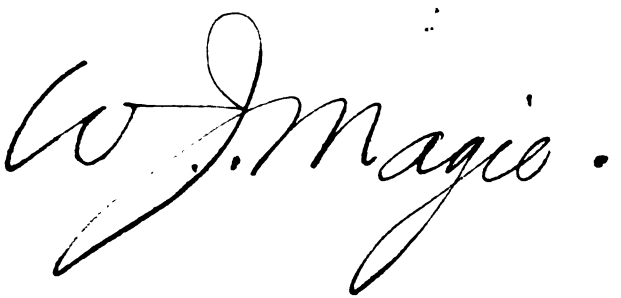

F. C. Brec

# ANNUAL

# LAW REGISTER

OF THE

# UNITED STATES

BY WILLIAM GRIFFITH,

COUNSELLOR AT LAW.

VOL. III.

BURLINGTON, NEW JERSEY.

PUBLISHED BY DAVID ALLINSON.

1822.

DISTRICT OF NEW JERSEY TO WIT:

SEAL. BE IT REMEMBERED, That on the fourth day of December, in the forty-seventh year of the independence of the United States of America *Anno Domini* 1822, WILLIAM GRIFFITH 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:

"Annual Law Register of the United States. By William Griffith, Counsellor at Law. Vol. III."

In conformity to an 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." And also to the act, entitled "An act supplementary to an 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 times therein mentioned,' and extending the benefits thereof to the arts of designing, engraving and etching historical and other prints."

WILLIAM PENNINGTON,
Clerk of the District of New-Jersey.

D. Allinson, Printer.

# ADVERTISEMENT.

The states comprised in this III. Vol. are,


| | | | |
|---|---|---|---|
| Vermont, *commencing at page* | 1 | Virginia, | 310 |
| New Hampshire, | 29 | Ohio, | 386 |
| Connecticut, | 58 | Illinois, | 410 |
| Rhode Island, | 90 | Georgia, | 428 |
| New York, | 122 | Indiana, | 450 |
| North Carolina, | 194 | Massachusetts, | 474 |
| Pennsylvania, | 234 | Ending at page | 564 |


*It was my purpose to have prefixed to these volumes, some* introductory *remarks, as a survey and comparative view of the most important provisions wholly peculiar to certain states, or varying in essential particulars from those in other states on subjects of regulation common to all: But in attempting an essay of this nature, I soon found, that it would require much time for its completion, and more labour than my impaired health could at present sustain.*

*It must be left to gentlemen, as occasion requires, or who from curiosity may wish to possess this information, to examine for themselves: Next to the practical uses to which these compilations may be applied, nothing will more attract attention than these peculiarities, beside the various modifications and diversities which exist on titles of law and municipal regulation, in some degree common to every state.*

*I also intended here, to submit to my subscribers and the publick, certain considerations connected with the design and continuance of the Law Register, in a form somewhat more fitting than a mere prospectus or advertisement allows.*

*But having issued a* Notice *relative to these particular volumes, in which under the 'General Note,' I have inserted in substance what it was my intention to say, I refer the reader to that notice. It follows this advertisement, and in the form it was published: Although not altogether appropriate as an "Introduction" it will, I hope, convey all that is material for me to announce at this time.*

*At the end of* Vol. IV, *will be found such corrections and additions, as have been suggested to me by the gentlemen who furnished the matter of the several states after they had received a printed copy. These will be in such form as to admit of being connected in binding up, with the principal article.*

*After so much trouble already encountered by them, it is not to be expected that the contributors of what is now to be published, will extend it. But should they or any other gentlemen do me the favour to note omissions or mistakes, they shall be carefully set right in a future number.*

*It will be perceived, that the Territories of the U. States,* Michigan, Arkansaw, Florida *and the district of* Columbia, *are not noticed.*

*Conceiving them as more properly belonging to the "Federal System," a notice of their laws and regulations is deferred, and will be attached to the 1st and 2d volumes of the Register.*

*Notwithstanding all possible care, some errors of the press and in the transcription of such an immense body of MS. have occurred; they are however I believe, not material, and will be attributed to the intrinsic difficulties attending a first impression from manuscript.*

WM. GRIFFITH.

*New Jersey, City of Burlington,*
*December* 1822.

N. JERSEY, BURLINGTON, NOV. 23, 1822.

# ANNUAL,

## LAW REGISTER OF THE UNITED STATES.

## *Vols. 3d. & 4th. for 1821,2.*

THE *Editor* informs the Publick, that *Two volumes* of this *annual* work, will soon be published.

Under the title, of "*State Laws and Regulations, &c.*" they will comprise a great body of information separately compiled for the STATES of,

1. *ALABAMA*
2. *CONNECTICUT*
3. *DELAWARE*
4. *GEORGIA*
5. *INDIANA*
6. *ILLINOIS*
7. *KENTUCKY*
8. *LOUISIANA*
9. *MAINE*
10. *MARYLAND*
11. *MASSACHUSETTS*
12. *MISSISSIPPI*
13. *MISSOURI*
14. *NEW HAMPSHIRE*
15. *NEW JERSEY*
16. *NEW YORK*
17. *NORTH CAROLINA*
18. *OHIO*
19. *PENNSYLVANIA*
20. *RHODE ISLAND*
21. *SOUTH CAROLINA*
22. *TENNESSEE*
23. *VIRGINIA*
24. *VERMONT*

CONTENTS.

