—The law renders it necessary that every master of a vessel should be extremely exact in the returns of his cargo; for, by the fifty-seventh section of this act, "If any package whatever, which shall have been reported as aforesaid, shall be wanting, and not found on board such ship or vessel, or if the goods, wares and merchandise, on board such ship or vessel, shall otherwise not agree with the report or manifest delivered by the master or other person having the charge or command of any such ship or vessel, in every such case the master, or other person having such charge or command, shall *forfeit and pay the sum of five hundred dollars: Provided nevertheless,* That if it shall be made appear to the satisfaction of the collector, naval officer and surveyor, or to the major part of them, where those officers are established at any port, or to the satisfaction of the collector alone, where neither of the said others is established, or, *in case of trial for the said penalty, to the satisfaction of the court,* that no part whatever of the goods, wares or merchandise of such ship or vessel has been unshipped, landed or unladen since it was taken on board, except as shall have been specified in the said report, or manifest, and pursuant to permits as aforesaid, or that the said disagreement is by accident, or mistake, in such case the penalty aforesaid shall not be inflicted; but in all cases as aforesaid the master, or person having the charge or command of any ship or vessel, shall be required and shall make a post entry or addition to the report or manifest by him delivered, of any and all goods, wares or merchandise omitted to be included and reported in such manifest; and it shall not be lawful to grant a permit

U

to unlade any such goods, wares or merchandise so omitted, before such post entry, or addition to such report or manifest has been made." And, "in case the delivery of the cargo do not agree with the report thereof, made by the master or other person having the charge or command of such ship or vessel, and if the difference, or disagreement be *not satisfactorily accounted for* in manner prescribed by this act, the master, or other person having the charge or command of such ship or vessel, shall be liable to such penalties as in other like cases are by this act prescribed."

---

SECT. XXII.

*Goods entered with a fraudulent invoice to be forfeited.*—By the sixty-sixth section, "If any goods, wares or merchandise, of which entry shall have been made in the office of a collector, shall not be invoiced according to the actual cost thereof, at the place of exportation, with design to evade the duties thereupon, or any part thereof, all such goods, wares or merchandise, or the value thereof, to be recovered of the person making entry, shall be *forfeited*; and in every case in which the said collector shall suspect that any such goods, wares or merchandise are not invoiced at a sum equal to that for which they have usually been sold in the place or country from whence they were imported, it shall be the duty of such collector to take the said goods, wares or merchandise into his possession, and retain the same with due and reasonable care, at the risk and expense of the owner or owners, consignee or consignees thereof, until their value at the time and place of importation shall be ascertained, by two reputable merchants, to be chosen and appointed as in the case of damaged goods, or goods not accompanied with an invoice, and until the duties arising, according to such valuation, shall be first paid, or secured to be paid, as required by this act in other cases of importation:—*Provided*, That in case of a prosecution for the forfeiture aforesaid, such appraisement shall not be construed to exclude other proof upon the trial, of the actual and real cost of the said goods at the place of exportation."

## SECT. XXIII.

*Officers of the customs may open packages, on suspecting fraud.*—By the sixty-seventh section, “ It shall be lawful for the collector, naval officer, or other officer of the customs, after entry made of any goods, wares, or merchandise, on suspicion of fraud, to open and examine in the presence of two or more reputable merchants, any package, or packages thereof, and if upon examination they shall be found to agree with the entries, the officer making such seizure and examination, shall cause the same to be re-packed and delivered to the owner or claimant forthwith; and the expense of such examination shall be paid by the said collector, or other officer; and allowed in the settlement of their accounts; but if any of the packages so examined shall be found to differ in their contents from the entry, then the goods wares or merchandise contained in such package or packages *shall be forfeited: Provided, That* the said forfeiture shall not be incurred, if it shall be made appear to the satisfaction of the collector and naval officer of the district where the same shall happen, if there be a naval officer, and if there be no naval officer, to the satisfaction of the said collector, or of the court in which a prosecution for the forfeiture shall be had, that such difference proceeded from accident or mistake, and not from an intention to defraud the revenue.”

## SECT. XXIV.

*Collectors, &c may search suspected places for goods.*—“ Every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandize, subject to duty, are concealed, and therein to search for, seize, and secure any such goods, wares or merchandise; and if they shall have cause to suspect a concealment thereof in any particular dwelling house, store, building, or other place, they or either of them shall upon proper application on oath, *to any justice of*

*the peace*, be entitled to a warrant to enter such house, store, or other place (in the day time only) and there to search for such goods; and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid, or secured to be paid, shall be *forfeited*."

---

SECT. XXV.

*Penalty on buying or concealing goods liable to seizure.*—  
 "All goods, wares, or merchandise which shall be seized by virtue of this act, shall be put into, and remain in the custody of the collector, or such other person, as he shall appoint for that purpose, until such proceedings shall be had as by this act are required, to ascertain whether the same have been forfeited, or not; and if it shall be adjudged that they are not forfeited, they shall be forthwith restored to the owner or owners, claimant or claimants thereof; and if any person or persons shall conceal or buy any goods, wares or merchandise, knowing them to be liable to seizure by this act, such person or persons shall on *conviction* thereof *forfeit* and pay a sum *double the amount or value of the goods, wares or merchandise so concealed or purchased*."

---

SECT. XXVI.

*Penalty for resisting officers of the customs.*—By the seventieth section of this act the custom-house officers are authorized to make seizures as well out of, as within their respective districts; and by section seventy-first, "If any person shall forcibly resist, prevent, or impede any officer of the customs or their deputies, or any person assisting them, in the execution of their duty, such person so offending shall for every such offence, be fined in a sum not exceeding *four hundred dollar*.—And if any master, or other person having the charge or command of any ship or vessel coming into, or arriving at any port or place within the United States, shall obstruct or hinder, or shall be the cause or means of any obstruction or hindrance with such

an intent, to any officer of the customs or revenue, in going on board such ship or vessel, for the purpose of carrying into effect any of the revenue laws of the United States, he shall *forfeit* for every such offence a sum not exceeding *five hundred dollars*, nor less than *fifty dollars*."

SECT. XXVII.

*Penalties on officers of the customs, &c. for misbehaviour.*—

The seventy-third section of this act provides, "That every collector, naval officer and surveyor, shall cause to be affixed, and constantly kept in some public and conspicuous place of his office, a fair table of the rates of fees and duties demandable by law, and shall give a receipt for the fees he shall receive, specifying the particulars, whenever required so to do; and in case of failure therein, shall *forfeit and pay one hundred dollars*, to be recovered with costs, in any proper court having cognizance thereof, to the use of the informer; and if any officer of the customs shall demand or receive any greater, or other fee, compensation or reward, for executing any duty or service required of by him by law, he shall *forfeit and pay two hundred dollars* for each offence, recoverable in manner aforesaid, for the use of the party aggrieved. And if any inspector, gauger, weigher or measurer shall receive any gratuity, fee or reward for any services performed by virtue of this act, other than is by law allowed, or if any gauger, weigher, or measurer, employed as such by the public, in the districts of Portsmouth, Salem and Beverly, Boston and Charleston, Providence, New-York, Philadelphia, Baltimore, Norfolk and Portsmouth, or Charleston, shall gauge, weigh or measure, any article or articles other than shall be directed by the proper officer in order to ascertain the duties to be received, or the drawbacks to be allowed thereon, or shall make a return of the weight, gauge or measure of any merchandise laden, or to be laden, on board any ship or vessel for the benefit of drawback upon exportation, without having actually weighed, gauged or measured the same, as the case may require, after such merchandise shall have been notified to the collector and entered for export-

tation, they shall for the first offence forfeit and pay the sum of *fifty dollars*, and for the second offence shall forfeit *two hundred dollars*, and be discharged from the public service; and if any inspector or other officer of the customs shall certify the shipment of any merchandise entitled to drawback on exportation, without having duly inspected and examined the same, after he shall have received the permit for lading such merchandise, or, if the amount of such drawback shall be estimated according to weight, gauge or measure, until such merchandise shall be first weighed, gauged or measured, as the case may require, he shall be subject to the like forfeitures, and be discharged from the public service."

---

SECT. XXVIII.

*Penalty on re-landing goods entered for drawback, &c.*—By the eighty second section of this law, "If any goods, wares or merchandise, entered for exportation, with intent to drawback the duties, or to obtain any allowance given by law, on the exportation thereof, shall be landed within any port or place within the limits of the United States as aforesaid, all such goods, wares or merchandise shall be subject to seizure and forfeiture, together with the ship or vessel from which such goods, wares or merchandise shall be landed and the vessels or boats used in landing the same; and all persons concerned therein shall on indictment and conviction thereof, suffer imprisonment for a term not exceeding six months; and for discovery of frauds, and seizure of goods, wares or merchandise, re-landed contrary to law, the several officers, established by this act, shall have the same powers, and in case of seizure, the same proceedings shall be had, as in the case of goods, wares and merchandise imported contrary to law."

---

SECT. XXIX.

*Forfeiture on making a false entry for exportation, for benefit of drawback or bounty.*—By section eighty-four, "If any goods, wares or merchandise of which entry shall have been

made in the office of a collector, for the benefit of drawback or bounty upon exportation, shall be entered by a false denomination, or erroneously as to the time when and the vessel in which they were imported, or shall be found to disagree with the packages, quantities or qualities, as they were at the time of original importation, except such disagreement as may have been occasioned by necessary or unavoidable wastage or damage only, and except also in cases where permission shall have been obtained according to law, to alter or change the quantities or packages thereof, all such goods, wares or merchandise, or the value thereof to be recovered of the owner or person making such entry, shall be *forfeited*. *Provided*, That the said forfeiture shall not be incurred, if it shall be made appear to the satisfaction of the collector and naval officer of the district, if there be a naval officer, and if there be no naval officer, to the satisfaction of the said collector, or of the court in which a prosecution for the forfeiture shall be had, that such false denomination, error, or disagreement happened by mistake or accident, and not from any intention to defraud the revenue."

---

SECT. XXX.

*Officers of the customs not to be concerned in shipping or commerce.*—By the eighty-sixth section, "No officer of the customs, or other person employed under the authority of the United States, in the collection of the duties imposed by law on goods, wares or merchandise imported in the United States, and on the tonnage of ships or vessels, shall own, either in whole or in part, any ship or vessel, or act as agent, attorney, or consignee for the owner or owners of any ship or vessel, or of any cargo or lading on board the same; nor shall any officers of the customs, or other person employed in the collection of the duties as aforesaid, import, or be concerned directly or indirectly in the importation of any goods, wares or merchandise, for sale, into the United States, on penalty that every person so offending, and being thereof *convicted*, shall *forfeit* and *pay* the sum of five hundred dollars."

## SECT. XXXI.

*Penalty on their receiving a bribe to connive at a false entry, or conniving at such entry.*—“ If any officer of the customs shall directly or indirectly take or receive any bribe, reward or recompence, for conniving, or shall connive at any false entry of any ship or vessel, or of any goods, wares or merchandise, and shall be convicted thereof, every such officer or other person shall *forfeit* and *pay* a sum not less than *two hundred, nor more than two thousand dollars for each offence*; and any person *giving* or *offering* any bribe, recompence or reward for any such deception, collusion, or fraud, shall *forfeit* and *pay* a sum not less than *two hundred dollars, nor more than two thousand dollars, for each offence.*”

## SECT. XXXII.

*Penalty for not exhibiting manifests and obtaining clearances to foreign ports.*—By the ninety-third section of this act, “ The master or person having the charge or command of any ship or vessel, bound to a foreign port or place, shall deliver to the collector of the district from which such ship or vessel shall be about to depart, a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear, or affirm to the truth thereof; whereupon the said collector shall grant a clearance for such ship or vessel and her cargo, but without specifying the particulars thereof in such clearance, unless required by the said master, or other person having the charge or command of such ship, or vessel, so to do. And if any ship or vessel, bound to a foreign port or place, shall depart on her voyage to such foreign port or place, without delivering such manifest, and obtaining a clearance as hereby required, the said master, or other person having the charge or command of such ship or vessel, shall *forfeit* and *pay* the sum of *five hundred dollars, for every such offence.*”

## SECT. XXXIII.

*Penalty on other vessels carrying the revenue pendants or ensign.*—Section one hundred and two provides, “ That the

cutters and boats, employed in the service of the revenue, shall be distinguished from other vessels, by an ensign and pendant, with such marks thereon as shall be prescribed and directed by the President of the United States." "And if any ship, vessel or boat, not employed in the service of the revenue, shall, within the jurisdiction of the United States, carry or hoist any pendant or ensign prescribed for vessels in the service aforesaid, the master, or commander of the ship or vessel so offending shall *forfeit and pay one hundred dollars.*"

SECT. XXXIV.

*Vessels and packages in which alone certain articles are to be imported.*—By section one hundred and three, "No beer, ale, or porter shall be brought into the United States by sea from any foreign port, or place, except in casks, or vessels, the capacity whereof shall not be less than forty gallons, beer measure, or in packages containing not less than six dozen bottles, on pain of forfeiture of the said beer, ale, or porter, and the ship or vessel in which the same shall be brought; nor shall any refined lump or loaf sugar be imported into the United States, from any foreign port or place by sea, except in ships or vessels of one hundred and twenty tons burthen and upwards, and in casks or packages containing each not less than six hundred pounds weight; nor shall any distilled spirits (arrack and sweet cordials excepted) be imported, or brought into the United States, except in casks or vessels of the capacity of ninety gallons wine measure and upwards, nor in casks or vessels which have been marked pursuant to any law of the United States, on pain of *forfeiture of the said refined lump and loaf sugar, and distilled spirits*, imported contrary to the provisions herein described, together with the *ship, or vessel*, in which they shall be so imported;—*Provided*, That nothing contained in this act shall be construed to forfeit any spirits for being imported, or brought into the United States, in other casks or vessels as aforesaid, or the ship or vessel in which they shall be brought, if such spirits shall

be for the use of the seamen, on board such ship or vessel, and shall not exceed the quantity of four gallons for each seaman."

---

SECT. XXXV.

*Penalty for opening goods, &c.*—By sections one hundred and five, six, seven and eight of this act, goods are allowed to be imported into the northern and north-western districts of the United States, in boats, rafts, or vessels of any size or dimensions, but where they are to be transported over any of the carrying-places in order to be re-embarked and carried to some other port or place, they must be attended with a certain *protection* from the collector, the form of which is there pointed out, and by section one hundred and nine, "If any person having the charge, or being concerned in the transportation of any goods, wares or merchandize, entered as aforesaid, for the purpose of being transported across any of the portages or carrying places within the limits of the United States, and to be delivered without the limits thereof, shall, with intent to defraud the revenue, break open or unpack any part of the said merchandise, or shall sell, exchange or consume the same, or with like intent shall break or deface any seal or fastening, placed thereon by any officer of the revenue, or if any person whatever shall deface, alter or forge any certificate, granted for the protection of merchandise transported as aforesaid, each and every person so offending, shall forfeit and pay five hundred dollars, and shall be imprisoned not less than one nor more than six months, at the discretion of the court before which such person shall be convicted."

---

SECT. XXXVI.

*Penalties how to be sued for.*—"All penalties, accruing by any breach of this act, shall be sued for, and recovered with costs of suit, in the name of the United States of America, in any court competent to try the same; and the trial of any fact, which may be put in issue, shall be within the

judicial district in which any such penalty shall have accrued, and the collector, within whose district the seizure shall be made, or forfeiture incurred, is hereby enjoined to cause suits for the same to be commenced without delay, and prosecuted to effect; and is moreover authorized to receive from the court within which such trial is had, or from the proper officer thereof, the sum or sums so recovered, after deducting all proper charges to be allowed by the said court, and on receipt thereof the said collector shall pay and distribute the same without delay, according to law, and transmit quarter yearly to the treasury an account of all monies by him received for fines, penalties and forfeitures, during such quarter."

---

SECT. XXXVII.

*Manner of proceeding to the condemnation of vessels and goods seized.*—"All ships or vessels, goods, wares or merchandise, which shall become forfeited in virtue of this act, shall be seized, libelled and prosecuted as aforesaid, in the proper court having cognizance thereof; which court shall cause fourteen days notice to be given of such seizure and libel, by causing the substance of such libel, with the order of the court thereon, setting forth the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure, and also by posting up the same in the most public manner, for the space of fourteen days, at or near the place of trial; for which advertisement a sum not exceeding ten dollars shall be paid: And proclamation shall be made in such manner as the court shall direct; and if no person shall appear and claim any such ship or vessel, goods, wares or merchandise, and give bond to defend the prosecution thereof, and to respond the cost in case he shall not support his claim, the court shall proceed to hear and determine the cause according to law; and upon the prayer of any claimant to the court, that any ship or vessel, goods, wares or merchandise, so seized and prosecuted, or any part thereof, should be delivered to such claimant, it shall be lawful for the court

to appoint three proper persons to appraise such ship or vessel, goods, wares or merchandise, who shall be sworn in open court for the faithful discharge of their duty; and such appraisement shall be made at the expense of the party on whose prayer it is granted; and on the return of such appraisement, if the claimant shall, with one or more sureties, to be approved of by the court, execute a bond in the usual form of the United States for the payment of a sum equal to the sum at which the ship or vessel, goods, wares or merchandise, so prayed to be delivered, as appraised, and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties on the goods, wares and merchandise, or tonnage duty on the ship or vessel, so claimed, have been paid or secured in like manner, as if the goods, wares or merchandise, ship or vessel had been legally entered, the court shall, by rule, order such ship or vessel, goods, wares and merchandise, to be delivered to the said claimant, and the said bond shall be lodged with the proper officer of the court, and if judgment shall pass in favor of the claimant, the court shall cause the said bond to be cancelled; but if judgment shall pass against the claimant, as to the whole, or any part of such ship or vessel, goods, wares or merchandise, and the claimant shall not within twenty days thereafter pay into the court, or to the proper officer thereof, the amount of the appraised value of such ship or vessel, goods, wares or merchandise so condemned, with the costs, judgment shall and may be granted upon the bond on motion in open court, without further delay. And when any prosecution shall be commenced, on account of the seizure of any ship or vessel, goods, wares or merchandise, and judgment shall be given for the claimant or claimants; if it shall appear to the court before whom such prosecution shall be tried, that there was a reasonable cause of seizure, the said court shall cause a proper certificate, or entry to be made thereof, and in such case the claimant or claimants shall not be entitled to costs, nor shall the person who made the seizure, or the prosecutor, be liable to action, suit or

judgment on account of such seizure and prosecution; *Provided*, That the ship or vessel, goods, wares or merchandise, be after judgment forthwith returned to such claimant or claimants, his, her, or their agent or agents; *And provided*, That no action or prosecution shall be maintained in any case under this act, unless the same shall have been commenced within *five years (a)* next after the penalty or forfeiture was incurred."

SECT. XXXVIII.

*Distribution of fines, penalties and forfeitures.*—"All fines, penalties and forfeitures, recovered by virtue of this act (and not otherwise appropriated) shall, after deducting all proper costs and charges, be disposed of as follows;—one moiety shall be for the use of the United States, and be paid into the treasury thereof, by the collector receiving the same; the other moiety shall be divided between, and paid in equal proportions to, the collector, and naval officer of the district, and surveyor of the port, wherein the same shall have been incurred, or to such of the said officers as there may be in the said district; and in districts where only one of the aforesaid officers shall have been established, the said moiety shall be given to such officer; *Provided nevertheless*, That in all cases where such penalties, fines and forfeitures shall be recovered in pursuance of information given to such collector, by any other person other than the naval officer or surveyor of the district, the one half of such moiety shall be given to such informer, and the remainder thereof shall be disposed of between the collector, naval officer, and surveyor, or surveyors, in manner aforesaid: *Provided also*, That where any fines, forfeitures and penalties, incurred by virtue of this act, are recovered in consequence of any information given by any officer of a revenue cutter, they shall, after deducting all proper costs and charges, be disposed of as follows;—one fourth part shall be for the use of the United States, and paid into the treasury thereof in manner as before directed; one fourth part for the officers of the customs, to be

(a) See an act of Congress passed 27th March, 1804.

distributed as herein before set forth; and the remainder thereof to the officers of such cutter, to be divided among them agreeably to their pay: *And provided likewise,* That whenever a seizure, condemnation and sale of goods, wares or merchandise, shall take place within the United States, and the value thereof shall be less than two hundred and fifty dollars, that part of the forfeiture which accrues to the United States, or so much thereof as may be necessary, shall be applied to the cost of prosecution."

---

SECT. XXXIX.

Having stated distinctly the various *penalties* and *forfeitures* imposed by this act for the collection of duties on imposts and tonnage, we proceed to state a few incidental matters, the knowledge of which is necessary to carrying its provisions fully into effect.

*Debentures* for drawbacks of duties are by this act made assignable, and in case the collector refuses to discharge them, the assignee may commence suits for the same, against the grantee, or indorser, but *these suits* must be "in the proper circuit or district courts of the United States."

*Bonds for duties to be put in suit immediately after they become due.*—"Where any bond for the payment of duties shall not be satisfied on the day it may become due, the collector shall, forthwith and without delay, cause a prosecution to be commenced for the recovery of the money thereon by action or suit at law, in the proper court having cognizance thereof; and in all cases of insolvency, or where any estate in the hands of the executors, administrators or assignees, shall be insufficient to pay all the debts due from the deceased, the debt or debts due to the United States, on any such bond or bonds, shall be first satisfied."

*Such bonds entitled to a priority of satisfaction in case of insolvency.*—"Any executor, administrator, or assignees, or other person, who shall pay any debt due by the person or estate from whom, or for which, they are acting, previous to the debt or debts due to the United States from such person or estate being first duly satisfied and paid, shall be-

come answerable in their own person and estate, for the debt or debts so due to the United States, or for so much thereof as may remain due and unpaid: and actions or suits at law may be commenced against them for the recovery of the said debt or debts, or for so much thereof as may remain due and unpaid, in the proper court having cognizance thereof."

*In suits for duties or pecuniary penalties, defendant may be held to special bail.*—"In all cases in which suits or prosecutions shall be commenced for the recovery of duties or pecuniary penalties prescribed by the laws of the United States, the person or persons against whom process may be issued, shall and may be held to special bail, subject to the rules and regulations which prevail in civil suits in which special bail is required."

*Surety paying bond to have priority, in case of insolvency, &c. of the principal.*—"If the principal in any bond, which shall be given to the United States for duties on goods, wares or merchandise imported, or other penalty, either by himself, his factor, agent, or other person for him, shall be insolvent, or if such principal being deceased, his, or her estate and effects, which shall come to the hands of his or her executors, administrators or assignees, shall be insufficient for the payment of his or her debts, and if in either of the said cases, any surety on the said bond or bonds, or the executors, administrators or assignees of such surety shall pay to the United States the money due upon such bond or bonds, such surety, his or her executors, administrators or assignees, shall have and enjoy the like advantage, priority or preference for the recovery and receipt of the said monies out of the estate and effects of such insolvent, or deceased principal, as are reserved and secured to the United States; and shall and may bring and maintain a suit or suits upon the said bond or bonds in law or equity, in his, her, or their own name or names, for the recovery of all monies paid thereon."

*Meaning of insolvency.*—"The cases of insolvency mentioned in this section, shall be deemed to extend as well to cases in which a debtor, not having sufficient property to pay

all his or her debts, shall have made a voluntary assignment thereof, for the benefit of his or her creditors; or in which the estate and effects of an absconding, concealed, or absent debtor, shall have been attached by process of law, as to cases in which an act of legal bankruptcy shall have been committed."

*Judgment for duties, &c. to be rendered at the first term.*—

"Where a suit shall be instituted on any bond for the recovery of duties due to the United States, it shall be the duty of the court, where the same may be pending, to grant judgment at the return term, upon motion, unless the defendant shall, in open court, the United States attorney being present, make oath or affirmation that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district, prior to the commencement of the return term aforesaid: whereupon, if the court be satisfied, that a continuance until the next succeeding term, is necessary for the attainment of justice, and not otherwise, a continuance may be granted until next succeeding term and no longer."

*Judgment at the return term.*—"And in all suits for the recovery of money upon *debentures* issued by the collectors of the customs as aforesaid, it shall be the duty of the court in which such suits shall be pending, to grant judgment at the return term, unless the defendant or defendants shall, in open court, exhibit some plea, on oath or affirmation, by which the court shall be satisfied that a continuance, until the next succeeding term, is necessary to the attainment of justice; in which case, and not otherwise, a continuance until the next term may be granted."

*Interest to be allowed upon bonds.*—"On all bonds upon which suits shall be commenced, an interest shall be allowed at the rate of six per cent per annum, from the time when said bonds become due, until the payment thereof."

*Affirmation may be made instead of oath.*—"Whenever an oath is required by this act, persons conscientiously scrupulous shall be permitted to affirm."

*Officers may plead the general issue.*—“ If any officer or other person, executing or aiding or assisting in the seizure of goods, shall be misused or molested for any thing done in virtue of the powers given by this act, or by virtue of a warrant granted by any judge or justice, pursuant to law, such officer or other person may plead the general issue, and give this act and the special matter in evidence; and if in such suit the plaintiff is nonsuited, or judgment pass against him, the defendant shall recover double costs.”

*Onus probandi to lie upon the claimant.*—“ In actions, suits or informations to be brought, where any seizure shall be made pursuant to this act, if the property be claimed by any person, in every such case the *onus probandi* shall be upon such claimant.”

*Special proviso as to the onus probandi.*—“ But the *onus probandi* shall lie on the claimant only where probable cause is shewn for such prosecution, to be judged of by the court before whom the prosecution is had.”

*False swearing to be punished as perjury.*—“ In all cases where an oath or affirmation is by this act required from a master or other person having the command of a ship or vessel, or from an owner or consignee of any goods, wares, or merchandise, his, her, or their factor, or agent, and generally whenever an oath or affirmation is required from any person or persons, whatsoever, by virtue of this act, if the person so swearing or affirming shall swear, or affirm falsely, such person shall, on indictment and conviction thereof, be liable to the same pains and penalties prescribed for persons convicted of wilful and corrupt perjury.”

*No forfeiture to be incurred where the forms of documents are substantially complied with.*—“ In cases where the forms of official documents, as prescribed by this act, shall be substantially complied with and observed, according to the true spirit, meaning and intent thereof, no penalty or forfeiture shall be incurred by a deviation therefrom; and the officers of the department of the treasury, according to their respective powers and duties, shall and may from time to time prescribe additions to the said forms, for the purpose of adapting the same to any alterations which may

be made to the rates of duties on the importation of goods, wares and merchandise, and on the tonnage of ships and vessels, and for the better collection and payment of the said duties; *Provided however*, That it shall not be competent for the said officers to prescribe any form or regulations incompatible with, or contravening the special provisions of this act."



## CHAP. XXXV.

### PENALTIES UNDER THE ACT CONCERNING THE REGISTER- ING AND RECORDING OF SHIPS OR VESSELS.

#### SECT. I.

On the 31st December, 1792, congress passed an "act (a) concerning the registering and recording of ships or vessels." The first section of this act declares what shall be deemed "ships or vessels of the United States," which are to enjoy the privileges of American vessels, only while owned and commanded by citizens of the United States.

*Penalty for a vessel's not having her name, &c. painted on her stern.*—The second section points out what description of vessels may be registered, the benefits of which registers are confined to *actual residents* within the United States, except where the owner of an American vessel, being a citizen of the United States, resides abroad in the "capacity of consul or agent for, and partner in, some house of trade consisting of citizens of the United States actually carrying on trade within the United States." And by the third section, "The name of the ship or vessel, and of the port to which she shall so belong, shall be painted on her stern, on a black ground, in white letters, of not less than three inches in length. And if any ship or vessel of the United States, shall be found, without having her name, and the name of the port, to which she belongs, painted in manner aforesaid; the owner or owners shall *forfeit fifty dollars*; one

<sup>a</sup> Laws of the U. S. vol. II. p. 131.

half to the person giving the information thereof, the other half to the use of the United States."

---

SECT. II.

*Penalty for taking certain false oaths or affirmations.*—The fourth section of this act prescribes the manner in which a registry is to be made and the substance of the oath or affirmation to be taken on the occasion. "And in case, any of the matters of fact, in the said oath or affirmation alledged, which shall be within the knowlege of the party, so swearing, or affirming, shall not be true, there shall be a forfeiture of the ship or vessel, together with her tackle, furniture and apparel, in respect to which, the same shall have been made, or of the value thereof, to be recovered, with costs of suit, of the person, by whom such oath or affirmation shall have been made: *Provided always*, That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid, when application shall be made for registering the same, he shall, himself, make oath, or affirmation, instead of the said owner, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself forfeit and pay, by reason thereof, the sum of one thousand dollars."

---

SECT. III.

*Penalty for not delivering up certificates of registry, &c.*—The eleventh section of this act directs the manner in which citizens purchasing ships or vessels out of their proper district, are to proceed in obtaining a register for the same. And "whenever such ship or vessel shall arrive within the district, comprehending the port to which such ship or vessel shall belong, the certificate of registry, which shall have been obtained, as aforesaid, shall be delivered up to the collector of such district, who, upon the requisites

of this act, in order to the registry of ships or vessels, being complied with, shall grant a new one, in lieu of the first; and the certificate, so delivered up, shall forthwith be returned by the collector who shall receive the same, to the collector who shall have granted it: and if the said first mentioned certificate of registry shall not be delivered up, as above directed, the owner or owners, and the master of such ship or vessel, at the time of her said arrival within the district comprehending the port to which such ship or vessel may belong, shall, severally, *forfeit the sum of one hundred dollars*, to be recovered, with costs of suit; and the said certificate of registry shall be thenceforth void. And in case any of the matters of fact, in the said oath or affirmation alledged, which shall be within the knowledge of the party so swearing or affirming, shall not be true, there shall a *forfeiture of the ship or vessel, together with her tackle, furniture and apparel*, in respect to which, the same shall have been made, or of the value thereof, to be recovered, with costs of suit, of the person by whom such oath or affirmation shall have been made: *Provided always*, That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid, when application shall be made for registering the same, he shall, himself, make oath or affirmation, instead of the said owner, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself, *forfeit and pay*, by reason thereof, the sum of *one thousand dollars*."

---

SECT. IV.

*Penalty for not delivering up certificates of registry, &c.*—The twelfth section of this law directs the manner in which a register is to be obtained when purchased by an agent. But "whenever such ship or vessel shall arrive within the district comprehending the port to which such ship or vessel shall belong, the certificate of registry, which shall

have been obtained, as aforesaid, shall be delivered up to the collector of such district, who, upon the requisites of this act, in order to the registry of ships or vessels, being complied with, shall grant a new one, in lieu of the first; and the certificate, so delivered up, shall forthwith be returned by the collector, who shall transmit the same to the collector who shall have granted it. And if the said first mentioned certificate of registry, shall not be delivered up, as above directed; the owner or owners, and the master of such ship or vessel, at the time of her said arrival within the district comprehending the port to which she may belong, shall, severally, *forfeit* the sum of *one hundred dollars*, to be recovered, with costs of suit, and the said certificate of registry shall be thenceforth void. And in case, any of the matters of fact, in the said oath or affirmation alledged, which shall be within the knowledge of the party, so swearing or affirming, shall not be true, there shall be a *forfeiture of the ship or vessel, together with her tackle, furniture and apparel*, in respect to which, the same shall have been made, or of the value thereof, to be recovered, with costs of suit, of the person by whom such oath or affirmation shall have been made: *Provided always*, That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid, when application shall be made for registering the same, he shall, himself, make oath or affirmation, instead of the said agent or attorney, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself, *forfeit and pay*, by reason thereof, the sum of *one thousand dollars*."

---

SECT. V.

*Penalty for not delivering up registers, &c.*—By the thirteenth section a certain oath or affirmation is prescribed in cases of the certificate of registry being lost or destroyed,

of this act, in order to the registry of ships or vessels, being complied with, shall grant a new one, in lieu of the first; and the certificate, so delivered up, shall forthwith be returned by the collector who shall receive the same, to the collector who shall have granted it: and if the said first mentioned certificate of registry shall not be delivered up, as above directed, the owner or owners, and the master of such ship or vessel, at the time of her said arrival within the district comprehending the port to which such ship or vessel may belong, shall, severally, *forfeit the sum of one hundred dollars*, to be recovered, with costs of suit; and the said certificate of registry shall be thenceforth void. And in case any of the matters of fact, in the said oath or affirmation alledged, which shall be within the knowledge of the party so swearing or affirming, shall not be true, there shall a *forfeiture of the ship or vessel, together with her tackle, furniture and apparel*, in respect to which, the same shall have been made, or of the value thereof, to be recovered, with costs of suit, of the person by whom such oath or affirmation shall have been made; *Provided always*, That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid, when application shall be made for registering the same, he shall, himself, make oath or affirmation, instead of the said owner, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself, *forfeit and pay*, by reason thereof, the sum of *one thousand dollars*."

---

SECT. IV.

*Penalty for not delivering up certificates of registry, &c.*—  
The twelfth section of this law directs the manner in which a register is to be obtained when purchased by an *agent*. But "whenever such ship or vessel shall arrive within the district comprehending the port to which such ship or vessel shall belong, the certificate of registry, which shall

have been obtained, as aforesaid, shall be delivered up to the collector of such district, who, upon the requisites of this act, in order to the registry of ships or vessels, being complied with, shall grant a new one, in lieu of the first; and the certificate, so delivered up, shall forthwith be returned by the collector, who shall transmit the same to the collector who shall have granted it. And if the said first mentioned certificate of registry, shall not be delivered up, as above directed, the owner or owners, and the master of such ship or vessel, at the time of her said arrival within the district comprehending the port to which she may belong, shall, severally, *forfeit* the sum of *one hundred dollars*, to be recovered, with costs of suit, and the said certificate of registry shall be thenceforth void. And in case, any of the matters of fact, in the said oath or affirmation alledged, which shall be within the knowledge of the party, so swearing or affirming, shall not be true, there shall be a *forfeiture of the ship or vessel, together with her tackle, furniture and apparel*, in respect to which, the same shall have been made, or of the value thereof, to be recovered, with costs of suit, of the person by whom such oath or affirmation shall have been made: *Provided always*, That if the master, or person having the charge or command of such ship or vessel, shall be within the district aforesaid, when application shall be made for registering the same, he shall, himself, make oath or affirmation, instead of the said agent or attorney, touching his being a citizen, and the means whereby, or manner in which, he is so a citizen; in which case, if what the said master, or person having the said charge or command, shall so swear or affirm, shall not be true, the forfeiture aforesaid shall not be incurred, but he shall, himself, *forfeit and pay*, by reason thereof, the sum of *one thousand dollars*."

---

SECT. V.

*Penalty for not delivering up registers, &c.*—By the thirteenth section a certain oath or affirmation is prescribed in cases of the certificate of registry being lost or destroyed,

and the mode pointed out for obtaining a new one, in place of the one so lost or destroyed. " But in all cases, where a register shall be granted, in lieu of the one lost or destroyed, by any other than the collector of the district, to which the ship, or the vessel actually belongs, such register shall, within ten days, after her first arrival within the district to which she belongs, be delivered up to the collector of the said district, who shall, thereupon grant a new register, in lieu thereof. And in case the master, or commander shall neglect to deliver up such register, within the time aforesaid, he shall *forfeit one hundred dollars*; and the former register shall become null and void."

---

#### SECT. VI.

*Penalty for not delivering up registers, &c.*—The fourteenth section of this act directs in certain cases of sale of a vessel to a citizen of the United States, or materially altering her form, burthen, &c. that her former certificate of registry is to be given up and a new one taken out. " And in every such case of sale or transfer, there shall be some instrument of writing, in the nature of a bill of sale, which shall recite, at length, the said certificate, otherwise the said ship or vessel shall be incapable of being so registered anew. And in every case, in which a ship or vessel is hereby required to be registered anew, if she shall not be so registered anew, she shall not be entitled to any of the privileges or benefits of a ship or vessel of the United States. And further, if her said former certificate of registry shall not be delivered up, as aforesaid, except where the same may have been destroyed, lost, or unintentionally mislaid, and an oath or affirmation thereof shall have been made, as aforesaid, the owner or owners of such ship or vessel shall *forfeit and pay the sum of five hundred dollars*, to be recovered, with costs of suit."

---

#### SECT. VII.

*Penalty for not reporting a change of master.*—By the fifteenth section, " When the master, or person having the

charge or command of a ship or vessel, registered pursuant to this act, or the act hereby in part repealed, shall be changed, the owner, or one of the owners, or the new master of such ship or vessel, shall report such change to the collector of the district where the same shall happen, or where the said ship or vessel shall first be, after the same shall have happened, and shall produce to him the certificate of registry of such ship or vessel, and shall make oath or affirmation, shewing that such new master is a citizen of the United States, and the manner in which, or means whereby, he is so a citizen; whereupon the said collector shall endorse upon the said certificate of registry, a memorandum of such change, specifying the name of such new master, and shall subscribe the said memorandum with his name, and if other than the collector of the district, by whom the said certificate of registry shall have been granted, shall transmit a copy of the said memorandum to him, with notice of the particular ship or vessel, to which it shall relate; and the collector of the district, by whom the said certificate shall have been granted, shall make a like memorandum of such change, in his book of registers, and shall transmit a copy thereof, to the Register of the Treasury. And if the said change shall not be reported, or if the said oath or affirmation shall not be taken, as above directed, the registry of such ship or vessel shall be void, and the said master, or person, having the charge or command of her, shall *forfeit and pay the sum of one hundred dollars.*"

---

#### SECT. VIII.

*Forfeiture for not making known the sale of an American vessel to a foreigner.*—By the sixteenth section of this act, "If any ship or vessel, heretofore registered, or which shall hereafter be registered, as a ship or vessel of the United States, shall be sold or transferred, in whole or in part by way of trust, confidence or otherwise, to a subject or citizen of any foreign prince or state, and such sale or transfer shall not be made known, in manner herein before directed, such *ship or vessel, together with her tackle, apparel and*

*furniture, shall be forfeited: Provided, That if such ship or vessel shall be owned in part only, and it shall be made appear to the jury, before whom the trial for such forfeiture shall be had, that any other owner of such ship or vessel, being a citizen of the United States, was wholly ignorant of the sale or transfer to, or ownership of, such foreign subject or citizen, the share or interest of such citizen of the United States shall not be subject to such forfeiture; and the residue only shall be so forfeited."*

---

SECT. IX.

*Penalty on making false registers, or demanding unlawful fees.*—By the twenty-sixth and twenty-seventh sections of this act, "Every collector, or officer, who shall knowingly make, or be concerned in making, any false register or record, or shall knowingly grant, or be concerned in granting, any false certificate of registry or record of, or for any ship or vessel, or other false document whatsoever, touching the same, contrary to the true intent and meaning of this act, or who shall designedly take any other, or greater fees, than are by this act allowed, or who shall receive any voluntary reward or gratuity, for any of the services performed, pursuant thereto; and every surveyor, or other person appointed to measure any ship or vessel, who shall wilfully deliver to any collector, or naval officer, a false description of such ship or vessel, to be registered or recorded, shall, upon conviction of any such neglect, or offence, forfeit the sum of one thousand dollars, and be rendered incapable of serving in any office of trust or profit, under the United States; and if any person or persons, authorized and required by this act, in respect to his or their office or offices, to perform any act or thing, required to be done or performed, pursuant to any of the provisions of this act, shall wilfully neglect to do or perform the same, according to the true intent and meaning of this act, such person or persons shall, on being duly convicted thereof, if not subject to the penalty and disqualification aforesaid, forfeit the sum of five hundred dollars for the first.

*offence, and a like sum for the second offence, and shall thenceforth, be rendered incapable of holding any office of trust or profit under the United States." And "if any certificate of registry, or record, shall be fraudulently or knowingly used for any ship or vessel, not then actually intitled to the benefit thereof, according to the true intent of this act, such ship or vessel shall be forfeited to the United States, with her tackle, apparel, and furniture."*

---

SECT. X.

*Penalty for taking a false oath or affirmation.*—By section twenty-eight, "If any person or persons shall falsely make oath or affirmation, to any of the matters, herein required to be verified, such person or persons shall suffer the like pains and penalties as shall be incurred by persons committing wilful and corrupt perjury; and if any person or persons shall forge, counterfeit, erase, alter, or falsify any certificate, register, record, or other document, mentioned, described or authorized, in and by this act, such person, or persons, shall, for every such offence, *forfeit the sum of five hundred dollars.*"

---

SECT. XI.

*Penalties under this act how to be recovered.*—By the twenty-ninth section of this act, "All the penalties and forfeitures, which may be incurred, for offences against this act, shall and may be sued for, prosecuted and recovered, in such courts, and be disposed of, in such manner, as any penalties and forfeitures, which may be incurred, for offences against the act, intitled, "An act (a) to provide more effectually for the collection of the duties imposed by law, on goods, wares and merchandise imported into the United States, and on the tonnage of ships or vessels," may legally be sued for, prosecuted, recovered and disposed of: *Provided always,* That if any officer entitled to a part, or share of any such penalty, or forfeiture, shall be necessary, as a

(a) Laws U. S. vol. iv. p. 427.

witness, on the trial for such penalty or forfeiture, such officer may be a witness upon the said trial; but in such case, he shall not receive, nor be entitled to any part or share of the said penalty or forfeiture; and the part or share, to which he would otherwise have been entitled, shall accrue to the United States."

---

Such are the penalties and forfeitures prescribed by the act concerning the registry and recording of vessels, and the mode of recovering and distributing the same. Two other acts have been passed on this subject, the one on the 27th June, 1797, and the other on the 27th March, 1804; but as neither of these impose any penalty or forfeiture, they claim no particular notice in the present work.

---

\*  
CHAP. XXXVI.

OF THE MITIGATION OR REMISSION OF THE FORFEITURES,  
PENALTIES AND DISABILITIES ACCRUING UNDER THE  
PROVISIONS CONTAINED IN THE FOUR PRECEDING CHAP-  
TERS.

---

SECT. I.

1. *By the secretary of the treasury on report of a district Judge.*—An act (a) passed on the 3d March, 1797, by which, "Whenever any person or persons, who shall have incurred any fine, penalty, forfeiture or disability, or shall have been interested in any vessel, goods, wares or merchandise, which shall have been subject to any seizure, forfeiture, or disability, by force of any present or future law of the United States, for the laying, levying or collecting any duties or taxes, or by force of any present or future act, concerning the registering and recording of ships or vessels, or any act concerning the enrolling and licensing ships or vessels employed in the coasting trade or fisheries, and for

(a) Laws U. S. vol. iii. p. 402.

regulating the same, shall prefer his petition to the judge of the district, in which such fine, penalty, forfeiture, or disability shall have accrued, truly and particularly setting forth the circumstances of his case; and shall pray, that the same may be mitigated or remitted, the said judge shall enquire, in a summary manner, into the circumstances of the case; first, causing reasonable notice to be given to the person or persons claiming such fine, penalty, or forfeiture, and to the attorney of the United States, for such district, that each may have an opportunity of shewing cause against the mitigation or remission thereof; and shall cause the facts which shall appear upon such enquiry, to be stated and annexed to the petition, and direct their transmission to the Secretary of the Treasury of the United States, who shall thereupon, have power to mitigate or remit such fine, forfeiture, or penalty, or remove such disability, or any part thereof, if, in his opinion, the same shall have been incurred without wilful negligence, or any intention of fraud in the person or persons incurring the same; and to direct the prosecution, if any shall have been instituted for the recovery thereof, to cease and be discontinued, upon such terms or conditions as he may deem reasonable and just."

2. *On a report from any state court.*—By the second section of this act, "The judicial courts of the several states, to whom, by any of the said acts, a jurisdiction is given, shall and may exercise all and every power in the cases cognizable before them, for the purpose of obtaining a mitigation, or remission of any fine, penalty or forfeiture, which may be exercised by the judges of the district-courts, in cases depending before them."

The fourth section of this act limited its duration to two years, but by an act (*a*) passed on the 11th of February, 1800, this section is "repealed and the residue of the act is continued in full force without any limitation of time."

## SECT. II.

By a late act of congress passed on the 27th March, 1804, section third, it is enacted, that "Any person or persons guilty of any crime arising under the revenue laws of the United States, incurring any fine or forfeiture by breaches of the said laws, may be prosecuted, tried, and punished, provided the indictment or information be found at any time within *five years* after committing the offence, or incurring the fine or forfeiture, any law or provision to the contrary notwithstanding."

## CHAP. XXXVII.

OF PROCEEDINGS BY JUDGES OF THE SEVERAL STATE COURTS AND JUSTICES OF THE PEACE, IN CASES OF CONTESTED ELECTIONS FOR MEMBERS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES.

By an act (*a*) of congress passed on the 23d of January, 1798, entitled "*An act to prescribe the mode of taking evidence in cases of contested elections for members of the House of Representatives of the United States, and to compel the attendance of witnesses.*"— Authority is given to the judges of the supreme state courts, and to judges of the county-courts of common pleas, to the mayors, recorders, and intendants of the several cities, in the different states, and where magistrates of this grade, shall not reside within a "district for which an election about to be contested, shall have been held, "then to any *two justices of the peace* residing within such district," who are authorized to proceed *jointly*, to execute the powers conferred, and in the manner directed by this act.

## SECT. I.

*What judicial magistrates to summon witnesses.*—By the first section of this act, "Where any person, from and after

*a* Laws of the U. S. vol. iv. p. 56.

the passing of this act, shall intend to contest an election for any member or members of the House of Representatives of the United States, or to support any such election so intended to be contested, and shall be desirous of obtaining testimony respecting such election, it shall be lawful for such person to make application to any judge of the courts of the United States, or to any chancellor, justice, or *judge of a superior or county court, or court of common pleas of any state*, or to any *mayor, recorder or intendant of any town or city*, who shall, thereupon, issue his *warrant of summons*, directed to all such witnesses as shall be named to him by such applicant, or his agent duly authorized for that purpose, and requiring the attendance of such witnesses, before him, at some convenient time and place, to be expressed in the warrant, in order to be then and there examined, in the manner herein after provided, touching the subject matter of the aforesaid application."

---

SECT. II.

*Manner of serving summons.*—"Every such witness, as is above mentioned, shall be duly served with such warrant, by a copy thereof being delivered to him, or her, or left at his or her usual place of abode; and that such service shall be made a convenient time before the day on which the attendance of such witness is required, which time the magistrate issuing the warrant is hereby authorized and required to fix, for each witness, at the time of issuing it, having respect to the circumstances of such witness, and the distance of his or her residence from the place of attendance."

---

SECT. III.

*Penalty for not attending in pursuance of summons.*—"Any person, being summoned in the manner above directed, and refusing or neglecting to attend, pursuant to such summons, unless in case of sickness, or other unavoidable accident, shall forfeit and pay the sum of twenty dollars, to be reco-

vered, with costs of suit, by the party at whose instance the warrant of summons was issued, and for his use, by *actions of debt* in any court, or before any other tribunal of the United States, or any state, having jurisdiction to the amount of such penalty."

---

SECT. IV.

*Notification to the opposite party, &c.*—"The magistrate issuing the aforesaid warrant of summons, shall, at the time of issuing it, cause to be made out, under his hand, and delivered to the said applicant, or his agent authorized as aforesaid, a notification directed to the opposite party, and stating the time and object of the aforesaid application, the name of the applicant, and the time and place fixed for the examination of the witnesses; which notification the said applicant, or his agent as aforesaid, shall cause to be served on the said opposite party, by delivering to him, or leaving at his usual place of abode, a copy thereof, a convenient time before the day fixed for the aforesaid examination; which time the magistrate granting the said notification shall fix, at the time of granting it, having respect to the distance of the said party's place of residence from that appointed for the examination; which examination shall not be proceeded in, unless proof be made by affidavit in writing, of the due service of such notification, or unless the party on whom such service is hereby directed to be made, shall attend at the time and place aforesaid, by himself or his agent duly authorized; which consent shall be certified by the magistrate."

---

SECT. V.

*Witnesses to be examined on oath or affirmation.*—"All witnesses who shall attend, pursuant to the said summons, and all other witnesses who shall be produced at the time and place aforesaid, by either of the parties, or their or either of their agents duly authorized, shall then and there be examined on oath or affirmation, by the magistrate, who issued the warrant of summons aforesaid, or, in case of his

absence, by any other such magistrate as is authorized by this act to issue such warrant, touching all such matters and things respecting the election about to be contested, as shall be proposed by either of the parties aforesaid, or by their, or either of their agents duly authorized; the testimony given on which examination, together with the questions proposed by the parties aforesaid, or their agents, or either of them, to the witnesses, respectively, the said magistrate is hereby authorized and required to cause to be reduced to writing, in his presence, and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses, respectively: After which, he shall transmit the said testimony, duly certified under his hand, covered and sealed up, to the clerk of the House of Representatives of the United States, for the time being, together with a copy of the warrant of summons and notification issued in that behalf, and the original affidavit proving the service of such notification."

---

SECT. VI.

*What proceedings to be had in case the judicial officers mentioned above cannot attend.*—"In case any judge, justice, chancellor, mayor, recorder or intendant as is aforesaid, to whom the application herein mentioned shall be made, shall, by reason of sickness, necessary absence, or unavoidable accident, be rendered unable to attend, at the time and place fixed for the examination aforesaid, it shall be lawful for him to certify the matter, and the proceedings had by him in that behalf, to any other magistrate of any of the descriptions aforesaid, which said magistrate, thereupon, shall be, and hereby is authorized to attend at such time and place, and to proceed touching the said examinations, in all respects, as the magistrate issuing the warrant of summons, might have done, by virtue of this act."

---

SECT. VII.

*Two justices of the peace empowered to act in certain cases.*—"Where no such magistrate as is herein authorized to re-

ceive applications as aforesaid, and proceed upon them, shall reside within any district for which an election about to be contested shall have been held, it shall be lawful to make such applications to *any two justices of the peace* residing within the said district, who are hereby authorized in such case, to receive such application, and *jointly* to proceed upon it in the manner herein before directed."

---

SECT. VIII.