The SUBJECTS treated of in each state, are the following,

I. STATE OFFICERS,

And officers of the U. STATES, connected with the judicial department, and some others; their names, residence, titles, tenure of office, mode of appointment, salaries, &c.

II. THE TIMES AND PLACES

Of holding the several circuit and district *courts*, of the U. States; the states composing each circuit, and the names of the judges of the supreme court, and of the district judges, who preside in each.

III. THE SEAT OF GOVERNMENT,

And the "TIMES OF THE MEETING of the *legislature*," in each state.

IV. Of ATTORNIES & COUNSELLORS,

*in each state:*

On what *terms* of previous study, examination, &c. and by whom admitted; and how, from *other* states, &c. with the "constitutions" of certain associations of the *bar*; and incidental *notes* and observations.

V. LAWS AND LAW BOOKS,

*of each state.*

STATUTES: *an account* of the prior and latest editions; the *periods* they comprise, and how cited; the public laws in pamphlets since, and how obtained.

DIGESTS and *abridgments* of state laws extant: the periods they contain; and others preparing.

STATE REPORTS: (and also, of the circuit and district courts of the U. States,) *chronologically* arranged; with their *titles* at large; the *periods* comprised in each volume; the times of publication and names of the *reporters*.

TREATISES on the law, and *practice* of the law; or applicable to particular officers and jurisdictions; or on particular subjects, as conveyancing, mercantile forms &c.; *chronologically* arranged, with their titles and contents fully stated; times of publication, and names of the authors or compilers:

The *catalogue* of each state, accompanied with explanatory *notes:* The whole presenting a comprehensive view of (domestic) *law books* in the U. States, from the earliest times to the year 1822, inclusive; with some notices of *foreign* books; periodical *miscellanies*, and *law collections* in the U. States, and of works in *preparation*.

## VI. COURTS OF LAW AND EQUITY
*of the several states:*

Containing their names; style of the judges; extent of territorial jurisdiction; general and peculiar organization; the *jurisdiction*, original, exclusive, concurrent, or appellate, of each; and over what subjects, civil and criminal respectively; and the methods of carrying up causes by appeal, error, certiorari, motion and notice &c.; with various information relative to this important title.

*Together*, with the RULES of the several superiour courts of common law and equity in each state; carefully revised, arranged in order of time, and numbered in arithmetical progression; with an *alphabetical* and *synoptical* INDEX to their contents, respectively; and *notes*; presenting a great body of useful, and many peculiar regulations of practice. (1)

## VII. OF CONVEYANCES,
*in the several states.*

REQUISITES of: most usual deed; possession how passed; technical words in, if necessary; rules of construction and operation; subscribing witnesses, when required and the number; sealing, when necessary; and other requisites to the *formal* perfection of instruments, for the alienation of estates.

RECORDING of deeds, mortgages &c.; necessary or not between the *parties* and their heirs; *subsequent* purchasers, mortgagees, &c., their priority against unrecorded deeds; *notice* of a prior unrecorded conveyance, effect of.

ENTITLING a deed to *record:* "acknowledgment" by the grantors, or "proof" by witnesses for that purpose; courts and *officers* in each state, authorised to take acknowledgements or proofs: FORMS of *certificates* of acknowledgments by the parties, and of proof by witnesses in court, or before officers out of court; drawn pursuant to the laws respecting them, and at full length. DIRECTIONS; respecting the certificate; seal of the officer or court to it, when necessary; subscription of the names of grantors on acknowledgment, or of the witnesses on proof, required or not; affirmations, how taken: GRANTORS or mortgagors, in *other states;* what *officers* or courts there, may take the acknowledgment or proof; *certificate* of, how authenticated, as taken by the proper officer, &c.

GRANTORS &c. in *foreign* countries; what provision for taking the acknowledgment or proof, in such cases.

GRANTOR or witnesses, dead, removed from the state, or not to be heard of; what provision for *secondary* proof, as by hand writing &c.

COPIES of deeds, &c. by whom, how, and at what office exemplified; *evidence* on trial, in what cases; and when the original must be produced.

PRIORITY; by *recording* of deeds, mortgages &c., of real and personal property, in the several states; times respectively allowed after execution, for this purpose.

MARRIED WOMEN; their competency to convey, devise &c. in the respective states.

JOINING in the deed with the husband, when required; private examination of the *feme*, when necessary; what *officers* and courts, authorised to take their acknowledgments and examinations, in and out of the state:

FORMS, of *certificates* at large, drawn pursuant to the laws of each state; with directions in all cases, either where they convey their own estates, or relinquish dower:

The whole accompanied with *notes*, critical and explanatory: *Containing* whatever is necessary to be known by the citizens in *each* state in respect of their own laws, or of the laws of the se-

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(1) *I would particularly direct the attention of the bench and bar in the U. S. to the head of "Law Books" and of "Rules of Court." Little is hitherto known of the vast extent of the first, and how deficient our libraries are, in digests and works of great merit, and specially adapted to disseminate not only state law, but legal information of every kind; and more useful, as they come nearer to our peculiar practice and subjects which occasion legal controversy, than foreign treatises and reports. At a small expense, gentlemen might possess themselves of the latest* digests, *of the Statutes and Compendiums of practical law in each state:*

*As to "Cases" they are now ably reported, and the decisions themselves will be found in many states of a very high character, and furnishing expositions on almost every question of law which can arise; and on subjects common to every state.*

English *books now, are almost a dead expense to the bar; a bale of reports will scarcely furnish an important case*—here.