*Allowance to witnesses and how the same may be recovered.*—“Every witness attending by virtue of such warrant of summons as is herein directed to be issued, shall be allowed the sum of seventy-five cents for each days attendance, and the further sum of five cents, for every mile necessarily travelled in going and returning, which allowance shall be ascertained and certified by the magistrate taking the examination, and shall be paid by the party at whose instance such witness was summoned: And such witness shall have an action for the recovery of the said allowance, before any *court or magistrate having competent jurisdiction*, according to the laws of the United States, or of any state, in which action the *certificate* of the magistrate taking the said examination shall be evidence.”

---

SECT. IX.

*Fees to the officers employed.*—“Each judge, justice, chancellor, mayor, recorder, intendant and *justice of the peace*, who shall be necessarily employed, pursuant to the directions of this act, and all sheriffs, constables, or other officers who may be employed to serve any of the warrants of summons or notifications herein provided for, shall have and receive from the party, at whose instance such service shall have been performed, such fee or fees, as are or may be allowed for similar services in the states wherein such service shall be rendered, respectively.”

[*Warrant of summons.*]—This is a peculiar phrase and wholly unknown to the common law. A *summons* and a *warrant*, are two very distinct writs. The former, like a

*subpœna*, is merely to give a party legal notice to appear before some judicial authority; the latter, like an *attachment*, is to *arrest* and to bring him by force, before such authority. But, notwithstanding the alternate use of the words *summons* and *warrant* in this act, (which certainly could never have been drawn by a lawyer) it is clear that the intention of the legislature was, that the process of *summons*, with a penalty of *twenty dollars* in case of the witness disobeying the same, should be the process used. This act was limited to continue in force "until the end of the sixth session of the sixth congress," which closed in the year 1800. Prior to its expiring, an act (*a*) passed, viz. on the 22d of April, 1800, continuing it in operation for the further "term of *four years* and no longer." It will, of course, expire on the 22d day of April, 1804, unless continued by the present, or hereafter revived by a future congress.



### CHAP. XXXVIII.

#### OF TAKING SURETY OF THE PEACE, AND FOR GOOD BEHAVIOUR UNDER THE LAWS OF THE UNITED STATES.

We have already seen (*b*) that not only the judges of the courts of the United States, but that all *judges and justices of the courts of the several states*, are authorized in cases arising under the constitution and laws of the United States, to take *security of the peace*, and for the *good behaviour* of persons threatening to disturb the public peace, or putting others in fear of their persons or property.

This plan of *preventive justice* we derive from the common law of England. In the exercise of the authority thus given, our magistrates are therefore to be regulated by the rules of the same law.

This security is said to consist in obliging the suspected person or offender (for it sometimes constitutes a part of the punishment of a past offence) to be bound with one or more sureties in an obligation called a *recognizance* to the

(a) Laws of the U. S. vol. v. p. 92.

(b) See p. 22-23 before.

United States, taken in court, or before one of the judges or justices of a court, and entered on record, by which the party or parties acknowledge himself or themselves to be indebted to the United States in the sum required, with condition to be void, if the party shall appear at court on a certain day; and in the mean time shall *keep the peace* either *generally* towards the citizens of the United States, or *particularly* in regard to the person who sues for the security; or if it be for *good behaviour*, then on condition that the party shall demean and *behave himself well* for the time limited, *generally* or in relation to one or more persons, as the case may be. This recognizance if taken by the judge of a state court, should be regularly returned to the court before which the offender is bound to appear. And if the conditions of such recognizance be broken by any violation of the peace or by any misbehaviour, the penalty mentioned in the recognizance becomes forfeited, and the party and his sureties may be sued for the sums in which they are respectively bound.

*Who may be bound to keep the peace &c.*—By the common law, one justice of the peace may require sureties of another justice, or of a judge of a Superior Court—and of all other persons except, of idiots, lunatics, and madmen. Husbands and wives may demand surety of the peace against each other—but wives and infants (persons under the age of 21.) cannot be bound themselves, being incapable of engaging for any debt under seal or by recognizance. They must give security by their *friends* only.

*What will discharge a recognizance.*—A party may be discharged by a legislative act, by the death of the principal party bound thereby, if not before forfeited; by an order of the Court to which the recognizance is returned at their discretion; or at the request of the person in whose behalf it was granted, or if the prosecutor does not appear and pray its continuance.

*In what cases security may be required.*—1. To keep the peace, any justice may bind men over, who, in his presence, quarrel or fight, or threaten to kill or beat another;

or go about with unusual weapons or attendants, to the alarm of the people; or such as he knows to be common barrators, such as are brought before him by the constable for a breach of the peace, and such as having been before bound, have broken it, and forfeited their recognizances. Also, where any person hath just cause to fear, that another will burn his house, or do him a corporal injury, by killing, imprisoning, or beating him, or that he will procure others to do it; he may insist on such persons being bound over to preserve the peace, and every justice of the peace is obliged to grant it, if he demands it upon oath, alledging that he is in fear of his life or bodily harm, and that he does not require such security out of malice or mere vexation. This is called *swearing the peace* against another; and if the party does not find such sureties as the justices shall require, he may be committed till he does.

Such recognizance, if special, becomes forfeited by an actual violence, assault, or menace to the person of him who demands it: if it be general, it is forfeited by any unlawful action, that either tends to, or is, a breach of the peace; by a commission of a variety of offences, or any private violence done to any man; but a bare trespass upon the lands or goods of another, unless attended with a wilful breach of the peace, does not forfeit it. Neither are mere reproachful words, calling a man a liar or a knave, any breach of the peace, unless they amount to a challenge to fight.

2. Sureties for *good behaviour* include security for the peace and something more. Justices are empowered to bind over to good behaviour, all that are *not of good fame*, wherever found. Under which words, it is held that a man may be bound over for offences against good morals, as for haunting bawdy houses with women of bad fame, or for keeping such women in his own house; for words tending to scandalize the government, or in abuse of the officers of justice, especially in the execution of their office; for being a night walker, an

caves-dropper, for keeping suspicious company, such as are reported to be pilferers or robbers—for being a common drunkard, a cheat, an idle vagabond, or for any other misbehaviour, that tends to his being thought a person not of good fame. An expression, indeed, that gives great latitude to the magistrate : but if he commits a man for want of sureties, he must express the cause of such commitment with tolerable certainty, and must take care that such cause be a good one.

Recognizances for good behaviour, may be forfeited by the same means as for the security of the peace, or by committing any of those acts of misbehaviour which the recognizance was intended to prevent ; but not by barely giving fresh cause of suspicion of that which, perhaps, may never actually happen.”

---

## CHAP. XXXIX.

### OF PROCEEDINGS IN CRIMINAL CASES UNDER THE LAWS OF THE UNITED STATES.

---

By the thirty-third section of the act of congress for the “ establishment of the judicial courts of the United States, the magistrates of the *several states* are empowered to “ *arrest, imprison and bail, as the case be,*” all persons guilty of any crime or misdemeanor, in violation of a law of the United States. Hence it must appear evident that a correct knowledge of the *mode of proceeding* which should be observed in order to bring offenders against the laws of the union to justice, must be of no small importance to the judicial magistrates of the several states.

For this purpose it will be useful to enquire and ascertain what is the general law on the subject.

1. Of Arrest.
2. Of Commitment.
3. Of Bail in Criminal cases.

SECT. I.  
OF ARRESTS.

1. *By warrant.*—In all cases it is prudent, though not in all cases *necessary*, that the party demanding a warrant should be examined under oath; that his examination should be reduced to writing, and that he should be bound over to appear and give testimony before the court having cognizance of the offence.

A person *suspected* of having committed a felony, may be apprehended and brought before a magistrate for examination, and this whether the suspicion arise in the mind of the magistrate himself, from facts within his own knowledge, or from those stated to him on oath.

“The warrant should be under the seal of the justice, should set forth the time and place of granting, the cause for which it is granted, and should be directed to the constable, or other peace-officer, (or it may be to any private person by name) requiring him to bring the party generally before *any* justice of the peace for the county, or only before the justice who granted it; in which last case, the warrant is called a *special* warrant. A *general* warrant to apprehend all persons suspected, or guilty of any crime, without naming or describing any one, is illegal, and will not justify the officer who acts under it: but if properly proved (though the magistrate, in granting such warrant, should exceed his power) will indemnify the officer. When a warrant is received by the officer, he is bound to execute it, so far as the jurisdiction of the magistrate and himself extends.”

The warrant of a judge of the supreme court of the United States, must extend to all the states of the union; of a district judge, or of one of the judges of a supreme or superior state court; to the whole of a state or district; but the warrant of a justice of the peace, or of a judge of a city or county court, extends no further than the city or county of which he is a magistrate.

2. *Of arrests by officers without warrant.*—If a breach of the peace or a felony be committed in the presence of a justice of the peace, he may himself, or he may *by word*,

command any person to apprehend the offender, and such verbal command is a sufficient authority without writing; but if the offence is not committed in his presence, he must issue his *warrant in writing*. "The sheriff and coroner also, without a warrant, may apprehend any felon within the county. A constable may also, without warrant, take up any person breaking the peace in his presence, and carry him before a justice, and in case of a felony committed, or such a wound given as may occasion felonious death, he may, on probable suspicion, apprehend the offender, and for that purpose is justifiable in breaking open doors, even without a warrant, provided he has first asked for admittance. Nay, he may kill the felon, if he cannot otherwise be taken: and if he, or either of his associates, be killed in such attempt, it is murder in all concerned. Watchmen, such as keep watch in all towns, from sun-setting to sun-rising, or such as are mere assistants to the constable, may, by virtue of their office, arrest all offenders, especially night-walkers, and commit them to custody till the morning.

"Any private person present (more especially a peace officer) is bound by law, when any felony is committed, to apprehend the offender, on pain of fine and imprisonment, if he escapes by the negligence of the standers-by: and to follow such offender, he may break open any doors; he may even justify killing him, if he cannot be taken alive; and should any be killed in endeavouring to apprehend him, it is murder. A private person may also arrest a felon or other person on suspicion; but he must not break open a door to do this; and if either party kill the other in the attempt, it is manslaughter."

## SECT. II.

### OF BAIL AND COMMITMENT.

I. *Of cases in which bail must be taken.*—The thirty-third section of the act (a) of congress for the establishment of the judicial courts of the United States, after authorizing

(a) Laws of the U. S. vol. I. p. 73.

the magistrates of the individual states to "arrest, imprison, or to bail offenders against the laws of the United States," provides further, that "Upon all arrests in criminal cases, bail shall be admitted, except where the punishment may be death, in which cases it shall not be admitted but by the supreme or circuit court, or by a justice of the supreme court, or a judge of a district court, who shall exercise their discretion therein, regarding the nature and circumstances of the offence, and of the evidence, and the usages of law. And if a person committed by a justice of the supreme or a judge of a district court for an offence not punishable with death, shall afterwards procure bail, and there be no judge of the United States, in the district to take the same, it may be taken by any judge of the supreme, or superior court of law of such state."

And by the *eighth* section of the amendment to the constitution of the United States, it is expressly declared, that "*excessive bail shall not be required.*" Still, however, what shall be considered as *reasonable* and what *excessive* bail must be referred to the sound discretion of the judicial magistrate. If, for instance, in the case of an offence *not capital*, such bail should be required as is manifestly beyond the reach of the offender, and renders his commitment inevitable; or if it appears that passion or prejudice, evidently influenced the determination of a magistrate, in fixing the amount in which a party charged with violating a law of congress, should be held to bail; on application to a judge of a court of the United States, or to a judge of a superior state court, relief without question would be granted.

On the other hand, if the magistrate takes *insufficient* bail, he is liable to be fined if the criminal does not appear. To refuse or to delay admitting a person to bail, who is bailable, is an offence at common law, for which also a magistrate is liable to punishment.

When, therefore, a person is brought before a judicial officer, charged with any offence, it is the duty of such officer, without delay, to examine into the circumstances of his case, and if upon inquiry it *manifestly* appears that no

such offence was committed, or that the suspicion entertained against the person is altogether groundless, in such case only, it is lawful to discharge him. But if the magistrate finds strong grounds to believe the accused, guilty of the offence with which he is charged, he should then take his examination in writing, which, after being distinctly read over should be signed by him. The depositions, also, of the witnesses should be taken and by them respectively signed. On such examination when the prisoners guilt clearly appears, he is immediately to be committed to prison, or to be admitted to bail, for his appearance to answer the charge against him.

This commitment being therefore only for safe custody, wherever bail will answer the same purpose, it ought to be taken, unless expressly prohibited by some act of congress. Let us then distinctly enumerate the cases in which the judges of *inferior* state courts, and justices of the peace, are by the express prohibition of the national legislature prevented from taking bail, and in which the person *must* be committed to prison, for safe custody, unless admitted to bail by a judge of one of the courts of the United States, or by a judge of a supreme or superior state court.

II. *Of cases in which bail cannot be taken by the judge of an inferior state court, or justice of the peace.*—This prohibition by the act of congress is confined to *capital* cases, that is to such in which the punishment on conviction of the offence, is *death*. And these,

1. *Treason*, as defined by the constitution.
2. *Murder* within a fort, arsenal, dock-yard, magazine, or any other place or district under the sole and exclusive jurisdiction of the United States, including herein, by necessary implication, the crime of *duelling*.
3. *Murder*, or *robbery* at sea.
4. Where a captain or mariner of a vessel shall piratically run away with such vessel, or with goods, to the value of fifty dollars, or yield up such vessel voluntarily to a pirate.
5. Where a seaman shall lay violent hands on his commander, to prevent his fighting in defence of his ship or goods, or shall make a revolt in the ship.

6. Where a citizen, under colour of authority from a foreign power, shall commit *piracy* or *robbery*.

7. *Being accessory before the fact*, to any piracy or murder.

8. *Forging* or *counterfeiting*, or *causing* to be forged or counterfeited, any *certificate*, *indent*, or *other public security* of the United States.

9. *Uttering*, offering in payment, or causing to be uttered or offered in payment, any false, forged, or counterfeited certificate, indent, or other public security, with intention to defraud any person, *knowing* the same to be false, forged or counterfeited.

10. *Rescuing* any person found guilty of a capital crime going to execution; or during execution.

11. *Robbing the mail* of the United States, or any part thereof, and being thereof convicted a *second* time.

12. Or if in effecting such robbery of the mail, the carrier is "*much wounded, or his life put in jeopardy by the use of dangerous weapons.*"

13. *Debasing the public coin*, by any of the officers or persons employed in the mint of the United States, with a fraudulent intent.

14. Or where any of the said officers or persons shall *embezzle* any of the metals, sent to the mint to be coined, or *after being coined*, shall embezzle any of such *coins*.

15. Where any citizen of the United States, or other person, shall go into any town or territory belonging to any nation or tribe of Indians, in amity with the United States, and shall there *kill* any member of such nation or tribe.

16. (a) Where " Any person, not being an owner, who shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy any ship or other vessel unto which he belongeth, being the property of any citizen or citizens of the United States, or procure the same to be done, and being thereof lawfully convicted, he shall suffer death."

17. (a) Where " Any person shall, on the high seas,

(a) These two last offences are declared, and the punishment prescribed, by a law of congress passed on the 27th day of March, 1804. Regularly those clauses should have been inserted in page 39, under the head of " Crimes

wilfully and corruptly cast away, burn, or otherwise destroy any ship or vessel, of which he is owner, in part or in whole, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons, that hath underwritten, or shall underwrite any policy or policies of insurance thereon, or if any merchant or merchants that shall load goods therein, or of any other owner or owners of such ship or vessel, the person or persons offending therein, being thereof lawfully convicted, shall be deemed and adjudged guilty of felony, and shall suffer death."

Such are the cases in which by the laws of the United States, judges of inferior state-courts and justices of the peace, are prohibited from admitting persons to bail, but in which if the offence charged, be proved, or unless the *innocence* of the party charged, be clear and certain, he must be committed to prison, unless admitted to bail by a judge of the United States, or of a superior state court.

In all other cases of crimes and misdemeanors, arising under the constitution and laws of the United States, or treaties with foreign powers, judges of inferior state courts, and justices of the peace, are bound to admit a party charged with the commission of such offence, to bail, on his producing sufficient security, of which the magistrate is to be the judge; but if such offender, either will not, or cannot procure sufficient security for his appearance, the magistrate is then bound to commit him to prison, by a *mittimus* under his hand and seal, which should contain the cause of his commitment, there to remain until delivered by due course of law.

As this commitment is only for the purpose of safe custody, until the party can have a trial, and either be discharged or remitted to the punishment prescribed by law; it is the duty of the magistrate to see that he is treated

made punishable with death, in which judges of inferior state courts and justices of the peace may *arrest* and *imprison*, but not admit to *bail*," but as 144 pages of this work had been struck off before the passing of the above law, it was necessary to introduce in this place the clauses declaring the two last offences.

with humanity, and that his confinement should not be more rigorous than is absolutely necessary for his safe keeping. Some difference should be made between a case of this kind, and where the confinement is in consequence of a *judicial sentence*, after conviction, and where it forms a part of the punishment directed by law.

---

CHAP. XL.

OF PROSECUTIONS FOR OFFENCES AGAINST THE LAWS OF  
THE UNITED STATES.

Having now considered the nature and extent of the authority given to the judges of inferior state courts, and justices of the peace, to "*arrest and imprison*" all persons duly charged with a crime or misdemeanor under an act of Congress. Having also shewn in what cases they cannot admit to bail, and in what other cases they are bound to allow it, provided the party charged is willing and able to produce satisfactory security for his appearance, to answer the charge alleged against him; we proceed, to state, for the information of the American magistrate, the ordinary course of proceeding against persons accused of violating a law of the United States. Where an offender has not already been "*arrested, imprisoned, or bound over with sureties,*" to appear before a certain court of criminal jurisdiction, he may be *presented* by a grand jury for the breach of any law cognizable by the court which they are summoned to attend.

A *presentment* is therefore described to be the cognizance taken by the grand jury, of any offence from their own knowledge and observation; such as the presentment of a nuisance, a libel, &c. This presentment, shortly stating the facts constituting the offence, is to be handed to the *law-officer* appointed to conduct suits on behalf of the state, or United States, who thereupon forms an *indictment*, which must be submitted to the examination and decision of the grand jury.

*An indictment* is a formal written accusation of one or more persons, for some crime or misdemeanor, at the suit of a state, or the United States, presented on oath by a grand jury.

*Grand juries* consist, or ought to consist, of the most respectable freeholders in a city or county. They are usually selected by a marshal of the United States, or the sheriff of a county. The number commonly summoned is twenty-four, but of these not less than twelve nor more than twenty-three are to be sworn, that twelve may be a majority. After being impanelled, the foreman of the jury is sworn or affirmed, "That he will diligently inquire, and true presentment make, of all such matters and things as shall be given him in charge. The United States' counsel (the state's or commonwealth's, as the case may be) the prisoner's and their (the grand jury's) own, he will keep secret—that he will present no man from envy, malice, or ill-will; nor leave any one unpresented from fear, favour or affection, reward, gain or hope thereof, but will present all things well and truly as they shall come to his knowledge." Each of the jurors, if not conscientiously scrupulous of taking an oath, is then to be sworn—"That the oath which their foreman has taken, they will respectively observe and keep on their and each of their parts." But if there should be any, who, from scruples of conscience, decline taking an *oath*, in such case, they are to be *severally affirmed* in the words used in the foreman's oath. When the jury have all been sworn or affirmed, their names are distinctly to be called over. Silence is then commanded under pain of imprisonment, while the charge of the court is delivered to the jury. It is then usual for the presiding judge of the court to explain their duties, and to point their attention to the objects of their inquiry. They then withdraw and frame presentments or receive indictments, which are preferred in the name, and on behalf of the state, or the United States, as the case may be. The finding of an indictment is only in nature of an *accusation*, the truth or falsehood of which is afterwards to be ascertained by a petty jury; no evidence ought, there-

fore, to be admitted except on the part of the prosecution. The business of a grand jury is not to *try* the person charged, but simply to inquire and pronounce, on their oath, whether or not there is sufficient ground to call on the party accused to answer the accusation.

The evidence on the part of the public being heard, if twelve of the grand jury agree in thinking the charge *proved*, the foreman indorses on the indictment—"A true bill." It is then to be returned and publicly delivered to the court, and to be filed as a record; but if a majority of the jury are not satisfied with the evidence on the part of the prosecution, but consider the charge as groundless, the foreman indorses on the indictment—"Ignoramus," or "Not a true bill," and signs his name. On this the party accused is entitled to his discharge, though a subsequent bill may be presented to another grand jury. But should the grand jury agree in finding "A true bill" against the party accused, process may be issued to bring him in, to answer the charge against him, unless for this purpose he has already been bound by recognizance to appear before the court having jurisdiction of the case.

When he appears, the indictment is distinctly to be read to him, and he is bound to *plead* to the indictment either specially or the general issue. If he intends to avail himself of any defect in the indictment, he should plead the matter *specially*. But where there is a striking informality in the indictment, the court, on motion, will order it to be quashed. This, however, will not prevent another bill from being presented before a grand jury for the same offence.

Yet it is clear that the court in no case are bound *ex debito justicie*, (as a matter of right) to *quash* an indictment, but may oblige the defendant either to plead, or to demur to it, and this they generally do where it is for a crime of an enormous or public nature, as perjury, forgery, &c. Nor will the court quash an indictment removed by *certiorari*, if a recognizance for the trial of it has been forfeited.

*Of indictments.*—It would not comport with the design of this work, to go extensively into the doctrine of indict-

ments. It may, however, be of use to point out some of the *leading* principles of the law, applicable to this doctrine—

1. Then an indictment should very fully and distinctly set forth the offence of which a party is accused. It should precisely and exactly pursue the law forbidding the offence, if grounded on a special act of the legislature. The charge should be positive and not implied.

2. The person or persons accused, should be well and sufficiently described, with such additions, titles, or occupations, as will prevent all mistake of one person for another. And in all cases where a crime is the joint act of a number of persons, or a number are present, and assisting, so as to be responsible for the crime, they may be indicted and tried jointly or severally; but where, from the nature of the crime, it cannot be committed jointly, or where persons are joined in an indictment when it appears that the crime was not committed jointly; the indictment is bad. Although several are joined in an indictment, part may be convicted and part acquitted. Where sundry persons are present and aiding in the commission of a crime, although they do not the principal fact, yet they are to be charged as having done it, for the act of one is the act of all.

3. The thing wherein the offence is committed, must be described with sufficient certainty.

4. The day and year ought to be expressly stated in the indictment, but should there prove to be a mistake in not laying an offence on the very same day on which it afterwards appears to have been committed, the error is not considered as material.

5. No indictment can be good without shewing some *place* wherein the offence was committed, which must appear to have been within the jurisdiction of the court in which the indictment is taken, and must be alledged in such a manner as is perfectly free from all repugnance and inconsistency.

6. Criminal prosecutions are not within the statutes of amendment. The court cannot, therefore, alter or

amend an indictment after it has once been formed and returned. Should a material error or deficiency, however, be discovered before the grand jury is discharged, it may be returned to them, by whom it may be amended.

7. All indictments, grounded on acts of Congress, should conclude against "the peace and dignity of the United States."

8. Where an indictment is grounded on a particular act of the legislature, the title of the act, if recited, must be recited exactly. There must be no repugnancy between the day stated in the indictment, on which the act was passed, and that on which it *actually* did pass.

9. The *tenor* of every act declaring an offence must be pursued, but a variance no wise altering the *sense* of the act, or a variance from the preamble or any immaterial part of the act is not fatal.

10. It is not always necessary to pursue the *very words* of an act, provided, without them the fact in which the offence consists can be expressly, fully, and certainly alleged; yet, if not pursued, no circumlocution or intendment will make an indictment good, which does not bring the fact prohibited or commanded, in the doing or *not* doing of which the offence consists, within all the material words of the law.

11. Where the indictment is grounded on an express act of the legislature, the indictment should conclude—"against the form of the act in such case made and provided."

12. The caption of every indictment should set forth, with proper certainty, the court in which, the jurors by whom, and the time and place at which, such indictment is found.

13. Where a person is indicted upon a *legislative act*, and the evidence does not bring the case within the law, but *proves* the offence charged in the indictment, as an *offence at common law*, the defendant may be found guilty at common law, and the words—"against the form of the

See ante, p. 13.

not in such case made and provided," shall be rejected as surplusage.

*Of informations.*—Another mode of proceeding, which may be used in *some* cases against persons guilty of offences against the laws of the United States, is that of *information*.

Informations are of two kinds: 1. Where they are wholly at the suit of the public, for some crime or misdemeanor; and, 2. Where they are at the suit of the United States, or of the United States and of a party, who, in their name, sues for some penalty or forfeiture, prescribed by an act of the legislature, for the doing, or the omission of some particular thing.

Those of the *first* kind are now generally disused in cases arising under the constitution and laws of Congress, in pursuance of the fifth article of amendment to the constitution of the United States, which prescribes that "no person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of 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."

But those of the second class are expressly authorized by various acts of Congress, and may, therefore, in a great variety of cases, be brought in the courts of common pleas or quarter sessions of the several states.

*Informations* and actions of debt, are both used in suing for those penalties which are inflicted by various acts of congress, as consequent on certain transgressions or omissions; but *information* is the proper mode of procedure in a common law court, where a *forfeiture*, not of a sum of money, but of some *specific thing*, is declared; the action of *debt* is used where the forfeiture is of a precise sum of money. (a)

The several acts of congress direct to whom the forfeitures or penalties shall accrue. Sometimes they are given wholly to the party aggrieved; sometimes to the United States; sometimes to the officers of the customs, or a moiety to them and a moiety to the United States, or one

(a) Woodeson, vol. iii. p. 98.

part to the government, and the other to the informer or party suing. Wherever a part only accrues to the prosecutor, he is then said to sue in a *qui tam* action, the process and declaration expressing, that he sues as well for the United States, as for himself, and must be in his own name, unless otherwise directed by the act of the legislature.

The information or declaration, in those cases, usually begins with reciting the essential part of the law; it then proceeds to the offence or forfeiture, and, lastly, expresses that an action has accrued to the plaintiff, to demand and have the sum or thing so forfeited, which, however, the defendant has not paid. If there be a distinct proviso in the act, which may, perhaps, be an excuse from the penalty, *that* should properly come from the defendant, by way of special plea, or as proof of the general issue; but if it be incorporated with the enacting clause on which the plaintiff proceeds, he must set it forth, and state that the party sued is not within any of the exemptions. In such *qui tam* action or information, the prosecutor is liable to a nonsuit, for it is the suit of the *informer*, and not of the United States. These prosecutions, on penal acts, must be laid in the proper county where the offence was in fact committed, and are in general subject to the same rules which obtain in cases of indictments.

By a clause in the ninety-first section of the act (a) for "the collection of duties on impost and tonnage," *informers*, whether officers of the United States or not, may be witnesses in cases where, by law, they are entitled to a share of the penalty or forfeiture; but, in such case, *their* share of the penalty reverts to the United States.

And by the fifth section of the "act (b) to regulate processes, &c. passed on the 8th May, 1792, it is provided, that "If any *informer* or plaintiff on a penal statute, to whose benefit the penalty or any part thereof if recovered, is directed by law to accrue, shall discontinue his suit or prosecution, or shall be nonsuited in the same, or if upon trial, a verdict shall pass for the defendant, the court shall

(a) Laws U. S. vol. iv. p. 432.

(a) Laws U. S. vol. ii. p. 107.

award to the defendant his costs, unless such *informer* or plaintiff be an officer of the United States, specially authorized to commence such prosecution; and the court before whom the action or information shall be tried, shall at the trial in open court, certify upon record, that there was reasonable cause for commencing the same, in which case no costs shall be adjudged to the defendant."



## CHAP. XLI.

### OF ARRAIGNMENT AND PLEADING.

When a party has been brought before the court, charged with an offence, and the same has been sanctioned by a grand jury, or the court, the indictment or information is to be read to him, and he is called upon either to confess or to deny it. If he voluntarily, and without any undue influence, either from impressions of hope or fear, makes a free confession of his guilt, the court have only to proceed and pronounce the judgment which the law, in such case, has prescribed. Should he altogether refuse to answer, and remain obstinately mute, the court would, in such case, consider such conduct as amounting to a denial of the offence charged, and would probably direct a jury to be impanelled, to try the prisoner in the same manner as if he had pleaded *not guilty*.

If, however, he should be disposed to plead, he might question the authority of the court to take cognizance of his case.

1. *By a plea to their jurisdiction.*
2. If indicted by a wrong name, surname, or addition, he might file a *plea in abatement*. But this would avail but little, as he would then be obliged to disclose his real name, surname, &c.
3. He might *demur* to the indictment or information; but this mode of proceeding is now disused, as an equal

advantage may be had, by a motion to quash the indictment before trial, or a motion in arrest of judgment, after trial.

4. He might offer some *plea in bar* of the prosecution, such as that he was *before* prosecuted, and either convicted, or acquitted, of the same offence; he might plead a pardon, or that he was *non compos mentis*; or the statute of limitations, &c. according to the nature and circumstances of the case.

5. Finally he might tender the general issue of *not guilty*, which is the general mode of traversing a criminal prosecution. Under this plea he could at once controvert the truth of the *facts* alledged against him, and shew, that admitting them to be true, still that he is not guilty of the criminal *intention* charged; or in general, that he is not guilty in *manner and form*, as he stands indicted; in any of which cases, if his *proof* sustains his *plea*, he will be entitled to an acquittal.

---

## CHAP. XLII.

### OF TRIAL AND ITS INCIDENTS.

---

When a prisoner has pleaded the general issue, to an indictment or information, the next step is to ascertain the truth or falsehood of the charge alledged against him. The only mode of doing this, recognized by our laws, is through the intervention of a jury. If, however, the accused has any just ground to believe that either of the jury summoned, is deficient in *age, or freedom*; or has been convicted of a crime, for which he had received an *infamous* punishment; or that he is *related* to the prosecutor; or in any way *interested*; or has exhibited any *prejudice* or *partiality* against the prisoner; on proof of any of the above circumstances, on the challenge of the prisoner, a juror would be set aside.

In some cases the *array*, that is, the whole jury, may be challenged, or objected to; as for example where the prisoner can state some grounds to shew that the sheriff or officer returning the jury, has been guilty of *partiality*; has ex-

pressed a hope for the conviction of the accused, or is known to entertain any degree of enmity against him. So also where the defendant is an alien, he is entitled to a jury *de medietate lingue*, that is, one half consisting of foreigners (if so many can be found in the neighbourhood) and one half, of native citizens.

There are some cases also in which a *juryman* is by law entitled to the privilege of being *exempted* from serving. as where he is superannuated; very infirm or sick; also clergymen, and physicians are generally exempt; counsellors and attornies, always.

By the twenty-sixth section of the act (a) to establish the post-office of the United States, "the post-masters and the persons employed in the transportation of the mail are exempt from militia duties, and *servng on juries*, and from any fine or penalty, for neglect thereof." This clause extends to juries in *state* courts, as well as to those in the courts of the United States.

So also by the act [b] for the regulation of public arsenals and magazines—"All artificers and workmen who are, or shall be employed in the said armories, are by the fourth section of this act, exempted during their time of service from all military service, and *service as jurors in any court*."

But supposing no ground for challenging any of the jury to exist; that by law or usage, they are not exempt from service, and that the cause is fairly at issue; the jury being impanelled, are to be sworn or affirmed, "*well and truly to try the issue joined between the United States, and the prisoner at the bar; and a true verdict give, according to evidence*." What the *nature* of legal evidence, and its various *kinds* are, as admitted in our several courts of justice; will next form the subject of our inquiry and attention.

*Of Evidence.*—As this constitutes the foundation of all judicial proceedings, as well in criminal prosecutions, as in civil actions; it is a matter of the first importance, that judges should be acquainted with those *general rules and kinds* of evidence, which obtain, and are *received*, in the sever-

(a) Laws U. S. vol. iv. p. 521.

(b) Laws of the U. S. vol. v. p. 143.

ral courts of these states, and which are equally binding on every individual magistrate. These, we derive chiefly, almost entirely, from cases determined in English courts. There are however, some few instances in which our national legislature, or courts, have departed from the English system, and have prescribed, or admitted evidence, or varied the general mode of taking it, so as to render it more applicable to our national habits or opinions. This it will be necessary to note carefully, in order to prevent the American magistrate from being led into error by rules laid down in the English law books.

It would not consist with the general design of this work, to go into a *detail* of cases on this subject. A selection of general principles, from authors of approved authority, is all that can be attempted. What respects *parol testimony*, (the evidence of living witnesses,) having most relation to the duties of the judicial magistrate; will demand the most particular attention.

---

## SECT. I.

### GENERAL RULES OF EVIDENCE.

1. The first and most extensive rule on this subject is, (a) "that the best evidence the nature of the case admits of, must be produced; for if it appears that *better* evidence might have been brought forward, the very circumstance of its being withheld, furnishes a suspicion that it would have prejudiced the party in whose favour it is, had he produced it.

2. "The party who makes an *affirmative* allegation, which is denied by his adversary, is in general required to prove it; for the *negative* not admitting, in its nature, of direct proof, the party who denies a fact, is not called upon to give that evidence which can only be circumstantial, till some evidence has been given to prove the fact alledged: but in cases where a man is charged with not doing an act, which by law he is liable to do, a different rule

(a) Peake's Evidence.

prevails, for the law presumes that every man does his duty to society, until the contrary is proved.

3. " Another rule is, that the evidence must be applied to the particular fact in dispute, and therefore no evidence not relating to the issue, or in some manner connected with it, can be received; nor can the *character* of either party, unless put in issue by the very proceeding itself, be called in question, for every cause is to be decided on its own circumstances, and not to be prejudiced by any matter foreign to it.

4. " The law never gives credit to the bare assertion of any one, however high his rank, or pure his morals; but always requires the sanction of an oath or affirmation. It further requires his personal attendance in court, that he may be examined and cross-examined by the different parties, and therefore, in cases depending on parol evidence, the testimony of persons who are themselves conversant of the facts they relate, must in general be produced; for the relation of one who has no other knowledge of the subject than the information he has received from others, is not a relation upon oath; and moreover the party against whom such evidence should be permitted, would be precluded from his benefit of cross-examination.

5. " In some cases, not within the exception as to hearsay evidence, the law receives the memorandum in writing, made at the time, by a person since deceased, if *in the ordinary way of his business*, and which is corroborated by other circumstances, as evidence of the fact it records.

6. " What a party has himself been heard to say, does not fall within the objection as to hearsay evidence. Any thing, therefore, which he admits, or which another asserts in his presence, and he does not contradict, is received as evidence against him; but what is said by his wife, or any other member of his family, in his absence, comes within the rule respecting hearsay evidence, and is therefore rejected.

7. " In cases where positive and direct evidence is not to be looked for, the proof of *circumstances, and facts* consistent with the claim of one party, and inconsistent

with that of the other, is deemed sufficient to enable a court of justice, or more correctly speaking, a jury under its direction, to *presume* the particular fact which is the subject of controversy; for the mind, comparing the circumstances of the particular case with the ordinary transactions of mankind, judges from those circumstances as to the *probability* of the story, and for want of better evidence, draws a conclusion from that before it."

These are the most important *general rules* of evidence, established in the British and American courts of justice, but there are kinds of evidence which it will be of some use to consider and explain, in a brief, yet comprehensive manner.

---

## SECT. II.

### GENERAL RULES IN REGARD TO WRITTEN EVIDENCE.

1. Mere (*a*) comparison of hand writing is not admissible evidence in a criminal prosecution; yet papers found in the custody of the defendant, and the writing thereof being proved to be in his hand, by persons who have seen him write, is sufficient *preliminary* evidence to entitle those who conduct the prosecution to have them read.

2. In (*b*) proving the hand writing of a defendant there is no distinction between that which is legal evidence in a civil action, and in a criminal prosecution, that which is evidence in the one, whether a capital offence or a misdemeanor being evidence in the other.

3. Written or printed papers (*c*) found in the possession of the defendant, may be read against him, in evidence, if accompanied with publication.

4. Letters written and forwarded on their way, for the purpose of treasonable correspondence, whether found in the possession of the defendant or intercepted, may be read in evidence, on a charge of *levying war, or adhering to an enemy, as a proof of treason.*

(a) M'Nally's Rules of Evidence, p. 463.  
(c) *Id.* p. 423.

(b) *Id.* p. 417.

5. The (a) final sentence, decree, or judgment of any foreign court, having competent jurisdiction of the subject determined before them, is conclusive evidence in any other court of concurrent jurisdiction; an acquittal on a criminal charge, in a foreign country, may be pleaded in our courts, in bar of an indictment for the *same* offence.

6. A [b] record of conviction of treason, felony, or any other crime, infamous in its nature, is a conclusive exception and bar to the competency of the person so convicted when offered as a witness.

7. The [c] conviction of a principal, is evidence against the accessory, sufficient to put him on his defence, but it is not *conclusive* evidence against him. He may, by the testimony of witnesses against the evidence of the record, prove that the principal was innocent; and if so, the accessory is entitled to his acquittal.

8. Written [d] evidence, as well as parol, may be explained by the party swearing.

9. The books of public offices, and of public bodies, (which of course are not interested in the event of a suit,) are admissible evidence.

10. By the twenty-second section of an act to establish the post-office of the United States, in all suits brought by the postmaster-general for the recovery of balances due from postmasters "certified copies under the seal of the general post-office of the accounts current of the several postmasters, after the same shall have been examined and adjusted at that office," and "copies of such accounts-current as are lodged in the office of the register of the treasury, certified by the register under the seal of his office; are to be admitted as evidence." [e]

### SECT. III.

#### OF THE VARIOUS KINDS OF EVIDENCE.

1. *Of records.*—The first and highest kind of written evidence, are records; that is, *acts of the legislature*, or the

(e) McNally, p. 463. (b) Id. p. 466. (c) Id. p. 474. | (d) Id. p. 422.  
 [e] Laws U. S. vol. iv. p. 519.

*judicial proceedings* of the national or state courts of law or equity.

The best evidence of these acts or proceedings, without doubt, would be the *original entries* of the same; but as there would be too much difficulty and inconvenience attending the removal of these to any part of the country where suitors might wish them, *copies* of the same, properly authenticated, may be produced as evidence, in all cases, whether of a civil or criminal nature.

2. *Of acts of Congress.*—The usual evidence of the acts of Congress, is the production of the laws published under the authority of the national government. These are all, previously to their publication, collated, or compared with the original rolls containing the acts as they pass, and receive the sanction of the two branches of the legislature, and the *approving fiat* of the President.

As, in some cases, it may be *impossible* to produce the volumes of the laws of the United States, the next best evidence of an act of Congress is, its publication in a *newspaper under the authority of the general government.*

In order to diffuse, throughout the union, an early and general knowledge of the laws of the United States, Congress, on the 15th September, 1789, passed an act, (a) in which they direct that whenever any "bill, order, resolution, or vote of Congress shall have been approved by the President of the United States, or otherwise become a law of the United States, the secretary of state shall, as soon as conveniently may be, after he shall have received the same, cause every such "law, order, resolution, and vote," to be published at least in *three of the public newspapers* printed within the United States."

And by a late act, passed on the 27th, of March, 1804, Congress directs that "the secretary of state shall cause to be published, in one newspaper in each of the *territories* of the United States, where newspapers are printed, the laws which have passed during their late session, and which may hereafter be passed by Congress."

(a) Laws of the U. S vol. I. p. 42.

Accordingly, the secretary of state collates a copy, printed at the seat of government, with the original act as passed by Congress, different impressions of which collated copy are transmitted from the department of state, to one or more printers of newspapers, in each of the different cities or towns of the United States, and from this collated copy, they publish others under the authority of the United States. As these printers are compensated by the public for their service, and are presumed to be under no improper bias, to alter, or misprint the laws of the United States, our courts would probably receive the acts, thus printed, as evidence, where it appeared satisfactorily *that the volumes of the laws could not be had.*

According to the adjudications of the English law, a *private act*, that is, an act respecting an individual, or a limited number of individuals, must be considered not as a *law* or *general rule of action*, but as a *fact* to be proved.

So also all *foreign laws*, or sentences of *foreign courts*, must be proved as *facts*. When controverted, the publication of them, or their mere production under *seal*, is not evidence in any of our courts of judicature unless supported by other proof.

But (a) an act that relates to a *state* or a *county*, would be considered as a *public law*.

---

#### SECT. IV.

#### OF THE AUTHENTICATION OF PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF THE DIFFERENT STATES.

By an act (b) passed on the 26th of May, 1790, Congress direct "that the *records and judicial proceedings of the courts of any state*, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and ju-

(a) Woodeson, vol. iii. p. 363.

(b) Laws of the U. S. vol. i. p. 115.

judicial proceedings authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are, or shall be taken."

And by a late act, supplementary to the foregoing, passed on the 27th of March, 1804, it is declared "that from and after the passing of this act, all records and exemplifications of office books, which are or may be kept in any public office of any state, not appertaining to a court, shall be proved or admitted in any other court or office in any other state, by the attestation of the keeper of the said records or books, and the seal of his office thereto annexed, if there be a seal; together with a certificate of the presiding justice of the court of the county or district, as the case may be, in which such office is or may be kept; or of the governor, the secretary of state, the chancellor or the keeper of the great seal of the state, that the said attestation is in due form and by the proper officer; and the said certificate, if given by the presiding justice of a court, shall be farther authenticated by the clerk or prothonotary of the said court, who shall certify under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or if the said certificates be given by the governor, the secretary of state, the chancellor or keeper of the great seal, it shall be under the great seal of the state in which the certificate is made. And the said records and exemplifications, authenticated as aforesaid, shall have such faith and credit given to them in every court and office within the United States, as they have by law or usage in the courts or offices of the state from whence the same are, or shall be taken.

And by *Sec. 2.* it is further enacted, "That all the provisions of this act, and the act to which this is a supplement, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States, and countries subject to the jurisdiction of the United States, to the public acts, records, office books, judicial proceedings, courts and offices of the several states."

## SECT. V.

## OF OTHER EXEMPLIFICATIONS, AND OF SWORN COPIES.

Copies of the original record, in cases before any court of judicature, or copies of papers removed by certiorari, from an inferior to a superior court, under the seal of the former, are to be received as good evidence. So also copies of proceedings before a justice of the peace, in cases within his jurisdiction, properly certified and under seal, are to be received as evidence. So likewise *office copies* of proceedings in a court of justice, granted and authenticated by an *officer* appointed by the law for that purpose, are admissible evidence. In such cases, a copy not under seal nor sworn to, is received as evidence; but where his certificate does not relate to the trust confided in him by the law, his certificate is of no greater authority than that of any private person, and gives the copy certified no credit whatever. [a] Copies not under seal, nor certified by the officers of the court, must be compared, by some disinterested witness, with the original record, and must be proved under oath, before a court or jury, if relied on as legal evidence.

## SECT. VI.

## RULES IN REGARD TO CONFESSIONS IN WRITING.

1. [b] The confession of the defendant himself taken upon examination in writing before a judicial magistrate, is legal evidence against the party confessing, but the *identity* of this written confession, must be *proved* at the trial, by the magistrate, or clerk, who reduced it to writing, that it is the true substance of what the prisoner confessed, before it can be read as evidence to convict him.

2. [c] In order to make the written confession, evidence, it is not *necessary* to warn the prisoner of the effects of it, or to procure his signature to it in writing; and although

[a] Peake's Evidence, p. 24. [b] M'Nally, p. 37. [c] *ib.* p. 32.

not reduced to writing, confessions before a magistrate or a private person, are always, when proved on oath, received as evidence against a defendant.

3. But the confession of one person cannot be received as evidence against others, because not under oath; and if the confession of a prisoner be taken under *oath*, the law will not permit it to be read against him. (a)

4. Before a written confession be read in evidence, it ought to be expressly testified that it was made *freely*, without any *menace*, or *terror*, or any *kind of influence*, exercised on the *prisoner*; for confessions forced from the mind by the flattery of hope, or the torture of fear, are not to be considered as any evidence of guilt, and of course should be rejected. (a)

5. But although a confession obtained under the impression of fear, or hope of pardon, or taken on the oath of a defendant, cannot be given in evidence; yet if any *facts* arise in consequence of such confession, they may be given in evidence. (a)

6. In cases of felonies and misdemeanors, if the confession of a prisoner be voluntarily made, and regularly proved, at the trial, it is sufficient if the jury believe it to be true, to convict the prisoner, without any corroborating evidence to support it; but a confession, whether by parol or in writing, does not amount to a conviction until the party has pleaded "not guilty," in open court; for the trial of the confession, must be by the (b) petty jury.

7. Where a man's confession is to be made use of against him, it must all be taken together, and not by parcels. Parol evidence of the examination of a prisoner, taken before a magistrate, will not be received, unless it be clearly proved, that in fact such an examination was never reduced to writing. (c)

8. Where it is by law made the duty of a judicial magistrate to take the examination of a prisoner in writing, it shall be presumed that he has done his duty, unless the contrary be expressly proved.

(a) *McNally*, p. 40, 42, 47. (b) *Leach's cases*. (c) *Id.* 51, 52

9. The mere *confession* of a crime, without any one circumstance to corroborate it, is not sufficient to convict a prisoner, unless he should again confess the fact by pleading "guilty," to the indictment. (a)

## SECT. VII.

### OF DEPOSITIONS UNDER THE ACT OF CONGRESS, AND MANNER OF TAKING THE SAME, &c.

In order to facilitate the administration of justice in the courts of the United States, Congress, in the thirtieth section of the "act (b) for the establishment of the judicial courts of the United States," provide, that "when the testimony of any person shall be necessary in any civil cause depending in any district, in any court of the United States, who shall live at a greater distance from the place of trial than *one hundred miles*, or is bound on a voyage to sea, or is about to go out of the United States, or out of such district, and to a greater distance from the place of trial than as aforesaid, before the time of trial, or is ancient, or very infirm, the deposition of such person may be taken *de bene esse* before any justice or judge of any of the courts of the United States, or before any chancellor, justice or judge of a supreme or superior court, *mayor or chief magistrate of a city, or judge of a county court, or court of common pleas of any of the United States*, not being of counsel or attorney to either of the parties, or interested in the event of the cause, provided that a notification from the magistrate before whom the deposition is to be taken, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, be first made out and served, on the adverse party or his attorney as either may be nearest, if either is within *one hundred miles* of the place of such caption, allowing time for their attendance after notified, not less than at the rate of one day, Sundays exclusive, for every twenty miles travel. And in causes of admiralty

(a) Leach's cases, p. 320. (b) Laws of the U.S. vol. i. p. 68.

and maritime jurisdiction, or other cases of seizure, when a libel shall be filed, in which an adverse party is not named, and depositions of persons circumstanced as aforesaid shall be taken before a claim be put in, the like notification as aforesaid shall be given to the person having the agency or possession of the property libelled at the time of the capture or seizure of the same, if known to the libellant. And every person deposing as aforesaid shall be carefully examined and cautioned, and sworn or affirmed to testify the whole truth, and shall subscribe the testimony by him or her given after the same shall be reduced to writing, which shall be done only by the *magistrate* taking the deposition, or by the deponent in his presence. And the depositions so taken shall be retained by such *magistrate* until he deliver the same with his own hand into the court for which they were taken, or shall, together with a certificate of the reasons as aforesaid of their being taken, and of the notice if any given to the adverse party, be by him the said *magistrate* sealed up and directed to such court, and remain under his seal until opened in court. And any person may be compelled to appear and depose as aforesaid in the same manner as to appear and testify in court. And unless the same shall be made to appear on the trial of any cause, with respect to witnesses whose depositions may have been taken therein, such depositions shall not be admitted or used in the cause. *Provided*, That nothing herein shall be construed to prevent any court of the United States from granting a *dedimus potestatem*, to take depositions according to common usage, when it may be necessary to prevent a failure or delay of justice; which power they shall severally possess, nor to extend to depositions taken in *perpetuam rei memoriam*, which if they relate to matters that may be cognizable in any court of the United States, a circuit court on application thereto made, as a court of equity may, according to the usages in chancery direct to be taken."

## CHAP. XLIII.

## OF PAROL EVIDENCE.

Having now considered the general rules relating to written evidence, we proceed to a subject of higher importance to the magistrate, because one, that in practice will more frequently occur; namely, the *testimony of living witnesses*.

All persons are admitted to give evidence in our courts or before magistrates, under oath or affirmation, unless rendered incompetent either by imbecility of understanding—by the infamy of their characters—by their interest in the cause—by relation to one of the parties to the suit—or unless by law *privileged* from examination.

Prior to giving evidence in a cause, a witness in all cases, must be *sworn or affirmed* to declare “the truth, the whole truth, and nothing but the truth.”

A (*a*) *Jew* may be sworn on the books of the Old Testament; a *Mahometan* on the Alcoran; *pagans, or infidels* of any description, also persons of any religious denomination may be sworn according to the ceremonies of the religion they profess, and are admissible witnesses in any cause. A *child* cannot be admitted to give evidence except under oath or affirmation.

In the courts of Great-Britain, in pursuance of an express act of parliament, the *affirmation* of a quaker cannot be received in any *criminal* case; but in the United States, where the religious principles, and pure morals, of this respectable denomination of christians, are well known, and where sincere scruples of conscience are more respected; *their affirmation* is in all cases, regarded as equivalent to the *oath* of other christians. It is considered as an appeal to Heaven for the truth of what they declare, and by our laws, where taken falsely, it is punished in the same manner, as where a false *oath* is taken.

(a) M’Nally, p. 64.

*Judges and jurors* may be witnesses for, or against a defendant on his trial.

Judges, who have sitten on one trial, may be called upon as witnesses for a defendant upon a subsequent trial; for though a judge cannot properly take notice of any thing but such as is *proved*, yet he may and ought to be a witness, if he knows of any thing that is material in regard to what has been tried before himself and others.

*Jurors* may be examined, not only as to the character of prisoners, but as to facts in the cause; but they must be sworn as other witnesses are, and they must give their evidence in open court in the usual way.

An *atheist*, who professes to have no belief in the existence of a God, and of course disbelieves a future state of rewards and punishments; also a person who has no idea of a God or religion, who is altogether ignorant of the obligations of an oath; ought not to be sworn.