*As to "Rules of Court," those of the higher tribunals will with a few exceptions be found in these Volumes. They have been revised with some care, and in form and connection I hope, not a little improved, accompanied with* indexes. *A reference to the "Rules in the state of New York" for example, will afford some view of the improvement I allude to. But it is to the jurist and lawyer, to whom I recommend the perusal of these* peculiar *codes. They show the result of the combined wisdom and ingenuity of men versed in law and its obliquities, for a century past, to supply the defects of legislative regulation, and counteract the "law's delay." They will suggest many useful regulations, and though none may pretend to be without defect, yet from the whole, might be framed more perfect systems.*

veral states, on this important head, relative to the formal execution and recording &c. of conveyances.

## VIII. JUDGMENTS, AND EXECUTIONS, *in the several states.*

*Lien* of, against the alienation of the *debtor*, of real or personal property, when it commences.

*Creditors*, priority among, upon judgments and executions, how determined in respect of real or personal estate.

*Lien* of judgments, on *after* acquired estate; and of *attachment*, by the peculiar laws of the New England states.

Different *kinds* of execution in the several states; and effect of judgments and executions, beyond the territorial limits of the court, in the same state. *Sale* of real and personal estate on executions; regulations concerning conveyance by the *officer*, how made; irregular or fraudulent sale; relief against, *summary* or what authorised.

Stop Laws, or enactments in the several states, tending to delay execution, or to impair, or defeat the remedy of creditors; carefully detailed according to existing laws.

*Judgments by confession*, in or out of court; before or after debt due; prohibited wholly; or to what extent allowed and modified in the several states. Judgments *reversed* after sale of the property; the debtors remedy.

The *Ca. Sa.* in what cases allowed; how restricted in regard to persons, and amount.

Effects, *exempted* from execution.

With *notes*, references to, and abstracts of state enactments and judicial opinions. Exhibiting, an extensive outline of state law and regulation on the subjects embraced under this title.

## IX. INSOLVENT LAWS, *of the several states.*

Persons entitled to the benefit of; exceptions; actual imprisonment necessary, or when not; methods of application; determined by court or jury; notice to creditors; time required to obtain a discharge; disposition of property surrendered; effect of discharge, as to the person or debt; peculiar enactments &c. presenting a *general* view of the existing law on this subject, in the several states, with notes &c.

## X. WILLS;

*Alienation* by, in the different states; how restrained; *formalities* of execution to pass "real" estate, in respect of witnesses, co-attestation, signing &c.

*Revocation* of wills of land, what sufficient: *statute* of frauds and perjuries, how far the rule:

*Probate* before what officer or court; manner of proving where no contest; how if contested; effect of probate or rejection, in respect to the heir or devisee of the land:

Will of "personal" estate; *formalities* of execution, what required; *revocation* of, what; *probate*, how and before whom; will and inventory, where deposited or recorded; office *copies* by whom and how certified; when evidence on trial:

Proved in *other* states or *foreign* countries, effect of; *copies* how authenticated; evidence, in what cases:

*Ex'ors and adm'rs*, in "another" state; suits by, if allowed, or how to enable themselves to sue:

*Peculiar* statute provisions; unborn children; implied revocations by marriage and issue; after acquired land &c: Comprehending a general and practical outline, of the existing law in each state, respecting the *execution* &c, of wills and testaments, with some notes and decisions.

## XI. DESCENTS; *the law of—in the several states:*

*Lineal*, descending or ascending, how regulated; to the *half blood*, how; and among *collateral* relations:

The numerous laws in some states, and prolix enactments in others, on this difficult, complex and important subject, being carefully reviewed; the *order of succession* in each reduced and stated briefly, under distinct numerical divisions; also, various incidental and additional matter relative to propinquity; representation; advancement; alienage; bastards &c; with *notes*.

## XII. DISTRIBUTION; *of the personalty of intestates, in the several states.*

To the widow, children and lineal descendants; to ascendants; and among collateral relations; 22 *and* 23 *Car.* ii. *c.* 10. and 29 *C.* ii. *c.* 30. how far adopted: *Together*, with peculiar enactments in each state, and relative to various subjects of administration; exhibiting the existing law of the several states, as deduced from their statutes.

## XIII. ENTAILS.

The law of *entails*, as variously modified in the several states; with references to, and abstracts from state laws, directing the manner of barring the entail, by conveyance or otherwise.

## XIV. DOWER.

The law of, as existing in the several states; *election* of the widow, in case of testamentary provision; *peculiar* enactments relative to the widow; *methods* of recovering and barring dower &c; with *notes* and directions.