---

#### SECT. I.

#### OF PERSONS DISQUALIFIED FROM GIVING TESTIMONY ON ACCOUNT OF THEIR INCOMPETENCY.

1. (a) *From want of understanding*.—All persons examined as witnesses must be fully possessed of their understanding, that is, such an understanding as enables them to retain in memory the events of which they were witnesses, and gives them a knowledge of right and wrong. *Idiots and lunatics*, while under the influence of their malady, not possessing this share of understanding, are excluded; but if they have *lucid intervals*, then during the continuance of such, they may be examined.

(b) Persons *deaf and dumb*, who are thereby deprived of their understanding, cannot be admitted as witnesses, unless through the medium of a person, who is able by signs to interpret their meaning, it appears that they have an idea of a God, and of a future state of rewards and punishments; in which case they are admissible.

(a) Peake's Evidence, p. 81.

(b) M'Nelly's Rules, p. 157.

(a) *Children*, under the age of *fourteen* are not of course, admitted as witnesses. There is no fixed time at which they are to be admitted; for the reason and sense of their evidence is to appear from the questions proposed to them; and although under seven years of age, it has been settled, that an infant if fully sensible of the danger and impiety of swearing falsely, may be sworn and examined.

2. (b) *Of incompetency arising from infamy of character.*—Persons stigmatized by the conviction of a crime of an *infamous* nature are rendered *incompetent* as witnesses. Of such a nature are treason, felony, and every species of what is termed in the law-books, the *crimen falsi*; such as perjury, forgery, conspiracy, barratry, &c. But a conviction of other crimes, although attended with a *punishment* of an *infamous* nature, does not destroy a person's *competency*, however it may affect his *credibility*.

A person once convicted of an infamous crime, remains ever after incompetent as a witness, until this disability is removed, either by a *pardon*, or by a *reversal* of the judgment pronounced in consequence of the conviction. Where this disability forms part of the punishment directed by law, then nothing but a *reversal of the judgment* will restore the person convicted to competency. In other cases a *pardon* will be sufficient for the purpose.

(c) In order to obtain any benefit from this objection to the testimony of a witness, it is necessary that the party who intends to make it, should be prepared with a copy of the judgment regularly entered upon the verdict of conviction; for until such judgment is entered, the witness is not to be deprived of his legal privileges. And although a man cannot be asked any questions tending to convict himself of a crime, he may be asked whether he is *already convicted*, and has suffered the judgment of the law; for his answer to this question can put him to no further peril.

(d) The only case in which a person who stands convicted of an infamous crime, can be admitted to an oath,

(a) *M'Nally's Rules*, p. 149. (b) *Peake's Evidence*, p. 85. (c) *Ibid.*, p. 87.  
(d) *M'Nally*, p. 211.

is in certain cases to exculpate himself by affidavit from a charge made against him.

Although in order to support an objection to the *competency* of a witness, it is necessary to produce a copy of the *record of conviction*, yet in order to impeach his *credit*, parol testimony is admissible in regard to his *general character*. It is admitted to shew a witness to be deficient in moral character, to have the general reputation of being a liar, or to be totally unworthy of credit; but the party who thus impeaches the credit of a witness must confine himself to this *general evidence*; he cannot enquire into particular facts, although the party whose interest it is to *support* his character, may call on the witnesses against him to declare the grounds on which they found their opinions.

The credit of a witness may also be impeached by shewing that he had before made declarations contrary to what he swears, at the trial of a cause.

A party calling a witness is not allowed to call other witnesses to impeach his credit; but if he mistakes facts, other witnesses may be called to disprove his statement.

3. *Of incompetency arising from interest.*—(a) On this subject the general rule now settled is, that “no witness shall be considered as incompetent, unless he be *directly interested*, that is, unless he may be *immediately benefited*, or *injured* by the event of the suit, or unless the verdict to be obtained by his evidence, or given against it, will be evidence for or against him in another action to which he may afterwards be a party.”

Any less degree of interest will go rather to his *credit* than his *competency*. And as in a criminal prosecution or penal action, the question is the same, as in a civil cause in which the witness is interested, the objection goes generally to his *credit*, unless the judgment in the prosecution where he is a witness, can be given in evidence in the cause wherein he is interested. (b)

On this principle, wherever a person is to *discharge* himself by such evidence as would affect the conviction of a

(a) Peake's Evidence, p. 93.

(b) 4 Burr, p. 2253.

prisoner on his trial, such person shall not be permitted to give evidence in support of a public prosecution.

(a) So a person who is bail for a defendant cannot be witness for him, without consent; and in informations on penal statutes, where the informer is entitled to the whole or part of the penalty, he is an incompetent witness, (unless made competent by law;) for he is directly interested in the event of the suit.

Aware of this settled rule of law, Congress, in the last act (b) passed "to regulate the collection of duties on imposts and tonnage," (section ninety-first,) have provided, that "if any officer, or other person entitled to a part or share of any of the fines, penalties, or forfeitures, incurred in virtue of this act, shall be necessary as a witness on the trial for such fine, penalty, or forfeiture, such officer or other person may be a witness upon the said trial; but in such case he shall not receive nor be entitled to any part or share of the said fine, penalty or forfeiture, and the part or share to which he otherwise would have been entitled, shall revert to the United States."

In criminal prosecutions where there are several defendants on trial, and it appears on closing the evidence on the part of the public, that against one or more of them, no evidence has been given, the court will in its discretion, direct a verdict to be given by the jury, in regard to those prisoners, against whom there is no evidence, and on a verdict of "not guilty" being recorded, will suffer the persons so acquitted, to give evidence in behalf of any prisoner or prisoners, at the bar, on trial.

But in cases where the *attorney-general* would make use of a defendant on the part of the prosecution, he must previously enter a *noli prosequi*.

In an indictment or information for usury, the party to the usurious contract cannot be a witness while he has any interest in the question, but after he has paid the money, he is a good witness.

Notwithstanding a penalty may be given to the poor of

(a) M'Nally's Rules.

(b) Laws of the U. S. vol. iv. p. 432.

in certain town or county, the inhabitants of the same are good witnesses on the part of the prosecution. So they may be examined on indictments against the town or county-officers for not repairing the roads, bridges, &c. although the fines, in case such officers are convicted, will go into the public treasury.

In cases also where the party injured cannot derive any immediate benefit from the verdict, as in indictments for assaults or other personal injuries, his testimony is admissible. Nor is it a legal objection on the part of the prosecution, to a witness, that he may derive benefit from the conviction of a defendant in consequence of a reward being offered by law, or by proclamation of the executive authority of a state, or the United States, for the apprehension and conviction of a certain offender. In this and in some other cases of a criminal nature, witnesses, though apparently interested, are from *necessity*, and to prevent the failure of justice, admitted to give evidence. (a) But in general, in order to destroy the competency of a witness, it must appear that he is, or that he actually *believes* that he is (although in fact he is not) to derive a certain and immediate benefit, or to sustain a certain loss, from the event of the suit in question. A future or contingent gain or loss, or a *remote or trifling interest*, will not destroy his competency.

(b) *Interest removed*.—"Not only must the interest exist at the time of the transaction, but it must continue to the time of the trial; and therefore when a witness is interested by being answerable to one of the parties, or will have a demand on that party in case the cause is unsuccessful, a release from the party to the witness, or from the witness to the party, as the case may require, by taking away his interest, restores his competency; and in these cases, if the party who wishes to call the witness, tenders a release to him; and he refuses to accept it, or the witness having a claim, tenders a release on his part, which is refused, he may be examined as a witness; for neither the witness

(a) M'Nally's Rules, p. 117—139.

(b) Peake's Evidence, p. 106.

himself, nor the party in the cause, can exclude his testimony, by an objection on account of his interest, when that interest has in truth been removed."

*Voire dire.*—There are two ways of impeaching the testimony of a witness; either by *proving* him to be interested in the event of the suit, or by examining him on his *voire dire*. In the latter case, before he is sworn *in chief*, he is to be sworn or affirmed (a) "that he will true answers make to all such questions as shall be demanded of him, and will speak the truth, the whole truth, and nothing but the truth." A person may be examined on his *voire dire*, in criminal, as in civil cases. This examination can only go to establish, whether the witnesses can *gain or lose* by the matter in controversy: if it goes to affect his *credit*, the court will not permit (b) it.

On this examination of a witness as to his interest, he may be asked any questions concerning instruments he has executed, without producing those instruments; and if a release is given by, or to the witness for the express purpose of rendering him competent, it should be produced, and the subscribing witness called to prove it.

3. *Of incompetency arising from relation to either of the parties to a cause.*—(c) The general rule on this subject is, "that husband and wife being as one and the same person in affection and interest, cannot be admitted to give evidence *for* or *against* each other, even where such evidence only tends to criminate. The reason on which this rule is founded, is, that if they were admitted to be witnesses *for* each other, they would contradict one maxim of law, "*nemo in propria causa, testis esse debet*," (no one should be a witness in his own cause;) and if *against* each other, they would contradict another maxim, "*nemo tenetur, seipsum accusare*," (no one is bound to accuse himself.) (d)

Nor can the *examination* of the one be made use of against the other, except in a criminal case, where either is aggrieved, and in their *persons*, are the subjects of illegal violence; they are then, from the necessity of the case,

(a) M'Nally, p. 146—7.  
(c) 2 Term Rep. p. 268.

(b) Peake's Evidence, p. 134—5.  
(d) 1 Bl. Com. p. 443.

competent witnesses against each other. Either of them, if in dread of personal injury from the other, may demand surety of the peace against the party threatening. But a wife is not bound to be sworn, or to give evidence against another in case of theft, &c. if her husband be concerned, though her evidence be *material* against the other, and not *directly* against her husband. So where there are several joint defendants to an indictment, the wife of one of the defendants is not a competent witness to be examined for any of the others. A wife may also give evidence against a prisoner, although she entertain a hope that the conviction of such prisoner will tend to procure the pardon of her husband previously convicted of felony; for this influence only affects her *credit*, and not her *competency*.

The rule however which prevents a wife from being a witness for or against her husband, is to be understood of a wife *de jure*, (a lawful wife) and not one merely *de facto*, that is, by force, or by voluntary cohabitation. A woman, therefore, who is taken away and married by violence, or who is married to a man who has another lawful wife alive, is a competent witness against the person so marrying her by force, or by fraud.

There is one more exception to the general rule on this subject, which is, that in high treason a wife is admitted as a witness against her husband; because the public safety is considered as of more importance, than the peace of private families; and because the ties of allegiance, to the sovereign authority under which we live, are considered as more obligatory, than those of any private relation.

But all other relations except husband and wife, as parents and children, brothers and sisters, masters and servants, &c. are competent witnesses for, and against each other.

5. *Of persons privileged from examination.*—By the fifth article of amendments to the constitution of the United States, no person “*shall be compelled in a criminal case to be a witness against himself;*” and at common law, a person is not to be asked, and if asked, is not bound to answer any question, which might subject him to a criminal prosecu-

tion, or which leads to a disclosure of his own turpitude or infamy; although if he has been convicted of an *infamous* crime, and has suffered execution of the judgment, he may be questioned as to that fact. Neither can he be *compelled* to answer a question which might tend to charge him with debt; of course, if *he* cannot be compelled to answer a question that would charge him with debt, a *wife* would be protected from answering a question that would charge her husband.

In like manner, *counsellors, solicitors, and attornies*, to whom facts are communicated professionally, during a cause, are neither obliged nor permitted, (should they *so far forget* their duty as to be willing so to do) to disclose facts so communicated, during the pendency of a cause, or at any future time, *against* the interest of the party from whom they had them. So if a foreigner in communicating with his attorney, has recourse to an *interpreter*, such interpreter is equally bound to secrecy with a counsellor or attorney. But where the attorney, &c. does not gain his knowledge of the facts in question, by the relation of his client, or where they are not stated to a *legal practitioner*, for the purpose of enabling him to conduct a cause, but to a person of *another* profession; the rule does not apply.

A counsel or attorney may therefore give evidence of facts that came to his knowledge previous to his being employed, or if he was present when his client was sworn to any judicial documents, he would be competent to prove the fact of taking such an oath; for it is a fact of his *own knowledge*, and not a matter of secrecy *committed to him* by his client.

So if a counsel or attorney be a witness to a deed produced in a cause, he shall be examined as to the time it was executed. He may also be called to prove his client's hand-writing to a note or any other instrument, and to state a conversation between him and his client relative to the justice of the cause, after it has been concluded.

A *grand juror* is privileged from examination as to any facts appearing before him in that capacity. Being sworn to secrecy, he would not be permitted to relate what was

said or done in private by the members of a grand jury of which he was one. So also a *clerk* attending on a grand jury, would not be allowed to reveal what was given in evidence before such jury. (a)

---

SECT. II.

OF THE EXAMINATION OF WITNESSES.

Having now distinctly considered the cases in which, by the rules of law, persons are altogether precluded from being witnesses in our courts of justice, we proceed to state the *manner* in which witnesses are to be examined, when their testimony is admissible. “ (b) When a witness is not liable to any legal objection, he is first examined by the counsel for the party, on whose behalf he comes to give evidence, as to his knowledge of the fact he is to prove. This examination, in cases of any intricacy, is a duty of no small importance in the counsel; for as on the one hand the law will not permit him to put what are called *leading* questions, viz. to form them in such a way, as would instruct the witness in the answers he is to give; so on the other, he should be careful that he makes himself sufficiently understood by the witness, who may otherwise omit some material circumstance of the case. The counsel retained on the other side, next cross-examines the witness, and the witness not being supposed so friendly to his client, as to the party by whom he is called, he is not restrained to any particular mode of examination, but may put what questions he pleases. Indeed of late years, the rule has been somewhat relaxed in the case of an original examination; and where it evidently appeared that a witness was hostile to the party by whom he was called, and unwilling to answer questions put to him; the examination *in chief* has been permitted to assume the appearance of a cross-examination, and leading questions to be put to a witness. It is impossible to point out the cases in which the general

(a) M’Nally, p. 253.

(b) Peake’s Evidence.

rule of law shall be so departed from; and therefore it must be left wholly to the discretion of the judge, who in general is guided by the demeanor of the witness, and the situation he stands in, with relation to the parties.

“ The party examined must, as was before observed, depose to those facts only, of which he has an immediate knowledge and recollection. He may refresh his memory with a copy taken by himself from a day-book; and if he can then speak positively as to his recollection, it is sufficient; but if he has no recollection, further than finding the entry in his book, the book itself must be produced.

“ Though witnesses can in general speak only as to *facts*, yet in questions of science, persons versed in the subject, may deliver their *opinions* upon oath, on the case proved by the other witnesses. Thus a physician who has not seen the particular patient, may, after hearing the evidence of others, be called to prove on his oath, the general effects of a particular disease, and its probable consequences in the particular case; for though not a particular fact, it is still general information, which the rest of mankind stand in need of, to enable them to form an accurate judgment on the subject in dispute.”

Every witness, whether on his examination *in chief* or cross-examination, has a natural right to *explain* and make clear, the evidence he has given; and if any *doubt* arises after the examination is closed, the court will call on him for an explanation.

---

### SECT. III.

#### OF HEARSAY EVIDENCE.

On the examination of witnesses, the general rule is, that they are to confine themselves strictly to *facts within their own knowledge or belief*; therefore, as no evidence can be received against a prisoner on trial, but in his presence, and as by the sixth article of amendments to the constitution of the United States, “ *he must be confronted with the witnesses against him;*” what a stranger has been *heard to say*,

cannot be legal evidence either *for* or *against* the prisoner. To the foregoing general rule, however, there are one or two exceptions.

1. Hearsay evidence may be admitted by way of *inducement* or *illustration* of what is evidence.

2. The *declarations* of a prisoner himself, respecting facts which apply to the case in question, may be stated *against* him, although they cannot *for* him.

3. What a witness has been *heard to say* at another time, may be given in evidence either to invalidate, or confirm, the testimony which he gives in court.

4. On a trial for murder, (and of course on a *charge* of murder,) the declarations of the deceased, after the mortal wound was given, may be received in evidence against the prisoner, although such declaration was not made in his presence; and although the party wounded did not *express* any apprehension of dissolution. But the declaration of a convict at the place of execution, cannot be given in evidence as the declaration of a *dying person*.

---

#### SECT. IV.

##### OF COMPELLING THE ATTENDANCE OF WITNESSES, &c.

By the sixth article of the amendment to the constitution of the United States, it is provided, that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury, of the state or 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 witnesses against him; to have *compulsory process* for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."

On the application of a prisoner, therefore, or his counsel, the court is bound to direct subpoenas to be issued for such witnesses as the prisoner may believe, or be advised, are necessary for his defence. These subpoenas may "run into any other district" or state, in pursuance of the sixth

section of the [a] act in addition to the act entitled, "An act to establish the judicial courts of the United States, passed on the 2d of March 1793."

By the sixth section of an [b] act passed on the 28th of February 1799, "Witnesses summoned to attend any of the courts of the United States are to be allowed *one dollar and twenty-five cents* for every day they shall attend in court, and for travelling, at the rate of *five cents per mile* from their respective places of abode to the place where the court is holden; and the like allowance for returning."

This provision, by the *letter of the act*, extends only to witnesses attending *the courts of the United States*; but the *spirit of the law*, and the interest of the public, would warrant a court in extending the benefit of the act, to witnesses who are bound over, or subpoenaed to attend a *state court*, in cases of prosecutions, or suits, on the part of the *United States*.

[c] In *civil* proceedings a witness is not obliged to attend unless his expences are tendered to him; but in *criminal* proceedings, the rule is different; the *common law* holding that justice supercedes every consideration of private inconvenience, and that therefore the witnesses are bound unconditionally, to attend the trial upon which they are summoned or bound over, to give their evidence without any remuneration for their trouble and expence. When a witness appears in court, if he refuses to give evidence, he may be committed for a contempt.

---

## CHAP. XLIV.

### OF SUMMING UP THE EVIDENCE, &c.

---

Having now considered the nature, and kind of evidence that is admissible in criminal prosecutions, or suits for penalties, we proceed to consider the *manner* in which it is to be laid before the jury.

[a] Laws U. S. vol. ii. p. 228. [b] *Id.* vol. iv. p. 276. [c] *McNally*, p. 317

The counsel for the prosecution is entitled to open the cause; to state the evidence he proposes to lay before the court and jury. He then produces his witnesses, or his written proof; but if any thing is offered that is not considered as legal evidence, the counsel for the defendant has the privilege of applying to the court, to refuse the admission of the same. The counsel for the prosecution is bound in the examination of his witnesses in general to confine himself to *specific* questions, and not to propose those which are termed *leading* ones; that is, such as put *answers* into the mouth of the witness. When the examination is finished, on the part of the prosecution, the witness may then be *cross-examined* by the defendant's counsel. When this cross-examination is closed, the nature of the defence is next opened to the jury. Witnesses are then examined, and proofs according to the nature of the case, adduced. When the evidence is all closed, the defendant's counsel first sums it up to the jury, with such remarks as appear to him pertinent and useful. The counsel for the prosecution is heard in reply. After which, one of the judges, mostly the first judge, or president of the court, reviews the evidence, and *charges* the jury respecting those matters which are most material for their consideration; presents a dispassionate and impartial statement of facts, divested of the colouring of the counsel, and explains the law arising in the cause.

The jury having heard the charge of the court, if the cause is very plain, and easy of decision, may give a verdict without retiring from the bar; if, however, there is any difficulty in the case, or likely to be a diversity of sentiment, in regard to the verdict they are to give, it is then usual for them to retire. An officer of the court is then sworn that "he will keep the jury in some convenient place by themselves, without meat or drink, fire or candle; that he will not suffer any person to speak to them, till they have agreed on their verdict, nor will he speak to them himself, unless it be to ask them, if they have agreed on their verdict."

Having been sworn to "try the issue in question, and a true verdict to give, according to evidence;" they cannot, regu-

larly, be discharged until they have so agreed. The verdict they return may be either *general* or *special*. A special verdict is where they are in doubt respecting the law; which, after stating the facts particularly, they leave to the determination of the court. If, however, they are satisfied respecting the law, they can at once decide on it, and on the facts, by giving a *general* verdict.

The jury having agreed on their verdict, must return and deliver it in open court, which is recorded by the clerk or prothonotary, and repeated in these words: "Gentlemen of the jury, hearken to your verdict, as the court have it recorded. You say you find for the United States, (or that the prisoner is guilty, or not guilty, as the case may be,) and *so you say all.*"

If the verdict is "*guilty*," the defendant is then said to be *convicted* of the offence with which he stands charged; and the court must proceed to pronounce the judgment of the law. If, however, the verdict is "*not guilty*," the prisoner is then said to be *acquitted*. In the case of a *criminal prosecution*, he can never again be tried for the same offence. In the case of a prosecution by information for a *penalty*, a verdict of acquittal may be set aside, if manifestly against evidence, and a new trial awarded. In cases of *conviction*, where the proceeding is by indictment, if the same be against evidence, the court will set the verdict aside, and order a new trial; but in no instance is this done where a party has been indicted, tried, and *acquitted*.



## CHAP. XLV.

### OF INCIDENTS SUBSEQUENT TO TRIAL.

#### SECT. I.

*Of motions in arrest of judgment.*—In case any material error should have been committed in the *form* of proceedings against a defendant, as for instance, if the indictment or information is obviously deficient in not setting forth and

describing the *person* accused; the time, place, or the material facts constituting the offence; or in case the charge is, for the violation of some particular act of the legislature, and the *tenor* of the act is not strictly pursued; under such circumstances, although the verdict may be *general*, pronounced on the law, as well as the fact, the court will, on *motion*, arrest the judgment, and if on argument the objections shall appear to be well taken, the court will set aside the whole proceedings; but this will be no bar to another prosecution for the same offence, since the prisoner in this case is discharged, not because of his innocence, but for some informality in the pleadings.

So also if there be any misconduct of the jury, as receiving evidence after leaving the bar, casting lots to determine their verdict, whether the defendant shall be convicted or acquitted; his counsel, or that for the prosecution, may allege this fact as a good ground for arresting the judgment. A motion in arrest of judgment may be made at any time after verdict and prior to the judgment being entered up. *Doug.* p. 718.

Should no motion in arrest of judgment be offered, or if offered, should it be over-ruled by the court, or should the defendant be convicted on his own confession, by standing mute, or by the verdict of the jury; it then becomes the duty of the court to pass that judgment on the offender which the law has prescribed. This judgment, however, if in a court of inferior jurisdiction, is not final. The whole proceedings in the cause may be removed by *writ of error*, or *certiorari*, to a superior court, and the judgment there, either affirmed, or reversed, according to the merits of the case.

---

## SECT. II.

### OF THE REMOVAL OF CAUSES FROM AN INFERIOR TO A SUPERIOR COURT.

1. *By writ of error*.—In criminal cases and suits for penalties, writs of error lie from superior to inferior jurisdictions, for correction of all errors apparent on the face

of the record. If the court should render an erroneous judgment upon a plea in abatement, upon a demurrer, or motion in arrest of judgment; or after conviction, if they should render judgment that the defendant suffer a punishment not warranted by law; for either of these causes, the proceedings may be removed by writ of error issuing from a superior, and directed to an inferior court, for the correction of such error.

By the twenty-second section [a] of the judiciary act, "final judgments and decrees in *civil actions and suits in equity*, removed by writ of error into a *circuit court of the United States from courts of the several states*, where the matter in dispute exceeds the sum or value of two thousand dollars exclusive of costs, may be re-examined, and reversed or affirmed" in the Supreme Court of the United States. To this writ of error must be "annexed and returned therewith, at the day and place there mentioned, an authenticated transcript of the record, and assignment of errors and prayer for reversal, with a citation to the adverse party, signed by the judge of a court of the United States; of which the adverse party is to have at least thirty days notice." "But there shall be no reversal in either court on such writ of error, for error in ruling any plea in abatement, other than a plea to the jurisdiction of the court, or such plea to a petition or bill in equity, as is in the nature of a demurrer, or for any error in fact. And writs of error shall not be brought but within five years, after rendering or passing the judgment or decree complained of, or in case the person entitled to such writ of error be an infant, *feme covert*, *non compos mentis*, or imprisoned, then within five years as aforesaid, exclusive of the time of such disability. And every justice or judge, signing a citation on any writ of error as aforesaid, shall take good and sufficient security, that the plaintiff in error shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good." And by the twenty-fifth section of the act above referred to, [b] "a final judgment or de-

[a] Laws of the U. S. vol. i. p. 62.

[b] *Ibid*, vol. i. p. 63.

ere in any suit, in the highest court of law or equity of a state in which a decision in the suit could be had, where is drawn in question the *validity of a treaty, or statute of, or an authority exercised under the United States*, and the decision is *against* their validity; or where is drawn in question the *validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties or laws of the United States*, and the decision is in *favor* of such their validity, or where is drawn in question the *construction of any clause of the constitution, or of a treaty, or statute of, or commission held under the United States*, and the decision is *against* the title, right, privilege or exemption specially set up or claimed by either party, under such clause of the said constitution, treaty, statute or commission, may be re-examined and reversed or affirmed in the Supreme Court of the United States upon a *writ of error*, the citation being signed by the chief justice, or judge or chancellor of the court rendering or passing the judgment or decree complained of, or by a justice of the Supreme Court of the United States, in the same manner and under the same regulations, and the writ shall have the same effect, as if the judgment or decree complained of had been rendered or passed in a circuit court, and the proceeding upon the reversal shall also be the same, except that the supreme court, instead of remanding the cause for a final decision as before provided, may at their discretion, if the cause shall have been once remanded before, proceed to a final decision of the same, and award execution. But no other error shall be assigned or regarded as a ground of reversal in any such case as aforesaid, than such as appears on the face of the record, and immediately respects the before-mentioned questions of validity or construction of the constitution, treaties, statutes, commissions, or authorities in dispute."

2. *Of a removal by certiorari.*—[b] This is a writ which although not particularly named, is clearly within the

[b] See Appendix, for the form of this writ and return thereto.

words of the fourteenth section of the "act for the establishment of the judicial courts of the United States," which provides that the different courts of the United States, "shall have power to issue writs of *scire facias*, *habeas corpus*, and *all other writs* not specially provided for, by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law." It issues to inferior courts and justices of the peace, to remove the record and proceedings from before them to a superior court, for the purpose of correcting any error or irregularity which may have taken place in such record or proceedings. It is to be directed to the inferior court by its proper style, and must be returned by them with the record of their proceedings itself, or the tenor thereof, as directed. When returned, read, and filed, the superior court will, on motion, assign a day for the consideration of the cause; at which time the applicant should state his exceptions, having previously given the opposite party due notice of the same.

If the writ be not duly returned, a rule may be obtained to return it within a reasonable time, or to shew cause why an attachment should not issue. A certified copy of this must be served on the court below, or the justice, and on affidavit of the same, if no good cause is shown, an attachment will be granted.

If the court, or justice to whom the *certiorari* is directed, intends to make a return, they indorse on the writ, "The execution of this writ appears by the schedule hereunto annexed;" which schedule must contain a true account of the whole of the proceedings before the court or justice, under hand and seal.

If the return be false or mutilated, the party may have his action for the same, against the judges or justices making the return; but if true, and the defendant in error intends to maintain the regularity of the proceedings below, he must cause his appearance to be entered in the superior court, and the plaintiff in error, to assign error in the proceedings returned, or that his *certiorari* be *non proffed*. If errors be assigned, and a joinder in error put

in, the cause is set down for argument; after which the court proceeds to affirm or reverse the judgment below.

This writ, must be *allowed* by a judge of a superior state-court, or a judge of the United States, before it can have any effect. On the part of the United States, it is grantable of course; but on the part of a defendant, some specific ground should be stated to the court, or judge, to whom application is made for its allowance, and sufficient bail should be taken for prosecuting it to effect.

[a] This writ is said to lie in all judicial proceedings, in which a writ of error does not lie.—*Ld. Raym.* p. 469.

It is not however allowed after conviction, unless for some special cause; as where the court below is doubtful what judgment to give.—2 *Hawk.* p. 288.

When allowed by an inferior court, it makes all the subsequent proceedings erroneous, except a jury has been sworn, prior to the delivery of the writ; in which case the court may proceed to take a verdict, and may set a fine, to complete their judgment.—*Ld. Raym.* p. 1515.

In this manner, either by *writ of error*, or by *certiorari*, may causes be removed, from an inferior to a superior jurisdiction, for the correction of any error apparent on the face of the proceedings. In admiralty cases, the mode of removal is by *appeal*, in which case an *inhibition* issues to the inferior court, staying all proceedings below, and removing the cause to the superior court for a final hearing and decision.

[a] 1 Burn, p. 422.

## CHAP. XLVI.

## OF PARDON, AND THE REMISSION OF PENALTIES AND FINES.

## SECT. I.

*Of pardon.*—If a prosecution for an offence against a law of the United States, or for a penalty resulting from some neglect or misdemeanor, is not removed to a supreme court in the manner above stated, or the judgment is not arrested in consequence of some defect in the proceedings, the court having cognizance of the cause, will proceed to pass that judgment which the law has prescribed. In criminal cases, however, after verdict and judgment, a defendant may obtain a *reprieve*, or a *pardon*, which in all cases of conviction under a law of the United States, in conformity with the national constitution, must be under the hand of the President, and the seal of the United States. For by the second article of this instrument, “The President *shall have power to grant reprieves and pardons for offences committed against the United States, except in cases of impeachment.*”

A general pardon from the President may be pleaded in bar of any prosecution for an offence against the United States, previous to trial; or after trial and judgment, it may be produced, as a protection from any punishment in consequence of a conviction and judgment.

## SECT. II.

*Of the remission of Penalties.*—All penalties or forfeitures incurred by offences against the revenue system of the United States, we have seen [a] before, may be remitted in part, or altogether, by the Secretary of the Treasury, in pursuance of a certain form, prescribed in an act [b] of Congress passed on the third day of March, 1797.

[a] See before, p. 178.

[b] Laws of the U. S. vol. iii. p. 493.

But in all other cases in which persons shall be convicted of an offence against the laws of the United States, and a certain fine or penalty has been prescribed, the sentence of the law must be carried into effect unless prevented by a pardon of the offender, by the authority, and under the hand, of the President of the United States.

If, however, the judgment of an inferior court has not been arrested for some informality in the proceedings; or removed to a superior court for the correction of some error in the record; if, in case of a conviction for some offence, a pardon of the President has not been obtained; or if a penalty and forfeiture has been incurred for the breach of some provision in the revenue system of the United States, and the same has not been remitted by the Secretary of the Treasury; the court before which the cause has been tried, is then bound to pronounce the judgment prescribed by law, and to direct the sheriff or marshal to see the same duly executed.

### SECT. III.

*Of Punishments.*—We have already considered the *general* nature of punishments: [a] their aim is to correct the offender, and to prevent others from committing like offences. As the present work does not embrace the consideration of punishments in *capital* cases; as the cognizance of these, except in one or two extraordinary instances, is confined exclusively to the *courts of the United States*, our remarks on this subject will be few, and will be confined to those lower grades of punishment, which the courts of common pleas and quarter-sessions throughout the different states have been permitted or enjoined, by the different acts of the legislature, to inflict.

These consist in general of fines and imprisonment; of pecuniary penalties; or the forfeiture of personal chattels.

In [b] one instance, the punishment of “solitary confine-

[a] See ante, p. 22.

[b] See before, p. 70.

ment at hard labour" is directed; and in [a] others, "stripes," not exceeding thirty or forty, are prescribed. Corporal punishments, however, have become so odious, throughout the United States, since that amelioration of our penal systems, which under many of the state governments, has recently been effected, that no small difficulty would probably exist in obtaining the conviction of an offender, if the punishment on such conviction were to be *public whipping*. It behoves our national legislature, therefore, on a review of this subject, to consider whether it would not be expedient to expunge from their penal code, all *corporal punishments* for misdemeanors, and to substitute in their place pecuniary forfeitures and solitary confinement at hard labour.

[a] See before, p. 69.

---

## APPENDIX.

---

### FORM OF A COMMISSION TO A JUDGE OF THE COURT OF COMMON PLEAS, IN THE STATE OF NEW-YORK.

**T**HE people of the State of New-York, by the grace of God free and independent, to S. B. of N. R. in our county of \_\_\_\_\_ Esquire, and to all to whom these presents shall come, greeting: Whereas by our letters patent and commission of the pleas for our said county of \_\_\_\_\_ under the great seal of our said state, bearing date the \_\_\_\_\_ day of \_\_\_\_\_ we did assign, constitute and appoint \_\_\_\_\_ to be Judges of our Court of Common Pleas in and for our said county, with full power unto them respectively, to exercise, fulfil, do and perform all power and jurisdiction which unto the office of a judge of the said court did or might belong, as by the said in part recited letters patent and commission, or the record thereof, in our Secretary's office, may more fully and at large appear. Now know you, that we have assigned, constituted and appointed, and by these presents do assign, constitute and appoint you the said S. B. also to be one of the Judges of our Court of Common Pleas in and for our said County of \_\_\_\_\_ with full power unto you the said S. B. to execute, fulfil, do and perform all powers and jurisdiction which unto the said office of a judge of our said court doth or may belong, and to use and exercise all and every other the like powers and authorities in and by our said in part recited letters patent granted unto the judges of our said court, as fully and amply, to all intents and purposes, as if the same were herein and hereby particularly and expressly granted unto you the said S. B. hereby commanding our Sheriff of our said County, and all

Constables and other our peace-officers in our said county, and all others, to pay due obedience to you our said Judge of our Court of Common Pleas of our said County of \_\_\_\_\_ and hereby also ratifying and confirming our said in part recited letters patent and commission, and all and singular the powers and authorities therein and thereby given and granted. In testimony whereof we have caused these our letters to be made patent, and the great seal of our said state to be hereunto affixed: Witness our trusty and well beloved J. J. Esquire, Governor of our said said state, General and Commander in Chief of all the Militia, and Admiral of the Navy of the same, by and with the advice and consent of our Council of Appointment, at our City of Albany, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ and in the year of our Independence,

—  
**WARRANTS.**  
 —

NO. I.

*General Warrant.*

State of \_\_\_\_\_, }  
 and City of \_\_\_\_\_, } To any Sheriff, Constable, or Marshal  
 or County of \_\_\_\_\_, } of said

Whereas Complaint has been made to me, J. S. one of the Justices for preserving the Peace in the City or County of [ *Here insert the place, the charge, &c.* ]

These are therefore in the name of the people of the State of \_\_\_\_\_ to command you forthwith to apprehend the said \_\_\_\_\_ and bring \_\_\_\_\_ before me or some other Justice of the Peace for the said City and County, or before one of the Judges of the United States, to answer the premises, and to be dealt with as the law directs.

Given under my Hand and Seal }  
 this \_\_\_\_\_ day of \_\_\_\_\_ }

J. S. [Seal,]

NO II.

*Warrant in any case Bailable.*

State of \_\_\_\_\_, }  
City of \_\_\_\_\_, } To any Constable or Marshal of said  
County of \_\_\_\_\_, } State, City, or County.

Whereas complaint on Oath, hath been made before me, I. S. one of the Justices for preserving the Peace in the said \_\_\_\_\_ by [Here insert the name of the prosecutor, of the accused, and the crime alledged.]

These are therefore, in the name of the People of the State of \_\_\_\_\_ (or in the name and on behalf of the United States) to command you to apprehend the body of the said \_\_\_\_\_ and forthwith bring before me, or some other Justice of the Peace for the said City or County of \_\_\_\_\_ or before one of the judges of the United States at [Here insert the place.] to find sufficient surety for \_\_\_\_\_ personal appearance, at the next Court of General Sessions of the Peace for the said City or County (or before the Circuit Court of the United States as the case may be.) And if

\_\_\_\_\_ shall refuse to do, then you are hereby commanded to convey \_\_\_\_\_ to the Prison of the said City or County, and deliver \_\_\_\_\_ to the Keeper thereof; And you, the said Keeper, are hereby commanded, to receive and safely keep \_\_\_\_\_ the said \_\_\_\_\_

\_\_\_\_\_ in the said Prison until \_\_\_\_\_ shall find security as aforesaid, or \_\_\_\_\_ be thence discharged by due course of law. Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord, 180 \_\_\_\_\_

J. S. [Seal.]

NO. III.

*Peace Warrant.*

State or District of \_\_\_\_\_, }  
City or County of \_\_\_\_\_, } To any Marshal, of the said  
\_\_\_\_\_ district, Sheriff, or Constable of said City or County,

Whereas complaint on Oath, hath been made before me, J. S. one of the Judges of the court of \_\_\_\_\_ in

F f

the said (City or County,) that on the  
 day of \_\_\_\_\_ at the \_\_\_\_\_ said City  
 (or County,) he was violently assaulted and beaten, or put in  
 bodily fear, &c. (as the case may be.) Whereupon the  
 said \_\_\_\_\_ hath prayed Surety of the Peace. These  
 are therefore, in the name of the People of the United  
 States, to command you to apprehend the body of the  
 said \_\_\_\_\_  
 and forthwith \_\_\_\_\_ before me, or some other Judge  
 of \_\_\_\_\_ for \_\_\_\_\_ County of  
 at \_\_\_\_\_ in the said \_\_\_\_\_ County, to find sufficient sureties  
 for \_\_\_\_\_ personal appearance, at the next Court of  
 for the said \_\_\_\_\_ County. And if  
 \_\_\_\_\_ shall refuse so to do, then you are hereby commanded  
 to convey \_\_\_\_\_ to the prison of the said  
 County, and deliver \_\_\_\_\_ to the Keeper thereof;  
 And you, the said Keeper, are hereby commanded, to re-  
 ceive and safely keep \_\_\_\_\_ the  
 \_\_\_\_\_ in the said Prison until \_\_\_\_\_ shall find  
 security as aforesaid, or until \_\_\_\_\_ be thence discharg-  
 ed by due course of law. Given under my hand and seal,  
 this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our  
 Lord 180 \_\_\_\_\_

J. S. [Seal,]

NO. IV.

*Search Warrant.*

District or State of \_\_\_\_\_, }  
 And City or County of \_\_\_\_\_, } To the Marshal of said dis-  
 trict, or to any Constable or Marshal of said State, City or  
 County.

Whereas, information on Oath hath been given to me,  
 one of the Justices for preserving the Peace  
 in the \_\_\_\_\_ (or Judges of) \_\_\_\_\_  
 of the \_\_\_\_\_ town or township of \_\_\_\_\_  
 \_\_\_\_\_

That the following goods \_\_\_\_\_ to wit, (here spe-  
 cify the articles stolen) \_\_\_\_\_  
 have lately been feloniously taken, stolen, and carried

away, by some person or persons in the City or County  
aforesaid. And that the said \_\_\_\_\_ has probable  
cause to suspect, and does suspect, that the said goods and  
chattles are secreted by \_\_\_\_\_ of the town or Coun-  
ty of \_\_\_\_\_

These are therefore, in the name of the  
People of the United States, (or State of) \_\_\_\_\_ to  
command and authorise you, with proper assistance, in the  
day time, to enter into the house of the said \_\_\_\_\_  
situate as aforesaid, and there diligently to search for the  
said \_\_\_\_\_ and if the same, or any part thereof shall  
be found, then you are likewise commanded to bring the  
same so found, together with the said \_\_\_\_\_ or the  
person in whose custody the same shall be so found, before  
me, or some other Justice of the Peace for the said City and  
County or Judge of \_\_\_\_\_ to be dealt with, as the law directs.

Given at the City or County aforesaid, }  
under my hand and seal, this \_\_\_\_\_ day }  
of \_\_\_\_\_ one thousand \_\_\_\_\_ hundred. }

J. S. [Seal.]

NO. V.

*Form of a search-warrant, under the clause of the act for the  
collection of duties on impost and tonnage, authorizing the of-  
ficers of the customs, to search dwelling houses, stores, &c. in  
which they suspect goods are concealed, that are subject to  
duty. — [See before p. 155.]*

State of \_\_\_\_\_, }  
and County of \_\_\_\_\_, } s.

The Commonwealth (people, or state, according to the form  
used, in the respective states).

To the Marshal of the District, or to any Sheriff, or  
Constable of \_\_\_\_\_ in the District of \_\_\_\_\_ Greeting

Whereas complaint has this day been made to me, J. S.  
one of the Judges of \_\_\_\_\_ (or Justices assigned to keep the  
peace) in and for the (city or town of) \_\_\_\_\_ in the  
County of \_\_\_\_\_ upon oath, by W. R. [Collector, Naval-  
officer, Surveyor, or person specially appointed by either of them  
respectively, as the case may be] that he has reason to suspect,

the said (City or County,) that on the  
day of \_\_\_\_\_ at the \_\_\_\_\_ said City  
(or County,) he was violently assaulted and beaten, or put in  
bodily fear, &c. (as the case may be.) Whereupon the  
said \_\_\_\_\_ hath prayed Surety of the Peace. These  
are therefore, in the name of the People of the United  
States, to command you to apprehend the body of the  
said \_\_\_\_\_

and forthwith \_\_\_\_\_ before me, or some other Judge  
of \_\_\_\_\_ for \_\_\_\_\_ County of  
at \_\_\_\_\_ in the said \_\_\_\_\_ County, to find sufficient sureties  
for \_\_\_\_\_ personal appearance, at the next Court of  
for the said \_\_\_\_\_ County. And if

\_\_\_\_\_ shall refuse so to do, then you are hereby commanded  
to convey \_\_\_\_\_ to the prison of the said

County, and deliver \_\_\_\_\_ to the Keeper thereof;

And you, the said Keeper, are hereby commanded, to re-  
ceive and safely keep \_\_\_\_\_ the

\_\_\_\_\_ in the said Prison until \_\_\_\_\_ shall find  
security as aforesaid, or until \_\_\_\_\_ be thence discharg-

ed by due course of law. Given under my hand and seal,

this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our

Lord 180 \_\_\_\_\_

J. S. [Seal,]

NO. IV.

*Search Warrant.*

District or State of \_\_\_\_\_, }  
And City or County of \_\_\_\_\_, } To the Marshal of said dis-  
trict, or to any Constable or Marshal of said State, City or  
County.

Whereas, information on Oath hath been given to me,  
\_\_\_\_\_ one of the Justices for preserving the Peace  
in the \_\_\_\_\_ (or Judges of) \_\_\_\_\_  
of the \_\_\_\_\_ town or township of \_\_\_\_\_  
\_\_\_\_\_ afore said, by

That the following goods \_\_\_\_\_ to wit, (here spe-  
cify the articles stolen) \_\_\_\_\_  
have lately been feloniously taken, stolen, and carried

away, by some person or persons in the City or County  
aforesaid. And that the said \_\_\_\_\_ has probable  
cause to suspect, and does suspect, that the said goods and  
chattles are secreted by \_\_\_\_\_ of the town or Coun-  
ty of \_\_\_\_\_

These are therefore, in the name of the  
People of the United States, (or State of) \_\_\_\_\_ to  
command and authorise you, with proper assistance, in the  
day time, to enter into the house of the said \_\_\_\_\_  
situate as aforesaid, and there diligently to search for the  
said \_\_\_\_\_ and if the same, or any part thereof shall  
be found, then you are likewise commanded to bring the  
same so found, together with the said \_\_\_\_\_ or the  
person in whose custody the same shall be so found, before  
me, or some other Justice of the Peace for the said City and  
County or Judge of \_\_\_\_\_ to be dealt with, as the law directs.

Given at the City or County aforesaid, }  
under my hand and seal, this \_\_\_\_\_ day }  
of \_\_\_\_\_ one thousand \_\_\_\_\_ hundred. }

J. S. [Seal.]

NO. V.

*Form of a search-warrant, under the clause of the act for the  
collection of duties on impost and tonnage, authorizing the of-  
ficers of the customs, to search dwelling houses, stores, &c. in  
which they suspect goods are concealed, that are subject to  
duty.—[See before p. 155.]*

State of \_\_\_\_\_, }  
and County of \_\_\_\_\_, }*ff.*

The Commonwealth (people, or state, according to the form  
used, in the respective states).

To the Marshal of the District, or to any Sheriff, or  
Constable of \_\_\_\_\_ in the District of \_\_\_\_\_ Greeting

Whereas complaint has this day been made to me, J. S.  
one of the Judges of \_\_\_\_\_ (or Justices assigned to keep the  
peace) in and for the (city or town of) \_\_\_\_\_ in the  
County of \_\_\_\_\_ upon oath, by W. R. [Collector, Naval-  
officer, Surveyor, or person specially appointed by either of them  
respectively, as the case may be] that he has reason to suspect,

and does suspect, that certain goods, wares, and merchandise [*here specify them if it can be done*] are concealed in a certain dwelling-house, store, building, or other place, owned, or in the occupation of A. B. and situate in [*here describe the place particularly*] which said goods, wares, and merchandize, are subject to a duty payable to the United States, and which has not yet been paid, or secured to be paid.

These are therefore to authorise you to make diligent search for the same, in the day time, in the dwelling-house of A. B. aforesaid, [*or wherever they may be*] and if you find the said goods, wares, or merchandize, or any part thereof, that then you seize and secure the same for trial, in conformity with the act of Congress of the United States, in such case made and provided, and this shall be your Warrant for proceeding in the premises.

Witness the said J. S. at \_\_\_\_\_ in the County of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_  
our Lord \_\_\_\_\_

J. S. [Seal.]

NO. VI.

*Form of a Warrant to apprehend a Fugitive from justice.*

[See before p. 87.]

State of \_\_\_\_\_, }  
and County of \_\_\_\_\_, } ss. The Commonwealth, State, &c.  
To the Marshal of the District of \_\_\_\_\_ or to the  
Sheriff of \_\_\_\_\_ or to any Constable of the County  
of \_\_\_\_\_ Greeting,

Whereas complaint has been made to me J. S. one of the Justices assigned to keep the peace, in and for the said County, that a certain person called C. D. of the State of \_\_\_\_\_ being duly charged with [murder, robbery, or whatever the crime may be upon oath or who has been duly convicted of [*the crime*] and that he hath fled from the said State, with the intent of escaping from justice; and it having further been stated to me, under oath, that there is reason to suspect that the said C. D. is at present concealed, or that he lurks in the said County

These are therefore to authorise and require you, and any or either of you, if the said C. D. is to be found within the said County, that you do forthwith apprehend the said C. D. and him safely convey to R. L. Esquire, Governor of the said State [or to some prison] and him the said C. D. safely to keep, that he may be further dealt with according to law.

Witness the said J. S. at \_\_\_\_\_ in the county of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_  
J. S. [Seal.]

NO. VII.

*Warrant to apprehend a seaman who has deserted his vessel,  
( See p. 98. )*

State or District of \_\_\_\_\_ }  
And City or County of \_\_\_\_\_ } ss. To the Marshal of the said  
district. or to any Sheriff or Constable of the said city or  
county, Greeting,

Whereas complaint under oath has been made to me J. S. one of the justices assigned to keep the peace, &c. for the said city and county by A. B. master of the [ship, brig, &c.] called the \_\_\_\_\_ of \_\_\_\_\_, bound on a voyage from \_\_\_\_\_ to \_\_\_\_\_ that C. D. a seaman shipp'd on board of said vessel and who it appears to me by due proof has signed a contract agreeably to the form, and within the intent and meaning of the act of Congress entitled "an act for the government and regulation of seamen in the merchants service," for the said voyage, which voyage agreed for, is not finished, altered, or the contract otherwise dissolved; has deserted the said vessel [or absented himself without leave as the case may be.] These, therefore, are to authorise and require you or any or either of you, if the said C. D. is to be found within your city or county, that you do forthwith apprehended the said C. D. and him safely convey to the house of correction (or to the common prison) of said city (or county) and him safely deliver to the keeper of the same; and you the said keeper are hereby commanded to receive him the said C. D. in

the said house of correction (*or prison*) until he be thence discharged by due course of law.

Given under my hand and seal this        day  
of        in the year of our Lord 180 .

J. S. [Seal.]

NO. VIII.

*Mittimus.*

State or District of ———, }  
City and County of ———, } To wit. By        Esquire,  
one of the justices for preserving the Peace in the City or  
County of        or Judges of

To the Sheriff, Constable or Marshal of the said City or  
County, and every of them, and to the Keeper of the Pri-  
son of the said City or County.

These are in the name of the People of the State of  
(*or of the United States*) to command you, the said Sheriff,  
Constable and Marshal, to convey to the said Prison the  
body of

And you the said Keeper, are hereby commanded to re-  
ceive into your custody, in the said Prison, the body of the  
said        who stands charged before me, on the Oath  
of        with having on the        day of  
at        in        the said City, or County of

(*here insert the offence*)

And that you safely keep the  
in your custody in the said Prison  
until        shall be thence delivered by due course  
of Law.

Given under my hand and Seal, this        day of  
180 .

J. S. [Seal.]

NO. IX.

*Mittimus in a capital case for examination.*

District or State of ——— }  
City or County of ——— } To A. B. one of the constables,  
and to the Keeper of the prison of the said county, Greet-  
ing,

Whereas C. D. of the said state and county aforesaid, yeoman, has this day been brought before me J. S. one of the judges of the court of common pleas (or justices of the peace) in and for the said county, charged on the oath of L. M. with having been concerned with divers other persons in openly levying war against the United States (or with having murdered a certain or whatever the crime may be)

These, therefore, are to command you the said A. B. safely to convey the said C. D. to the prison of said county, and you the said keeper of the said prison, are hereby required safely to keep the said C. D. in your custody, that he may be further examined touching the offence whereof he stands charged, and that he may be further dealt with according to law.

Given under my hand and seal this day of anno domini, 180 .

J. S. [Seal.]

RECOGNIZANCES.

NO. X.

Recognizance for the appearance of a party, to answer a charge alleged.

State of \_\_\_\_\_, }  
City and County of \_\_\_\_\_, } ff. Be it remembered, That on the  
day of \_\_\_\_\_ in the year of our Lord, one  
thousand eight hundred and \_\_\_\_\_ A. B. and C. D. of the  
town of \_\_\_\_\_ personally came before me,  
J. S. one of the Justices for preserving the Peace in the  
city or county of \_\_\_\_\_ (or Judges of the County of) and  
acknowledged themselves to owe to the people of the State  
of \_\_\_\_\_ (or to the commonwealth of \_\_\_\_\_ or to the United States)  
That is to say, the said A. B. the sum of  
dollars, and the said C. D. the sum of \_\_\_\_\_ dol-  
lars, separately, of good and lawful money of the United  
States, to be made and levied of their respective goods and  
chattles, lands and tenements, to the use of the United  
States, if (he or they) shall fail in performing the condition  
following: viz.