## XV. CURTESY:

The law of, as existing and modified in the several states.

XVI. LIMITATION OF SUITS:

*Times* of, as prescribed, for real or personal property, in the several states; *savings*, to citizens and non-residents; *peculiar* enactments; points *adjudged*; notes &c: *Containing* various information, under this important head of state law.

XVII. TAXES:

Sale of lands for, in the several states; general regulations; notice; time and terms of redemption; vesting in the state; advice to non-residents; abstracts of laws, decisions, notes &c; principally for the use of persons owning lands, in other states than where they dwell.

XVIII. ADMINISTRATION: (administratora.)

*Right* to, how regulated in the several states; when and by *whom* granted; Security; duties of; accounting; 31 *Ed. iii. c.* 11, 21. *H. viii. c.* 5. in force, or how modified; *peculiar* laws; notes &c.

XIX. ALIENS:

Their disabilities, and privileges, in respect to *holding and disposing of estates*, under the existing laws of the several states.

XX. ALLUVION:

The law respecting it, in the several states.

XXI. ANTINUPTIAL CHILDREN:

Legitimated, by *after* marriage, or not; *peculiar* laws of the several states.

XXII. ATTACHMENT:

Against non-residents, and absconding *debtors*; provisions, in the several states &c.

XXIII. BAIL.

Laws respecting, in the several states.

XXIV. BARON AND FEME:

Rights of, respectively; regulated by the law of England, or how modified in the several states.

XXV. BASTARDS:

Under common law disabilities or not; *peculiar* laws &c, in the several states.

XXVI. BILLS OF EXCHANGE AND PROMISSORY NOTES.

Regulated by the law of England, or how modified; demand; notice; protest; liability over; damages on protest; peculiar enactments; decisions &c, in the several states; and *notes*: *Exhibiting* extensive information, on this important branch of law, as variously modified in the several states.

XXVII. BOOK ACCOUNTS:

How recoverable; for what things furnished; when evidence; interest on; peculiar laws &c, in the several states.

XXVIII. CHOSES IN ACTION:

Assignments of bonds &c.; assignees how to sue; liability over, when, and on what conditions; peculiar laws, in the several states, with *notes* &c.

XXIX. DECREES IN CHANCERY:

For money, how executed; on foreclosure of mortgages; and in other cases; peculiar enactments &c, in the several states.

XXX. DIVORCE:

For what *causes*; by what *court* granted; cause of, to arise *in* the state, or parties be resident or not; *peculiar* laws and provisions concerning, in the several states.

XXXI. ENGLISH LAW-BOOKS;

Allowed to be *read* in the state courts, or not; or under what restrictions.

XXXII. FISHERY:

Rights to, in front of the soil; peculiar laws of the several states &c.

XXXIII. FRAUDULENT CONVEYANCES;

To defeat creditors and purchasers; 13 & 27 *El.* if in force; peculiar enactments &c, in the several states.

XXXIV. FRAUDS:

Stat. 29. *C. ii. c.* 3. adopted, or to what extent; peculiar laws in the several states.

XXXV. GUARDIANSHIP: (Guardians.)

Who entitled; appointed by will or deed; by what court granted; their powers and duties; accounting; peculiar laws &c; in each state; notes &c.

XXXVI. INSOLVENT ESTATES; *of deceased persons:*

Creditors paid *pro rata* or not; how settled; peculiar enactments &c, in the several states.

XXXVII. INTEREST:

Regulations, concerning, in the several states.

XXXVIII. JOINT-TENANCY *in lands:*

As at common law; or how modified, in the several states; *notes* &c.

XXXIX. LANDLORD AND TENANT:

*Distress* for rent, allowed or not; peculiar enactments &c, in the several states.

XL. LIFE ESTATES:

Tenants for, their rights and liabilities; regulated by common law, or how modified; waste; peculiar enactments &c, in the several states.

XLI. PAYMENT OF DEBTS BY EX'RS AND ADM'RS.

*Order* and priority of; *pro rata.* when; confessing judgments; sale of effects and lands; and peculiar laws and regulations in the several states; *notes* &c.

XLII. POWERS OF ATTORNEY:

Made in *other* states, or foreign parts; how to be executed and authenticated, to be effectual in the several states.

XLIII. PUBLICK OR PROPRIETARY LANDS:

If any for sale; prices; how applied for &c, in the several states.

XLIV. SEALING OR NOT:

Effect and operation of, in respect of the instrument; if common law governs; or how changed; *scrolls,* equivalent to wax; peculiar laws &c, in the several states.

XLV. SET-OFF:

How regulated, in the several states.

XLVI. TRUSTS:

Law of England received, or how modified, in the several states.

XLVII. USES:

*Stat 27. H. viii. c.* 10. adopted, or what similar provisions, in the several states.

XLVIII. USURY:

Penalties of, and peculiar laws respecting, in the several states.

PARTICULAR NOTICE.