*The condition of this Recognizance is such, that if the above named A. B. shall personally appear at the next Court of General Sessions of the Peace, (or Circuit Court of the United States) to be holden in and for the city or county of (or District of ) and then and there answer all such matters and things as shall be objected against (him or them) and not depart without leave of the Court; and in the mean time keep the Peace, and be of good behaviour towards the People of the State of and particularly towards*

then this Recognizance to be void, otherwise to remain in full force and virtue.

*Taken and acknowledged before me, the }  
day and year first above written. }*

J. S.

NO. XI.

*Recognizance for a Witness to appear and Testify.*

And City or County of <sup>State of ———,</sup> } *Be it remembered, That on*  
the day of in the year of our Lord,  
one thousand eight hundred and A. B. *(here insert*  
*the Witness's name)* of *(here his place of residence)*  
personally came before me, J. S. *(the name of the Magis-*  
*trate,)* one of the Justices for preserving the Peace *(or*  
*Judges of the Court of )* in the of  
and acknowledged to owe to the people of the  
State *(or United States)* the sum of  
dollars, good and lawful money of the U-  
nited States to be made of  
goods and chattles, lands and tenements, to the use of the  
said if default shall be made in the Condition  
following, viz.

*The Condition of this Recognizance is such, That if the above named shall personally appear at the next Court of to be holden in and for the City or County of and then and there testify and give such evidence in behalf of the United States as knoweth concerning a (here insert the crime)*

And doth not depart thence without leave of the Court, then this Recognizance to be void, otherwise to be and remain in full force and virtue.

ACKNOWLEDGED before me the day and }  
year first above written. } J. S.

NO. XII.

*Recognizance for the peace, or good behaviour.*

And City or County of <sup>State of</sup> \_\_\_\_\_, }  
\_\_\_\_\_ } ss. Be it remembered, That on  
the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the independence of  
the United States of America, A. O. of said county, yeo-  
man, and A. S. of the same city, yeoman, and B. S. of the  
same city, yeoman, came before me J. W. esquire, one of  
the \_\_\_\_\_ assigned to keep the peace within the said city, and  
acknowledged themselves to owe to the people of the state  
of \_\_\_\_\_ to wit, the said A. O. the sum of 20/. the  
said A. S. the sum of 10/. and the said B. S. the sum of 10/.  
of good and lawful money of the said state, to be respec-  
tively made and levied on their several goods and chattles,  
lands and tenements, to the use of the people of the said  
state, if he the said A. O. shall fail in performing the con-  
dition endorsed (or underwritten.)

The condition of this recognizance is such, that if the  
within bounden [or above bounden] A. O. shall personally  
appear at the next (*court of oyer and terminer, or circuit court  
of the United States, &c.*) to be holden in and for the city  
or county aforesaid, to do and receive what shall then and  
there be enjoined him by the court, and in the mean time  
to keep the peace, [OR, be of the good behaviour, OR, shall  
keep the peace and be of the good behaviour] towards the  
people of the said state, and especially towards A. I. of  
in \_\_\_\_\_ county, yeoman; then the said recognizance  
shall be void, or else to remain in force.

ACKNOWLEDGED before me the day and }  
year first aforesaid. } J. W.

NO. XIII.

*Mittimus, for want of sureties.*

City or County of \_\_\_\_\_, }  
State of \_\_\_\_\_, } ss. To any of the constables or  
G g

marshals, and to the keeper of the gaol in the said city or county.

Whereas A. O. of            yeoman, is now brought before me, J. W. esq. one of the            assigned to keep the peace in and for the said city (*or county*) requiring him to find sufficient sureties to be bound with him in a recognizance for his personal appearance at the next (*here designate the court*) to be holden in and for the said city (*or county*) and in the mean time to keep the peace [OR, be of the good behaviour] towards the people of the state of            and especially towards A. I. of            yeoman; and whereas he, the said A. O. hath refused, and doth now refuse before me, to find such sureties: These are therefore in the name of the people of said state, to command you the said constable [or marshal] forthwith to convey the said A. O. to the common gaol of said city, and to deliver him to the keeper thereof, together with this precept; and I do, in the name of the people of the said state, hereby command you the said keeper, to receive the said A. O. into your custody in the said gaol, and him there safely to keep, until he shall find such sureties as aforesaid. Given under my hand and seal in            the            day of            in the            year of the independence of the United States of America.            J. W. [Seal.]

NO. XIV.

*The form of a supersedeas.*

State of \_\_\_\_\_ }  
County of \_\_\_\_\_ } ss. E. W. esquire, one of the justices assigned to keep the peace within the county aforesaid: To the sheriff, bailiff, and constables, within the said county, greeting:

Forasmuch as A. O. of            in the said county, yeoman, hath personally come to me at            in the said county, and hath found sufficient surety, that is to say, A. S. of            yeoman, and B. S. of            yeoman, either of the which hath undertaken for the said A. O. under the pain of 20*l.* and he the said A. O. hath undertaken for himself under the pain of 40*l.* that he the said A. O. shall personally appear at the next (*here designate the court*) to be holden in and for the said county, then and there to do and

receive what shall be enjoined him by the said court; and in the mean time shall well and truly keep the peace [OR, be of the good behaviour] towards the people of the said state, and especially towards A. I. of yeoman: Therefore, on behalf of the people aforesaid, I do command you and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any means for the said cause molest the said A. O. but cause him, to be delivered and set at liberty, without further delay. Given at  
 \_\_\_\_\_  
 aforesaid, in the county aforesaid, under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the independence of the United States of America.

E. W. [Seal.]

**SUMMONS.**

NO. XV.

*Form of a summons against the master of a vessel for seaman's wages. — (See before p. 97.)*

District or State of \_\_\_\_\_,  
 County of \_\_\_\_\_, } *ss.* To A. B. marshal of said district,  
 or to \_\_\_\_\_ sheriff or constable of said county.

You are hereby commanded by me J. S. one of the justices of the peace, in and for said county, that you do forthwith summon C. D. master of the [*ship or vessel*] called the \_\_\_\_\_ of \_\_\_\_\_ and named \_\_\_\_\_ lying at \_\_\_\_\_ in said county if he may be found within the said county to be and appear before me at \_\_\_\_\_ in the township of \_\_\_\_\_ in the county aforesaid on Saturday the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock in the morning (*or afternoon*) of this day to answer E. F. on a plea of \_\_\_\_\_ dollars lawful money of the United States, and this you are not to omit. Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_ anno domini 180 \_\_\_\_\_.

J. S. [Seal.]

NO. XVI.

*Form of a certificate by a justice of the peace that there is cause of complaint against a master of a vessel for non-payment of a seaman's wages.*

(See before p. 97.)

State of \_\_\_\_\_,  
 And County of \_\_\_\_\_, } *ss.* Be it remembered, That on the

day of \_\_\_\_\_ in the year of our Lord 18\_\_ personally appeared before me J. S. one of the justices of the peace in and for the county aforesaid E. F. a mariner, belonging to the ship (or vessel) called the \_\_\_\_\_ whereof C. D. is master, and prayed that process might issue against the said C. D. for \_\_\_\_\_ dollars, wages now due, and owing to the said E. F. In pursuance whereof, and in conformity with the act of congress in such case made and provided, I the said J. S. did issue a summons against the said C. D. a copy of which is hereunto annexed; which said summons was duly served on the said C. D. by \_\_\_\_\_ L. R. one of the constables of the township of \_\_\_\_\_ in the said county: And the said C. D. not having appeared agreeably to the said summons (or if he appeared, not having shown that the said wages were paid, satisfied, or forfeited) and the matter in dispute between the said parties not having been settled, I do hereby certify to E. D. clerk of the district court of the United States, in and for the district of \_\_\_\_\_ that in the foregoing there is sufficient cause of complaint whereon to found admiralty process. Certified the day and year aforesaid by me, \_\_\_\_\_ J. S.

### OATHS.

NO. XVII.

#### *Oath of a witness to give evidence.*

You A. B. do swear that the evidence you will give in the issue now joined between the United States, and the prisoner at the bar (or C. D. plaintiff, and E. F. defendant) shall be the truth, the whole truth, and nothing but the truth—So help you God.

*NB. The witness having laid his right hand on the Bible or New-Testament, then kisses the same.*

*If a Jew, he should be sworn on the five books of Moses, with his hat on.*

(See 2 Stra. 821.)

*If a Roman Catholic, there should be a cross on the book.*

*A Mahomedan must be sworn on the Alkoran, and other witnesses according to the ceremonies of their respective systems of faith (or mode of worship.)*

NO. XVIII.

*Special form of an oath used by some denominations of christians.*

“ I, A. B. do swear by Almighty God, the searcher of all hearts (or by the ever living God) that the evidence I will give, &c. and that, as I shall answer to God, at the great day.”

NO. XIX.

*Affirmation of a Quaker.*

You do solemnly, sincerely, and truly, declare and affirm, that the evidence, &c. as before.

NO. XX.

*The oath, &c. of a person requesting the surety of the peace.*

“ You do swear (or solemnly, &c. affirm) that you are in fear of your life, or of some bodily hurt to be done, or procured to be done, to you by R. S. and that you do not require the surety of the peace of him for malice, vexation, or revenge, but for your own safety and the causes aforesaid.”

NO. XXI.

*Oath, &c. of a juryman impannelled to try a cause.*

“ You do swear (or solemnly, &c. affirm) that you will well and truly try the issue of traverse joined between the United States, and the prisoner at the bar, (or the issue joined between A. B. plaintiff, and C. D. defendant) and a true verdict give according to evidence.”

NO. XXII.

*Oath (or affirmation) of a witness or a juryman on his VOIRE DIRE.*

“ You do swear (or solemnly, &c. affirm) that you will true answers make, to such questions as may be put to you, touching the challenge now exhibited against you [or touching your interest in the present suit, &c.]

NO. XXIII.

*Oath (or affirmation) of triars to ascertain the truth of a challenge against a juror, &c.*

“ You do swear [or affirm] that you will well and truly try the issue of challenge joined between A. B. plaintiff, and C. D. defendant, and a true finding make.”

**EXAMINATIONS, &c.**

NO. XXIV.

State of \_\_\_\_\_ }  
And County of \_\_\_\_\_ }*The examination of A. B. of the town of \_\_\_\_\_ in the county of \_\_\_\_\_ labourer, taken on oath before me, J. S. one of the judges of the court of \_\_\_\_\_ (or justices of the peace) in and for the county of \_\_\_\_\_ on (Monday) the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord 180 \_\_\_\_\_.*

*The aforesaid A. B. being duly sworn, deposes and says, that on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ (here state the facts minutely) then add, and further this deponent saith not.*

[Signed] A. B.

Sworn before me the day and  
year first aforesaid, \_\_\_\_\_ J. S.

NO. XXV.

*The confession of one charged with an offence.*

State of \_\_\_\_\_ }  
And County of \_\_\_\_\_ }*The voluntary confession of A. B. of the town of \_\_\_\_\_ in the county of \_\_\_\_\_ and state of \_\_\_\_\_ taken before me J. S. Esq. one of the judges, &c. on the \_\_\_\_\_ day of \_\_\_\_\_ anno domini 180 \_\_\_\_\_ at \_\_\_\_\_ in the county and state aforesaid.*

*The said A. B. having been apprehended on suspicion of having committed a felony, doth of his own free will and accord, confess and declare that, &c. (here state the substance of the confession) and further the said A. B. saith not.*

[Signed] A. B.

Taken before me the day and  
year first above mentioned, \_\_\_\_\_ J. S.

NO. XXVI.

*Form of an affidavit.*

State of \_\_\_\_\_ }  
And County of \_\_\_\_\_ }*Be it remembered that on the*

day of \_\_\_\_\_ personally appeared before me, J. S. one of the judges (or justices of the peace) in and for the county of \_\_\_\_\_ and state of \_\_\_\_\_ gentleman who being duly sworn on the Holy Evangelists doth depose and say (here state the facts) and further the deponent faith not.

[Signed] A. B.

Taken and sworn before me on the day and year first above mentioned,

J. S.

NO. XXVII.

Notification to an adverse party of the time and place of taking a deposition before a mayor, or chief magistrate of a city, or judge of a court of common pleas, &c. under the act of congress, directing the same.

(See before p. 214.)

State of \_\_\_\_\_,  
And City and County of \_\_\_\_\_, ss.

A. B. plaintiff, } To (the adverse party  
v. } whether plaintiff or defendant.)  
C. D. defendant;

Sir—You will please to take notice, that in the above cause now depending in the court of \_\_\_\_\_ in the state of \_\_\_\_\_ I shall, on Monday, the \_\_\_\_\_ day of July instant, at the hour of ten in the forenoon of the said day, and at the house of \_\_\_\_\_ known by the sign of \_\_\_\_\_ situate in \_\_\_\_\_ in the county of \_\_\_\_\_ take the deposition of E. F. a witness, then and there to be produced on behalf of (the plaintiff or defendant) when and where you will please to attend and put interrogatories to the said witness if you think fit. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_ anno domini 180 . J. S. one of the judges of the court of \_\_\_\_\_

NO. XXVIII.

Form of taking depositions under the act of congress for the establishment of the judicial courts of the U. States.

(See before p. 214.)

State of \_\_\_\_\_,  
And City or County of \_\_\_\_\_, ss. Be it remembered that on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ and at the (place) aforesaid, personally appeared before me, J. S. one

of the judges of the court of (or mayor, intendant, &c.)  
A. B. of the (city or county of in the state of ) gen-  
tleman (or labourer or whatever his profession or occupation may  
be) who having been by me carefully examined and cau-  
tioned and sworn (or affirmed) to testify the whole truth in  
a certain cause now depending in the court of  
between A. B. plaintiff, and C. D. defendant, deposes and  
says, that (here insert the testimony, after which add)

Taken and subscribed by the said A. B. before me, the  
said testimony having first been reduced to writing by me  
the said J. S. (or by the said A. B. the deponent in my pro-  
sence) the day of and year of our Lord first  
aforesaid.

J. S.

NO. XXIX.

*Form of a certificate to be annexed to a deposition taken  
as above, where the magistrate does not himself deliver  
the deposition into the court, by which the taking of the  
same was authorized and directed.*

(See before p. 215.)

I, J. S. one of the judges, &c. do hereby certify that  
prior to taking the foregoing deposition, to which the pre-  
sent certificate is annexed, it did appear to me that the  
said A. B. the deponent, aforesaid, was very infirm (or an-  
cient, or that by the oath of the said A. B. he is bound on a  
voyage to sea, &c. whatever the case may be) and that due  
notice was given to (A. B. or C. D. the plaintiff and defen-  
dant) of the time and place of taking the said deposition.

In witness whereof I have hereunto set my hand this  
day of in the year of our Lord,

J. S.

NO. XXX.

*Affidavit of the service of the notification aforesaid,*

State of \_\_\_\_\_, }  
City of \_\_\_\_\_, } L. M. of the city (or county) and state  
County of \_\_\_\_\_, }  
A. B. v. C. D. aforesaid maketh oath, that he this depo-  
nent on the day of at the dwel-  
ling house of (A. B. or C. D.) in the county and state

aforesaid; served the said (A. B. or C. D.) with a notice issued by J. S. one of the judges, &c. by delivering to the said (A. B. or C. D.) a copy thereof and showing him the aforesaid notice under the hand of said J. S. (or by leaving a copy of the said notice at the house of the said A. B. or C. D. he then being absent from home, if such should be the case) and further the deponent saith not. Sworn before me this day of \_\_\_\_\_ in the year of our Lord, 180 .

[Signed] L. M.

J. S. one of the judges of the court of \_\_\_\_\_

WRITS AND PLEADINGS.

NO. XXXI.

*Form of a writ of error as approved by two of the judges of the supreme court of the United States, agreeably to an act of congress.*

(See ante p. 231—and Laws of the U.S. vol. 2. p. 108.)

U. States, vs. The President of the United States to the judges of the court, holden in and for the (here insert the district or state) Greeting,

Because, that in the record and process, and also in the rendering of judgment in a suit before you or some of you between plaintiff, and defendant, in a plea of a manifest error has intervened to the great damage of the said as in complaint has been stated: And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf; you are hereby commanded that if judgment thereof be given, then under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice, and the associate justices of the Supreme court of the United States, on the first Monday of next at Washington, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honourable chief justice of the said Su-

H h

preme court at Washington, this day of in the year of our Lord and of the independence of the United States the S. B. Clerk.

Allowed by me, J. J. one of the justices of } the supreme court of the United States. }

NO. XXXII.

*Form of a certiorari, to a justice of the peace, to remove proceedings under an act of congress.*

(See before p. 233.)

District of —, }  
The United States of America to J. S. Esquire, one of the justices of the peace, in and for the county of in the district aforesaid, greeting, [a]  
We being willing to be certified of a certain plaint in our court before you at the suit of C. D. against E. F. for a forfeiture incurred under a certain act of congress, entitled, &c. and of the pleadings, judgment, execution and proceedings in the same plaint: We command you, that the plaint and judgment, &c. aforesaid, as fully and entirely, with all things touching and concerning the same, as it remains before you, by whatever names the said C. D. and E. F. may be called in the same, to the judge of our district court (or to the judges of our circuit court) at on the day of you certify and send together with this writ under your seal, that we may further cause to be done therein as of right we shall see fit to be done. Witness, J. W. one of the judges of the supreme court of the United States at the day of in the year of our Lord, 180. J. R. Clerk.

J. S. attorney. Allowed before me, J. W. one of the judges of the supreme court of the United States.

*Return to the above.*

State of New-York, }  
And County of —, } I do herewith send to the honorable the justices of the court of the United States (or as the case may be) the plaint, judgment, and proceedings as within I am commanded, as by the transcript

[a] If the writ is issued from a supreme state court, then the caption of the writ must pursue the form used in such state.

of the same under my hand and seal certified and hereto annexed, will more fully appear.

J. N. B. justice of the peace. [Seal.]

[This transcript should contain a minute detail of all the proceedings had before the magistrate, agreeably to the entries in his docket.]

NO. XXXIII.

*Form of a subpoena to give evidence and of a ticket.*

The people of the state of To A. B. C. D. and E. F. greeting: We command you, and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our justices assigned to keep the peace in our county of at the general quarter sessions of the peace to be holden at in and for the said county, on the day of at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of of the of in the said county, against A. O. in a case of And this you are in no wise to omit, nor any of you to omit, on pain of pounds. Witness R. S. esq. the day of in the year of the independence of the United States of America.

Note: The names of four witnesses may be put in one subpoena.

*A subpoena Ticket.*

To Mr. A. W.

By virtue of a writ of subpoena of the people of the state of to you directed, and herewith shewn to you, you are personally to be before our justices of the peace for the county of at the general quarter sessions of the peace to be holden for the said county, at in the said county, on the day of next, to testify the truth, and give evidence on behalf of of the township of in the said county, against A. O. in a case of And this you are not to omit, on pain of pounds. Dated this day of 180 .  
By the court. C.

preme court at Washington, this      day of      in the  
year of our Lord      and of the independence of the United  
States the      S. B. Clerk.

Allowed by me, J. J. one of the justices of }  
the supreme court of the United States. }

NO. XXXII.

*Form of a certiorari, to a justice of the peace, to remove  
proceedings under an act of congress.*

(See before p. 233.)

District of —, }  
J. S. Esquire, one of the justices of the peace, in and for  
the county of      in the district aforesaid, greeting, [a]

We being willing to be certified of a certain point  
in our court before you at the suit of C. D. against E. F.  
for a forfeiture incurred under a certain act of congress,  
entitled, &c. and of the      pleadings, judgment, execu-  
tion and proceedings in the same point: We command  
you, that the point and judgment, &c. aforesaid, as fully  
and entirely, with all things touching and concerning the  
same, as it remains before you, by whatever names the  
said C. D. and E. F. may be called in the same, to the  
judge of our district court (or to the judges of our circuit  
court) at      on the      day of      you certify and send  
together with this writ under your seal, that we may fur-  
ther cause to be done therein as of right we shall see fit to  
be done. Witness, J. W. one of the judges of the supreme  
court of the United States at      the      day of      in  
the year of our Lord, 180 .      J R. Clerk.

J. S. attorney. Allowed before me, J W. one of the  
judges of the supreme court of the United States.

*Return to the above.*

State of New-York,  
And County of —, } I do herewith send to the honor-  
able the justices of      the      court of the United  
States (or as the case may be) the point, judgment, and pro-  
ceedings as within I am commanded, as by the transcript

[a] If the writ is issued from a supreme state court, then the caption of the  
writ must pursue the form used in such state.

of the same under my hand and seal certified and hereto annexed, will more fully appear.

J. N. B. justice of the peace. [Seal.]

[This transcript should contain a minute detail of all the proceedings had before the magistrate, agreeably to the entries in his docket.]

NO. XXXIII.

*Form of a subpoena to give evidence and of a ticket.*

The people of the state of To A. B. C. D. and E. F. greeting: We command you, and every of you, that all business being laid aside, and all excuses whatsoever ceasing, you do in your proper persons appear before our justices assigned to keep the peace in our county of at the general quarter sessions of the peace to be holden at in and for the said county, on the day of at the hour of ten in the forenoon of the same day, to testify the truth, and give evidence on behalf of of the of in the said county, against A. O. in a case of And this you are in no wise to omit, nor any of you to omit, on pain of pounds. Witnesses R. S. esq. the day of in the year of the independence of the United States of America.

Note: The names of four witnesses may be put in one subpoena.

*A subpoena Ticket.*

To Mr. A. W.

By virtue of a writ of subpoena of the people of the state of to you directed, and herewith shewn to you, you are personally to be before our justices of the peace for the county of at the general quarter sessions of the peace to be holden for the said county, at in the said county, on the day of next, to testify the truth, and give evidence on behalf of of the township of in the said county, against A. O. in a case of And this you are not to omit, on pain of pounds. Dated this day of 180 . C.  
By the court.

NO. XXXIV.

*Form of pleas in an action of debt on a custom-house bond,  
where judgment is entered by default.*

District Court of the United States of America for the  
district of New-York.

Pleas in the district court of the United States of America for the district of New-York, at the city of New-York, in the said district of the stated term of \_\_\_\_\_ in the year of our Lord one thousand eight hundred and \_\_\_\_ Witness the honorable J. S. esq. judge of the said court.

D. Clerk

*District of New-York, to wit,* Be it remembered, that on the first Tuesday in \_\_\_\_\_ in this same term before the district court of the United States of America for the district of New-York, at the city of New-York, in the said district, comes N. S. attorney of the United States of America for the district of New-York, and brings into the said district court of the said United States now here a certain bill of the said United States against \_\_\_\_\_ being in custody, &c. in a plea of debt which said bill follows in these words, that is to say: District of New-York, to wit, The United States of America, by N. S. their attorney, complain of \_\_\_\_\_ being in custody, &c. of a plea that he the said \_\_\_\_\_ render to the said United States lawful money of the said United States which he the said \_\_\_\_\_ owes to the said United States and unjustly detains from the said United States: For this, to wit, that whereas the said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the independence of the said United States and in the year of our Lord one thousand eight hundred and \_\_\_\_\_ at the city of New-York, in the district of New-York, and at the first ward of the said city, by his writing obligatory sealed with the seal of him the said \_\_\_\_\_ and to the district court of the said United States for the district of New-York, now here shewn, the date of \_\_\_\_\_ of which said writing obligatory is on the same day, and in the same year last before specified, acknowledged himself to be held and firmly bound unto the said United States in the said sum of \_\_\_\_\_ to be paid to the said United States,

when he the said                    should be thereto afterwards requested: Yet the said                    though often requested, &c. has not yet paid the sum of                    or any part thereof to the said United States, but he the said                    has hitherto wholly refused and still does refuse to pay the same or any part thereof, to the said United States, to the damage of the said U. States of one hundred dollars, and thereof the said attorney on behalf of the said U. States brings suit, &c.

And now at this day, that is to say, on the first Tuesday in                    in the same term, before the said district court of the said United States, at the said city of New-York, in the said district, comes the said N. S. the said attorney on behalf of the said United States, and the said                    though now here solemnly called, comes not but makes default, and says nothing in bar or preclusion of the said action of the said United States, by reason whereof the said United States remain undefended therein against him the said

Therefore it is considered by the said district court now here that the said United States recover against the said                    their said debt, and also                    for the damages which the said United States have sustained, as well by reason of the detention of the said debt, as for their costs and charges by them about their suit in this behalf expended, by the said district court now here adjudged, to the said United States with their assent, and that the said                    be in mercy, &c.

Judgment signed the                    day of                    in the                    year of our Lord one thousand eight hundred and

J. S. H. district judge, &c.

NO. XXXV.

*Form of naturalizing a foreigner as used in the mayor's court of New-York.*

And City or County of <sup>State of</sup> } J. A. B. a citizen of the United States, being duly sworn, deposeth and saith, that he, this deponent, is well acquainted with C. D. [*the person applying to be naturalized*] of the said                    or county [*here insert his trade or occupation*] and that he the said C. D. was residing

within the limits and under the jurisdiction of the United States, between the twenty-ninth day of January, one thousand seven hundred and ninety-five, and the eighteenth day of June, one thousand seven hundred and ninety-eight; and, also, that he, the said C. D. has resided five years at least within the limits and under the jurisdiction of the said United States, and one year at least within the state of \_\_\_\_\_ and that, during the time aforesaid, he, the said C. D. has behaved as a man of good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same.

Sworn, this \_\_\_\_\_ day of \_\_\_\_\_ 180 \_\_\_\_\_ before me,

*New-York Court, ss.*

And City or County of \_\_\_\_\_ } *State of \_\_\_\_\_* } I, C. D. of the \_\_\_\_\_ of \_\_\_\_\_ do solemnly swear, that I will support the constitution of the United States, and that I do absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly to the king of the United kingdom of Great-Britain and Ireland, whereof I am now a subject, (or the republic of France, &c. as the case may be, of which I am now a citizen).

Sworn, in open court, this \_\_\_\_\_ day of \_\_\_\_\_ 180 \_\_\_\_\_

E. F. clerk or prothonotary.

NO. XXXVI.

*Form of an information QUI TAM.*

[See p. 200.]

State of \_\_\_\_\_ }  
And County of \_\_\_\_\_ } I, \_\_\_\_\_ be it remembered, that A. I. of \_\_\_\_\_ in the county of \_\_\_\_\_ gentleman, who as well for the people of this state as for himself doth prosecute, cometh before the justices of the said state assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, at their general quarter sessions of the peace holden at \_\_\_\_\_ in and for the said county, the \_\_\_\_\_ day of \_\_\_\_\_ in the \_\_\_\_\_ year of the independence of the United States of America, in his proper person; and as well for

the people of the said state as for himself, giveth the court here to understand and be informed, That A. O. late of        in the county aforesaid, yeoman, on the day of        in the year aforesaid, at        aforesaid, in the county aforesaid, not regarding the laws and statutes of the said state, but intending to        with force and arms (*here insert the offence with the same precision as an indictment*) against the form of the statute in that case made and provided: Whereupon the aforesaid A. I. as well for the said people as for himself, prayeth the advice of this court in the premises; and that the said A. O. may forfeit the sum of        according to the form of the statute aforesaid, and that the said A. I. may have one moiety thereof, according to the form of the statute aforesaid, and also that the aforesaid A. O. may come here into this court, to answer concerning the premises; and there are pledges of prosecuting, *John Doe* and *Richard Roe*. And hereupon it is commanded to the said A. O. that all other things omitted, and all excuses laid aside, he be in his proper person at the next general quarter sessions of the peace to be holden for the said county, to answer as well to the said people of the said state as to the said A. I. who as well for the said people as for himself, doth prosecute, of and concerning the premises, and further to do and receive what the said court shall consider in this behalf.

NO XXXVII.

*General form of conviction.*

And County of <sup>State of</sup> \_\_\_\_\_, } Be it remembered, that on the day of        in the        year of the independence of the United States of America, at        in the county of aforesaid, A. I. of        cometh before J. P. esq. one of the justices assigned to keep the peace of the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, (residing near to the place wherein the offence herein after mentioned was committed; *or as the statute requires*) and giveth me the said justice to understand and be informed that one A. O. of        in the said county, did, [*here set forth the fact, in the words of the statute as near as may be*] against the form

of the statute in such case made and provided: And afterwards upon the aforesaid day of in the year aforesaid, at aforesaid, in the county aforesaid, he the said A. O. after being duly summoned in this behalf before me the justice aforesaid, appeareth and is present, in order to make his defence against the said charge contained in the said information, and having heard the same, he the said A. O. is asked by me the said justice, if he can say any thing for himself, why he the said A. O. should not be convicted of the premises above charged upon him in form aforesaid; who pleadeth that he is not guilty of the said offence. Nevertheless on the day aforesaid, in the year aforesaid, at aforesaid, in the county aforesaid, one credible witness to wit, A. W. of yeoman, cometh before me the justice aforesaid, and before me the same justice upon his oath, on the holy gospel to him then and there by me the said justice aforesaid administered, deposeth, (or affirmeth) and saith, that the aforesaid A. O. on the day of aforesaid, in the year aforesaid, at aforesaid, in the county aforesaid, did (*here again set forth the fact, or so much thereof as is sufficient to convict the offender*) and thereupon the aforesaid A. O. the day of aforesaid, in the year aforesaid, before me the justice aforesaid, by the oath of one credible witness aforesaid, according to the form of the statute aforesaid, is convicted; and for his offence aforesaid hath forfeited the sum of of lawful money of to be distributed as the statute aforesaid doth direct. In witness whereof, I the said justice to this present record of the conviction as aforesaid, have set my hand and seal, at aforesaid, in the county aforesaid, the day and year first above written.

*If he confesses the fact,* then say—And because the said A. O. hath nothing to say, nor can say any thing in his own defence touching and concerning the premises aforesaid, but doth of his own accord freely and voluntarily acknowledge and confess, all and singular the said premises to be true, in manner and form as the same are charged upon him in the said information; and because all and singular the premises

being heard, and fully understood, by me the said justice, it manifestly appearsto me (Or if the party hath been summoned, and doth not appear,) then say—Whereupon, on the said day of in the year aforesaid, at aforesaid, in the county aforesaid, he the said A. O. was duly summoned in this behalf, to appear before me, in order to make his defence against the said charge contained in the said information, but the said A. O. doth neglect to appear before me, and doth not appear, nor make any defence against the said charge as aforesaid: Therefore, I the said justice, on the day of in the year aforesaid, at aforesaid, in the county aforesaid, do proceed to examine into the truth of the said complaint: And A. W. of a credible witness, cometh before me the justice aforesaid, and before me the same justice, upon his oath, &c.

## NO. XXXVIII.

*Form of a venire for summoning a jury.*

City of —, }  
 And County of —, } To any of said city.

You are hereby commanded, in the name of the people of this state to summon twelve good and lawful men, being freeholders or freemen of the city aforesaid, and in no wise of kin to the plaintiff or defendant, nor interested in this suit, to appear before me at my dwelling house, No. in street, on the of at o'clock, then and there to try a cause depending between A. B. plaintiff, and C. D. defendant; and to return this precept, together with their names: hereof fail not. Given under my hand and seal, this day of 180

J. S. [Seal.]

## NO. XXXIX.

*Form of a libel for goods seized under the act for the collection of duties on impost and tonnage.*

[See p. 138.]

District Court of the United States of America for the District of

At a general district court of the United States of America for the district of held at the city of in the

said district, on the first day of February, in the year of our Lord one thousand eight hundred and four, comes N. S. attorney of the said United States, for the district of \_\_\_\_\_ who for the said United States in this behalf prosecutes and being present here in this honorable court in his own person, doth on behalf of the said United States, articulately alledge, propound and declare as follows, that is to say :

First, That W. S. S. surveyor of the customs for the district of \_\_\_\_\_ did after the second day of March, in the year of our Lord one thousand seven hundred and ninety-nine, and before the exhibition of this libel, to wit, on the twentieth day of January in the year of our Lord one thousand eight hundred and four, at the city of \_\_\_\_\_ in the district of \_\_\_\_\_ seize as forfeited to the use of the said United States, one hamper of cheefe, the property of some person or persons to the said attorney unknown.

Secondly, That the said hamper of cheefe was heretofore, to wit, on the eighteenth day of January, in the year of our Lord one thousand eight hundred and four, brought and imported in a certain ship or vessel called the Duke of Marlborough, from a foreign port or place, to wit, from Falmouth in England, to a port or place in the United States, to wit, to the port of \_\_\_\_\_ in the district of \_\_\_\_\_

Thirdly, That the said hamper of cheefe was afterwards to wit, on the nineteenth day of January, in the year of our Lord one thousand eight hundred and four, at the city of \_\_\_\_\_ in the district of \_\_\_\_\_ unladen and delivered from the said ship or vessel called the Duke of Marlborough, in the night, that is to say, after the setting and before the rising of the sun, and without any licence from the collector and naval officer of the said district of the city of \_\_\_\_\_ for that purpose.

Fourthly, That the said hamper of cheefe was on the day and in the year last past specified at the city of \_\_\_\_\_ in the district of \_\_\_\_\_ unladen and delivered from the said ship or vessel called the Duke of Marlborough,

without a permit from the collector and naval officer of the said district of the city of \_\_\_\_\_ for such unloading and delivery.

Fifthly, That by reason of the premises and by force of the statute in such case made and provided, the said hamper of cheese became forfeited to the use of the said United States.

Lastly, That all and singular the premises are and were true public and notorious, of which due proof being made, the said attorney humbly prays the usual process and motion of this court in this behalf to be made, and that all persons interested in the said hamper of cheese, may be cited in general and special to answer the premises, and that right and justice may be duly administered in this respect, and all due proceedings being had that the said hamper of cheese may for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this honorable court, as forfeited to the use of the said United States, according to the form of the statute in such case made and provided.

N. S. attorney of the United States }  
for the district of \_\_\_\_\_ }

NO. XL.

*Form of an information for a breach of the act of congress, for enrolling vessels employed in the coasting trade and fisheries.—(See p. 120.)*

District Court of the United States of America for the District of \_\_\_\_\_

*District of \_\_\_\_\_ to wit,* Be it remembered, That N. S. attorney of the United States of America, for the district of \_\_\_\_\_ who prosecutes for the said United States in this behalf being present here at a special district court of the said United States, for the district of \_\_\_\_\_ held at the city of \_\_\_\_\_ in the said district, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and three: Doth on behalf of the said United States give the said court to understand and be informed that W. S. S. surveyor of the customs for the district of \_\_\_\_\_

after the eighteenth day of February in the year of our Lord one thousand seven hundred and ninety-three, and before the day of the exhibition of this information, to wit, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and three, at the city of            in the district of            did seize, as forfeited, to the use of the said United States, a certain schooner or vessel called the Nine Sisters, together with her tackle, apparel and furniture, of the goods and chattles of some person or persons to the said attorney, unknown: For that the said schooner or vessel called the Nine Sisters, being a schooner or vessel of twenty tons or upwards, and not being registered as a schooner or vessel of the said United States, after the last day of May, in the year of our Lord one thousand seven hundred and ninety-three, to wit, on the sixteenth day of November, in the year of our Lord one thousand eight hundred and three, at the city of            in the district of            was found trading between district and district in the said United States, to wit, between the district of Savannah, in the district of Georgia, and the district of the city of            in the district of            without being enrolled and licensed, in manner as is provided by an act of the congress of the said United States, entitled An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same; the said schooner or vessel then and there having on board twenty-eight barrels of coffee, two hogsheds of sugar, and forty-two bags of pimento; the said coffee, sugar and pimento, then and there being articles of foreign growth, and other than sea-stores, contrary to the form of the said statute, by reason whereof the said schooner or vessel called the Nine Sisters, her tackle, apparel and furniture, became forfeited to the use of the said United States: Wherefore, the said attorney on behalf as aforesaid, prays the judgment of the said court here in the premises, and that the said schooner or vessel called the Nine Sisters, with her tackle, apparel and furni-

ture, may for the reasons aforesaid, remain forfeited according to the form of the said statute.

N. S. attorney of the United States }  
for the district of . }

NO. LXI.

*Form of an information against a foreign vessel for breach of the act for the punishment of certain crimes against the neutrality of the United States.*

[See before p. 58, Sect. 4.]

District Court of the United States of America for the District of

*District of* to wit, Be it remembered, That N. S. attorney of the United States of America, for the district of who prosecutes for the said United States, in this behalf being present here at a special district court of the said United States, for the district of held at the city of in the said district, on the fourth day of November, in the year of our Lord one thousand eight hundred and three, doth on behalf of the said United States, give the said court here to understand and be informed that W. S. S. surveyor of the customs for the district of the city of after the fifth day of June, in the year of our Lord one thousand seven hundred and ninety-four, and before the day of the exhibition of this information, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and three, at the city of in the said district, did seize, as forfeited, to the use of the said United States, a certain sloop or vessel called the Admiral Duncan, with her tackle, apparel and furniture, of the goods and chattles of some person or persons to the said attorney, unknown: For that one Samuel Newson, after the said fifth day of June, in the year of our Lord one thousand seven hundred and ninety-four, to wit, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and three, within the port or harbour of to wit, at

the city of \_\_\_\_\_ in the district of \_\_\_\_\_ did fit out  
 and arm the said sloop or vessel called the Admiral Duncan,  
 with intent that the said sloop or vessel should be employed  
 in the service of a foreign prince or state, to wit, in the  
 service of the king of the united kingdom of Great Britain  
 and Ireland, to commit hostilities upon the citizens and pro-  
 perty of another foreign prince or state, to wit, upon the  
 citizens and property of the French Republic, the said  
 United States then being at peace with the said French  
 Republic, contrary to the form of the statute in such case  
 made and provided: And also, for that one Samuel New-  
 son, after the said fifth day of June, in the year of our  
 Lord one thousand seven hundred and ninety-four, to wit,  
 on the twenty-eighth day of October, in the year of our  
 Lord one thousand eight hundred and three, within the  
 port or harbour of \_\_\_\_\_ to wit, at the city of \_\_\_\_\_  
 in the district of \_\_\_\_\_ did attempt to fit out and arm  
 the said sloop or vessel called the Admiral Duncan, with  
 intent that the said sloop or vessel called the Admiral  
 Duncan, should be employed in the service of a foreign  
 prince or state, to wit, in the service of the king of the  
 united kingdom of Great-Britain and Ireland, to commit  
 hostilities upon the citizens and property of another  
 foreign prince or state, to wit, upon the citizens and  
 property of the French Republic, contrary to the form  
 of the statute in such case made and provided: And  
 also for that one Samuel Newson, after the fifth day of  
 June, in the year of our Lord one thousand seven hun-  
 dred and ninety-four, to wit, on the twenty-eighth day  
 of October, in the year of our Lord one thousand eight  
 hundred and three, within the port or harbour of \_\_\_\_\_  
 to wit, at the city of \_\_\_\_\_ in the district of \_\_\_\_\_  
 did procure to be fitted out and armed, the said sloop or  
 vessel called the Admiral Duncan, with intent that the said  
 sloop or vessel should be employed in the service of a  
 foreign prince or state, to wit, in the service of the king of  
 the united kingdom of Great-Britain and Ireland, to com-  
 mit hostilities upon the citizens and property of another  
 foreign prince or state, to wit, upon the citizens and pro-

perty of the French Republic, the said United States then being at peace with the said French Republic, contrary to the form of the statute in such case made and provided: And also for that one Samuel Newson, after the said fifth day of June, in the year of our Lord one thousand seven hundred and ninety-four, to wit, on the twenty-eighth day of October, in the year of our Lord one thousand eight hundred and three, within the port or harbor of to wit, at the city of \_\_\_\_\_ in the district of \_\_\_\_\_ was knowingly concerned in the furnishing, fitting out and arming the said sloop or vessel called the Admiral Duncan, with intent that the said sloop or vessel should be employed in the service of a foreign prince or state, to wit, in the service of the king of the united kingdom of Great-Britain and Ireland, to commit hostilities upon the citizens and property of another foreign prince or state, to wit, upon the citizens and property of the French Republic, the said United States then being at peace with the said French Republic, contrary to the form of the statute in such case made and provided: And also that one Samuel Newson after the said fifth day of June, in the year of our Lord one thousand seven hundred and ninety-four, to wit, on the twenty-eight day of October, in the year of our Lord one thousand eight hundred and three, within the port or harbor of \_\_\_\_\_ to wit, at the city of \_\_\_\_\_ in the district of \_\_\_\_\_ was knowingly concerned in the furnishing or fitting out the said sloop or vessel called the Admiral Duncan, with intent that the said sloop or vessel should be employed in the service of a foreign prince or state, to wit, in the service of the king of the united kingdom of Great-Britain and Ireland, to commit hostilities upon the property of another foreign prince or state, to wit, of the French Republic, the said United States then being at peace with the said French Republic, contrary to the form of the statute in such case made and provided: And also for that one Samuel Newson, after the said fifth day of June, in the year of our Lord one thousand seven hundred and ninety-four, to wit, on the twenty-eighth day

of October, in the year of our Lord one thousand eight hundred and three, within the port and harbor of  
 to wit, at the city of \_\_\_\_\_ in the district of \_\_\_\_\_  
 was knowingly concerned in the arming the said sloop or vessel called the Admiral Duncan, with intent that the said sloop or vessel should be employed in the service of a foreign prince or state, to wit, in the service of the king of the united kingdom of Great Britain and Ireland, to commit hostilities upon the property of another foreign prince or state, to wit, of the French Republic, the said United States then being at peace with the said French Republic, contrary to the form of the statute in such case made and provided, by reason whereof the said sloop or vessel called the Admiral Duncan, her tackle, apparel and furniture, became forfeited to the use of the said United States : Wherefore the said attorney on behalf as aforesaid prays the judgment of the said court here in the premises, and that the said sloop or vessel may for the reasons aforesaid remain forfeited according to the form of the statute in such made and provided.

N. S. attorney of the United States }  
 for the district of \_\_\_\_\_ }

NO. LXII.

*Claim and plea to the foregoing information.*

*New-York District Court.*

Samuel Newson, claimant of the }  
 sloop Admiral Duncan, &c. } CLAIM AND PLEA.  
*Adm.*  
 United States of America. }

And upon this comes here the said Samuel Newson, by Richard Harrison, his attorney, and claims the sloop or vessel in the said information mentioned, with her tackle, apparel and furniture, in the said information specified, to belong to him; and he prays oyer of the information aforesaid, and it is read to him, which being read, heard, and by him understood, he complains that he by colour of the premises is greatly vexed and disquieted, and the said sloop or vessel out of his hands and possession by the said W. S. taken and seized, and that unjustly, because protesting that the said information and the matter in the

Some contained are not sufficient in the law to which he hath no need nor by the law of the land is bound to answer for plea, nevertheless the said Samuel Newson saith, that on the twenty-eighth day of October in the year of our Lord one thousand eight hundred and three, in the said information mentioned, and long before and afterwards, there was open war between the king of the united kingdoms of Great Britain and Ireland in the said information mentioned and his subjects, and the republic of France, therein also mentioned, in all parts of the world, to wit, at the city of New-York, in the New-York district, and there being such open war, as aforesaid, the said sloop called the Admiral Duncan, on the same day, long before, and before her arrival within the United States, and ever since, was, and hath been a cruiser and armed vessel, to wit, at the city of New-York and in the district aforesaid, belonging to the said Samuel Newson, then and still a subject of the said king of the united kingdoms of Great Britain and Ireland, and as such duly commissioned to cruise against the enemies of the said king, and that the said sloop or vessel on the said twenty-eighth day of October, and long before, and also before the supposed arming, fitting out and furnishing, and attempting and procuring to be armed, furnished and fitted out, of the said sloop in the said information mentioned, and before her arrival within the United States, or any of the ports, harbours, bays, rivers, or other waters of the same states, to wit, on the 7th day of September in the year of our Lord one thousand eight hundred and three, being commissioned as a cruiser in manner aforesaid, was and ever since hath been armed, to wit, with six carriage guns, for the purpose of cruising against the enemies of the said king, as it was lawful for him the said Samuel Newson to do in with the said sloop, and that he the said Samuel Newson, on the twenty-eighth day of October aforesaid at the city and in the district aforesaid, purchased and procured seven quarter casks of gun powder, ten muskets, five cutlasses and twelve sweeps, to be used for augmenting the force of the said armed sloop or

vessel without that, that the said Samuel Newson did fit out, arm or attempt to fit out or arm, or procure to be fitted out or armed, or was knowingly concerned in the furnishing or fitting out or arming of the said sloop or vessel called the Admiral Duncan, or that the said sloop or vessel was furnished, fitted out or armed, with the intent that she should be employed in the service of the king of the said united kingdom, to commit hostility upon the citizens or property of any other foreign prince or state, otherwise than by increasing the force of the said sloop or vessel, the said sloop or vessel having been at the time of her arrival within the United States, to wit, on the fifteenth day of October in the year aforesaid, at the city and within the district aforesaid, a cruiser or armed vessel, belonging to the said Samuel Newson, a subject of the said King, and the said king and his subjects then being at war as aforesaid with the republic of France: And the said Samuel Newson is ready to verify all and singular the premises, wherefore he prays judgment, and that the said sloop or vessel, her tackle, apparel and furniture, may be redelivered to him, and that the said Samuel Newson, as to the premises, may from this court be dismissed.

R. H. attorney for defendant.

*New-York, to wit,*

Samuel Newson puts in his place R. H. his attorney, at the suit of the United States, upon an information filed against the said sloop or vessel called the Admiral Duncan, her tackle, apparel and furniture.

**FORMS FOR THE ACKNOWLEDGMENTS  
OF DEEDS, &c.**

[The following forms for taking the acknowledgement of deeds, will be found highly useful to the judges of the several courts of common pleas, within the state of New-York.]\*

**FORM A.**

*Where the grantor is personally known to the judge taking the acknowledgement.*

State of New-York, *vs.* Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ came before me J. S. one of the judges of the court of common pleas in and for the county of \_\_\_\_\_ in the said state, A. B. known to me to be the same person described in and who executed the within deed, who acknowledged before me that he had executed the same as his voluntary act and deed, and I having examined the same, and finding no material erasures or interlineations therein (or if there be any, then say except those noted prior to the execution of said deed,) do hereby allow the same to be recorded.

J. S.

\* N.B.—Deeds for lands lying in any part of the state New-York, may be acknowledged before either of the judges of the supreme court of the U. States; either of the judges of the supreme court of the state of New-York; a master in chancery, or the first judge of any court of common pleas, within the state. The other judges of the several courts of common pleas can take acknowledgements, only for lands lying within their respective counties. Assistant justices are in no cases authorized to take the acknowledgement of deeds.

The acknowledgements of British subjects actually residing in Great-Britain, must be taken before the lord mayor of London, or the minister of the United States.

The acknowledgements of citizens of other states, of deeds for land, lying in the state of New-York, may be according to the forms of their respective states, but if acknowledged without the state of New-York, must be before one of the judges of the supreme court of the United States.

The acknowledgements of married women residing in other states, are to be taken in the same manner as if they were respectively single women.

The effect and operation of deeds regularly acknowledged, agreeably to the above forms, is that whether recorded or not, they are admitted as evidence in the courts of the state of New-York, without further proof.

And after being recorded, should they be lost or destroyed, authentic copies of them, from the record, would be received in all cases as legal evidence.

**FORM B.**

*Where the grantor is not known to the judge taking the acknowledgement, and to whose identity, some third person is qualified.*

State of New-York, *§ ff.* Be it remembered, that on the day of            in the year of our Lord            personally came before me J. S. one of the judges, &c. A. B. of            And I having *satisfactory evidence* that he is the same person described in, and who executed the within deed, by the oath of C. D. who being duly sworn, deposed that he knew the said A. B. and that he is the person described in the said instrument (*or that he is a person of that name*) And the said A. B. before me acknowledged that he had executed the same as his voluntary act and deed, and I having examined the said deed, and finding no material erasures or interlineations therein, do hereby allow the same to be recorded.

J. S.

**FORM C.**

*Where a witness known to the a judge, testifies to the execution of a deed.*

State of New-York, *§ ff.* Be it remembered, that on the day of            in the year of our Lord            personally came before me J. S. one of the judges of the court of common pleas in and for the county of [*master in chancery or first judge of the court of common pleas, as the case may be*] T. L. well known to me, who being duly sworn, deponeth that he was present and saw A. B. the grantor, execute the within deed; that this deponent and W. R. subscribed their names as witnesses to the execution thereof; that the deponent knew the said A. B. to be the same person described as grantor in the said deed, which to me is *satisfactory evidence* of the facts above stated, (*or that the deponent knew the said A. B. and that he is the person described in, and who executed the said deed*) And I having examined the said deed, &c. (*as in the foregoing forms.*)

**FORM D.**

*Where the witness to the execution of a deed is not known to the judge.*

State of New-York, *vs.* Be it remembered, that on the day of        in the year        personally came before me J. S. one of the judges of the court of common pleas, in and for the county of        S. S. of        And I having satisfactory evidence that he is the subscribing witness of that name to the execution of the within deed, by the oath of F. L. who being duly sworn, deposeth that he knew the said S. S. and that he is a person of that name; And the said S. S. made oath before me that he was present, and saw A. B. the grantor, execute the said deed; that he knew the said A. B. to be the same person described in, and who executed the said deed; and that this deponent and T. P. subscribed their names, as witnesses, to the execution thereof, all which is to me *satisfactory evidence* of the facts so stated: And I having examined the said deed, &c. (as above.)

**FORM E.**

*Where a married woman is one grantors in a deed.*

State of New-York, *vs.* Be it remembered, that on the day of        in the year of our Lord        personally appeared before me J. S. (as before) A. B. of        and C. D. wife of said A. known to me, (if such is the fact otherwise certified under oath by some witness as above) to be the same persons described in, and who executed the within deed; and the said A. B. before me acknowledged that he had executed the same as his act and deed: *And the said C. D. having been by me privately examined, apart from her husband, acknowledged that she had freely executed the same, without any fear or compulsion of her husband, and I having examined the same, &c. (as before)*

\*\*\*\*\*  
FINIS.  
\*\*\*\*\*