*The above mentioned 3d and 4th volumes of the Law Register, will be followed by the 1st and 2d, comprehending the* "Federal System," *and the* particulars *falling under that title, as mentioned in the prospectus published* Jan. 1, 1821; extracts *from which, are annexed. The reasons for this* anticipation, *are stated in the* note *below.*

*Each of the present* VOLUMES *(stitched) will exceed 500 pages, printed on fine paper, (royal octavo,) and with a new type.* There is a running title denoting the particular state, and the* paging *is continued in one series through both; but the matter of* each *state, is printed by itself with a title page, and separable from the others in binding up, as may be convenient.*

*The whole (except the* appendix *to each state,) is arranged in the form of "Question and Answer," from* No. 1. *and proceeding in arithmetical order. A "general* Index" *is constructed, corresponding to the* number *and contents of each question and answer; and as these are the same and numbered alike in each state, this index serves for all. For* example: *It is desired to know, what* "Books of Reports" *have been published in Vermont? By recurring to this index at "Reports," it will refer to* No. 14; *and by turning to* No. 14, *the answer is given for that state; and at No.* 14, (Virginia *for instance and) in every other state, will be found an answer to the question respecting reports of cases adjudged in such other state. There is also an* index *to the contents referring to the* page *throughout. Beside these, there is to each* appendix, *a distinct alphabetical table of contents.*

Gentlemen *in the different states who may desire to become subscribers to the Law Register, or to be furnished with these volumes only, will please to* signify *their intention by a line* (post paid) *directed to* "Mr. David Allinson, City of Burlington, New Jersey."

*It would be the wish of the Editor, to* deliver *the present volumes to his numerous* subscribers: *But many of them are so widely apart and distant from the place of publication, and the size of the books not admitting of carriage by mail, it is not deemed practicable to send them to* every *individual. The best expedient he can propose to subscribers (and others who may only desire these particular volumes) is, to* designate *some person or bookseller in any principal city or town, to whom they may be sent on their account.*

*He suggests, the following places:*

*On the* OHIO, *Pittsburg, Cincinnati and Louisville: On the* MISSISSIPPI, *Natchez and New Orleans: On the* ATLANTIC, *or its rivers, at any place accessible to* ship or steam boat navigation.

*Notwithstanding this intimation, orders for conveyance in any other way, will be observed.*

*An* early *attention on the part of gentlemen, who may feel any disposition to patronize or possess this work, to the foregoing suggestion, will enable the* editor *to make arrangements for its punctual delivery, and tend to their mutual convenience.*

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The *subjects* of these volumes and the scope they fill, could leave no question of their value *if,* in point of execution and matter, they actually correspond with the representation held out in the table of contents.

My own judgment on this, might perhaps be more impartial than at first view would be supposed, for in reality I have nothing at stake. The *authorship* is not mine, and the very small portion of books which will be left after my subscribers are supplied, removes all apprehension of pecuniary *loss*

* The *quantity* of matter in the 2 volumes, will nearly equal 3 vols. of law reports, in common octavo of the same number of pages each.

in the disposition of that residue. I could wish however, to do justice to others; I mean the gentlemen who are the *contributors* of what is published.

In this view, I hope it will be allowable for me to say, that the work as it progressed, was communicated to many competent judges, and I could subjoin as many testimonials in favour of it.

I merely select out of the number, those which follow. They are from gentlemen only known to me, by their reputation and competency to decide.

*Extract of a letter from David Hoffman, Esq Professor of law in the University of Maryland.*

"I am much delighted with the work as far as it has progressed. It will be invaluable to the country at large, and to *me* it will prove a "pearl of great price."

*Extract of a letter from———Richmond, Va.*

"Let me congratulate you on your progress, which far exceeds my utmost expectations. I have examined the important heads of each of the numbers, as they came on: so far, your friends have every reason to be satisfied, and the publick at large must acknowledge, that you have fulfilled your engagements to the letter."(1)

(1) *I have taken the liberty to mention Professor* Hoffman *from the mere circumstance of his publick situation: but without his knowledge or sanction. The name of the other gentleman is with-held: I know not why it should be; but have a faint recollection, though quite on another point, that I am under some restriction, which might reach in his opinion this case.*

## *GENERAL NOTE.*

*At the time I announced to the public an outline of my extensive undertaking* (Jan. 1821.) *I was well aware that many subjects connected with it, were of so* detached *and insulated a character, as not easily to be interwoven with the* systematic *scheme which I had delineated; and yet were not only necessary to its completion, but really of more importance to the public, taken together, than any single part of it, and ought if practicable to be first executed.*

*This will be easily comprehended, by a survey of the several titles and specifications in the preceding table of the* contents *of the 2 volumes about to be published.*

*I did not then however, entertain a thought, that any diligence could enable me to* collect *the information on all these heads, from 24 states, in the time it has been accomplished.*

*But eventually to attain it, I immediately addressed in a printed form,* Questions, *to gentlemen of the law in each state, (known to me for their experience and eminence at the bar) on all the subjects embraced in the several titles of the table above exhibited, and as there arranged.*

*These questions in* number, *are* 177, *but including the particulars of each principal interrogation, amount to several hundred. They were put in a form so discriminated and precise as, if answered, the replies would afford all necessary information.*

*In accomplishing this task, my correspondents had to review the whole body of the laws of their respective states, (compiled and in pamphlets) and from the nature of the information sought, were subjected to a process of inquiry rendered extremely difficult from the minuteness, no less than the extent of it. The difficulty of execution was not a little increased, by the necessity they were under from the nature of this work, to confine themselves to limits compatible with its supposed design: On the one hand it was indispensable to avoid prolixity, and on the other a generality, which would convey indistinct views, and defeat the main object to be attained, viz; "information* practically *useful in every state," on the points of inquiry.*

*The* performance *of the several parts, will not be found in all respects equally full, or perhaps exact: Many circumstances connected with the personal situations of contributors, and different views of what I wished, will account for this: I flatter myself however, that the profession and the publick will be satisfied: On my own part, I want terms in which to express my grateful feelings towards those gentlemen, whose gratuitous labours have enabled me to publish so great a body of information on the subjects of these questions; local indeed to the particular state, and of least consequence there; but of common importance in every other.* Imperfection, *from the nature of the case must exist; it would have required a folio for each state, to remedy this; and mistakes or omissions not unfrequently must have happened, from inherent or accidental causes, easily comprehended, and which I doubt not, will be as readily pardoned by all who are competent to decide, upon the peculiar difficulties attending so many minute details upon such a variety of subjects; and all these, to be reduced to the most condensed limits, and composed not unfrequently on a sudden, and from first impressions. While these answers were preparing in the different states, and in a course of transmission, I was employed on that part of my work which falls under the head of the* "Federal System," (*the particulars of which are mentioned in the prospectus*) *and had nearly fin-*

shed the 1st. vol. in Feb. last, (1822,) much of it being then printed.

At this time, I had received a large portion of MS. from the several states; and it seemed to me of so much more immediate consequence to be made public, that I suspended what was begun, and commenced the preparation of that for the press, which will now appear in these volumes.

The information they convey, was promised, and constitutes an interesting and perhaps as extensively useful a section, as any in the great and arduous scheme which I have projected. At some time, and in some form it must have been published, and I feel persuaded that when it appears, all who take any concern in the subjects and success of the Law Register, will approve of my determination to give it the precedence.

It appeared to me at first, practicable, to comprise the whole in a single book, of so large a size and containing so much matter; but with all possible compression and allowable reduction of the manuscripts received, it could scarcely be got into two; a fact which will create no surprise, when it is considered, that they contain a "notice of the laws and regulations" of 24 states, on the various subjects indicated in the table of contents, with much incidental matter, not strictly falling under that description.

Thus much it seems incumbent on me to mention, at this time, in assigning the motives which induced me to deviate from the order of publishing, as laid down in the general syllabus of my design

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The volumes of the Law Register about to be issued, consist of 24 books, (if they may be so denominated,) viz: one for each state in the union; comprising in a practical form, a great body of legal information, or incident to institutions and the rights of persons and things in such state:

From the nature of the subjects, and the manner in which the materials were of necessity collected, it is not equally complete in its parts, or systematick, in the whole; yet taken throughout, affords a view of judicial establishments, and particular law in each state, hitherto very little known, and no less striking from the novelty it exhibits, than for its obvious utility to all persons who administer the law, or whose rights and property depend on its forms and execution in the several states.

The "TABLE OF CONTENTS" prefixed, exhibits a very brief and imperfect view of the matters which will be found in these books, or the labour employed by gentlemen who contributed the answers for each state, and I may add, of the compiler, in conforming them to his titles and restoring that uniform habit in which they now appear, without altering the substance, and rarely venturing on any change of language.

To professional gentlemen, the compilation for the state in which they reside, may be supposed as not likely to give them much information, or any considerable aid in the ordinary routine of their business and practice.

The editor however is not without a hope, that many important parts of their state law and regulations collected from numerous statutes, original and supplemental, digested under appropriate titles and in a small compass, will afford to them and their students, many facilities.

Such for example, as the law and forms respecting conveyances; of judgments and executions; of wills and testaments; of descents; distribution of estates on intestacy; limitation of suits; and the incidental matter connected with these titles.

And as respects other individuals and officers, the instruction to be found in the compilement of any particular state, cannot fail to be highly and generally useful, to the citizens of that state. But the great benefit to be derived from these volumes, to gentlemen who administer or practice the law, and other citizens, is the knowledge they communicate of laws and regulations in all OTHER parts of the union.

In reference to adjoining states, as far as they respect the rights of property, and prescribe the forms essential to its transfer and security, a knowledge of these, is obviously necessary, as well to professional men as others, in such neighbouring districts; and even in the most distant, such are the relations which subsist between debtor and creditor, and result from other transactions among citizens of the several states, infinitely diversified and daily occurring, that to have some acquaintance with their legal codes and methods of proceeding, would seem indispensable.(1)

The law of "Conveyances and Mortgage;" of "Judgments and executions;" of Insolvency;" of "Wills and Testaments;" of "Descents;" of "Distribution on intestacy:" of "Limitation of suits;" of "Taxes;" of "Notes and Bills of Exchange;" of "Assignments;" and on many other subjects (indicated in the preceding table of contents as it exists in the several states,) concerns or may concern many persons in every state, and ought to be understood not only by lawyers and judges, but all persons extensively engaged in business, and concerned in landed property held in their own right or under liens.

In respect to many other titles, such as relate to the "condition of the bar;" the "statutes and law books of the several states;" the peculiar "organization of courts and modes of administering justice, in each:" the special "rules of prac-

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(1) A gentleman who furnished answers to my questions in "Kentucky" observes: "thousands have been lost in this state to merchants and others on the sea board and in other parts of the union, from ignorance of our peculiar laws respecting mercantile notes and paper securities."

tice in all these courts;" and various other topicks alluded to in the table, they more immediately concern the legal profession, legislators, students of law and general readers; and from their importance and immediate connection with legal studies and knowledge, cannot fail in my opinion to impart both improvement and pleasure, to all liberal and inquisitive minds.

I must be excused here, in adverting to the progress and continuance of this work. Inquiries have been made, "when the Law Register would appear;" and gentlemen not acquainted with the extensive nature of my undertaking, have asked when "my book" would come out. In reply to the last inquiry, the answer will be found in the delineation of my original design as shown in the prospectus. It contemplates, not "a book," but a series of books in the form of an annual compilation on the subjects of law, or connected with law, as there exhibited.

In respect to the "annual" appearance of the Law Register, the year elapsed for the first volume: But in fact, one was ready within the time; yet as the subjects of it, viz: "State Laws and Regulations," could not be contained in a single volume, I deemed it more advisable to defer publication, until the whole on this branch was finished, which will now be accomplished, in two.

A word more on the "nature and design of the work." This is fully stated in the prospectus; and (in my judgment,) it differs essentially in its character from books which have been published, and are publishing in the form of quarterly law journals or magazines: It is more a law book, and systematic in its parts, and intended more directly to subserve the purposes of a lawyer's office and business, and to assist individuals any way concerned in the execution of law, and whose interests and situations daily call for a knowledge of its essential forms.

In stating thus much, it is far from my purpose as it would be disingenuous (and fruitless also,) to detract from the merit and utility of other law publications, bearing any resemblance in name or objects to the Law Register.

Magazines of the nature alluded to, are very properly made the repositories of more discursive juridical intelligence: They collect and give to the profession and the publick at short intervals, essays on constitutional law; on civil and penal reforms; critical reviews and notices of foreign and domestick law works; of recent trials and opinions at large of a peculiar or important character; dissertations upon the constitution of legal codes, and the amendment of the law; upon the policy or right structure of particular branches of municipal regulation, such as relate to pauperism; to bankruptcy, and insolvency; in short whatever regards if I may so call it "political jurisprudence." They are also very properly made the vehicles of lighter and more attractive reading; such as biographical notices of eminent jurists or distinguished lawyers; and of the eloquence of the bar or the senate: It has been found on experience, that they cannot long sustain the double character of combining general disquisitions and speculative law literature and intelligence, with technical detail and digested compilements of positive enaction

These latter, whatever be their merit, must of necessity be disjointed and soon lost sight of for practical purposes and daily application, amidst the voluminous pages and diversified matter of a general miscellany, such as I allude to. Such a one however, it cannot be doubted, must if well conducted, be in universal request. The practising members of the bar in the U. S. amount to more than six thousand, (1) and when to these are added all those in judicial, legislative or executive departments to whom such a work must be officially useful, and to these again general readers, it would be disparaging to the country to suppose a periodical miscellany of that description could fail of most ample support.

The "Law Register" is however, wholly of a different character: It will be confined as originally proposed to an annual volume, embracing all those titles of positive law and subjects connected with them, indicated in the prospectus. It is principally intended as a compendium of law and forms for the lawyer's office; and for the immediate use of men whatever stations they fill, or whatever interests they have at stake, who are seeking for law as it is, to direct and govern them in the practical performance of the duties they owe to themselves and to others; and who, for these purposes may have at hand, such abridgments, indexes, and notices, as will enable them in some degree to comprehend the vast concatenation of legal institutions, provisions and adjudications in the U. S. But in addition to these, accompanied with such other information of a more general and miscellaneous description,

(1) I have the names and places of residence of the gentlemen of the bar from 15 states in 1821. In Maine, 217. Massachusetts, 521. N. Hampshire, 204. Vermont, 220. Connecticut, 273. New York, 1391. New Jersey, 134. Pennsylvania, 417. Delaware, 32. Maryland, 175. Virginia, 483. Kentucky, 307. Ohio, 204. Georgia, 157. Louisiana, 106. Whole number in these 4841.

In the other 9 states, viz, R. Island, N. Carolina, S. Carolina, Tennessee, Mississippi, Alabama, Indiana, Illinois, Missouri, the estimated number at least 1000.

The whole probable number in 1822, 6000.

The judicial officers in the several States and Territories, cannot be less than 20 thousand!

*as cannot well be reduced to any exact classification, and yet important, to the bar, to legislators and citizens.*

*It must suffice at this time however, to refer to the annexed* extracts *from the exhibition of my scheme as published in Jan.* 1821, *in order to discriminate and point out the particular purposes and objects to be attained in the publication of the Annual Law Register.*

*If my health bears me out, it will be continued so long as the labour it imposes, meets with public approbation, and adequate reward.*

The 1st and 2d volumes, *relative to the "Federal System," will follow those now to be issued, comprehending,*

I. Certain PUBLICK DOCUMENTS relative to the *U. States;* as the Declaration of Independence; Articles of Confederation of the 13 States; Constitution of the U. States, and amendments; certain *Ordinances* of the Old Congress, relative to Courts, Territories, &c. with *notes* historical and explanatory.

II. A SUMMARY of the whole STATUTE law of the *U. States,* necessary to be *generally* known; correctly abridged, and arranged under proper titles, such as,

——Aliens, (and naturalization;) Army (and navy;) Census of 1820; Congress; Crimes and Punishments; Departments (of government;) Evidence; Fees; Fines and Forfeitures; Fugitives; Gaols; Indians; Insolvents; Judiciary (and judicial system in all its parts;) Land system of the U. S.; Limitations; Militia system; Ministers (consuls and vice-consuls;) Mint; Oaths; Offices; Patents (copyright, inventors;) Pensioners (invalids, military bounties;) Post-Office; Public Debt; (stocks, banks;) Revenue; (tonnage, customs, tariff, taxes;) Ships and Vessels; Slaves (slave trade;) Territories; Treaties,; &c.

III. A DIGEST, of all ADJUDGED CASES, in the several Courts of the *U. States,* since the adoption of the Federal Constitution to the present time, arranged under proper heads; stating, not only the principal matter decided, but incidental points and opinions. (1)

IV. ENTRIES or *Forms* of Writs, Declarations, Libels, Pleadings, Judgments, &c. in the District, Circuit, and Supreme Courts, of the *U. States,* in causes of Admiralty, Equity, and Common Law, and in Criminal Proceedings; and upon Appeals, Writs of Error, &c.

V. CATALOGUE OF LAW BOOKS, comprehending the Statutes of the several States, and the U. States; the Reports and Treatises of Law and Jurisprudence, published in each State, and Foreign Reports, and Treatises, with prices &c.

(1) With many hundred MS. decisions.

VI. The RULES of the Supreme Court, and of the several Circuit and District Courts of the United States.

VII. MISCELLANEOUS matter, useful and important to be known, not comprised under the foregoing divisions, and connected with the *Federal* System.

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EXTRACTS, from the Prospectus of the "Annual Law Register of the U. States," as published *Jan.* 1, 1821. By WILLIAM GRIFFITH, Esq. late one of the Judges of the U. States for the 3d. Circuit.

The Editor proposes to make the "Law Register" a vehicle of information, on legal subjects and provisions, important in their nature, and of *general* use and application to the citizens of the union; accompanied by well settled forms and practical directions.

It will comprise, as *fundamental* parts of the work, beside various other matter——

I. The CONSTITUTIONS of the U. States, and the several States.

II. A SUMMARY of all the Laws of the *U. States,* on the subjects of permanent and general concern, arranged alphabetically under proper titles.

III. A SUMMARY of the Laws of the *particular* States, and Territories, of permanent and general concern, arranged in like manner.

IV. A DIGEST *of cases adjudged,* in the Courts of the *U. States,* from the adoption of the Constitution, to the present time, including many adjudications not to be found in books of reports; arranged alphabetically, in a new and perspicuous method, exhibiting as well the principal matter decided, as incidental opinions.

V. A DIGEST of *cases adjudged,* in the Courts of the *several States,* to the present time, on the same plan. The decisions of the Federal and State Courts to be *separately* abridged; so that while *all* the American reports will be compiled, those in each State, and of the U. States, will be *distinct;* a plan affording obvious advantages.

VI. ENTRIES, of Forms, and Precedents, of Writs, Pleadings, Judgments, Appeals, Writs of Error, and other proceedings, in the several Courts of Admiralty, Law and Equity, of the *U. States.*

VII. FORMS relative to *Common Assurances,* and the Conveyance of Real and Personal *property,* &c. in the several States.

The utility of these *Summaries* of the Laws of Congress and the several States; *Digests* of adjudged cases; and *Entries,* or Forms; will be readily perceived by those conversant with the subject; and who have not the means or the leisure, to procure or examine the voluminous Statute books, and Law reports at large,—at this

time, sufficient to make a considerable library, and yearly accumulating.

In *addition* to these heads, (forming in themselves a full and *systematick* view of the existing Codes of Law, constitutional, civil and criminal, of the American governments,) the Register will contain, *particular* and CONTINUING—

1. NOTICES, of Statute Laws, and Judicial decisions, respecting landed and personal PROPERTY. in the U. States; such as relates to Wills, Conveyances, Descents, Mortgages, &c. and the acquiring or disposing of real and personal Estates, and the forms to be observed in order to give effect to transactions of this nature, in Courts of Justice, and to render them valid between the parties.
2. ——of Laws and Decisions, which relate to TAXES, and the means to avoid forfeitures; and of Laws and practices, touching the condition and *security* of titles, as affected by acts of Limitation, &c.
3. ——in respect to ALIENS, their rights and disabilities, and the proceedings, and *forms* to be observed for obtaining naturalization.
4. ——of Laws and Decisions, respecting PATENTS, Copy-right, &c. and the *forms* required, in securing to authors and Inventors their exclusive rights.
5. ——of laws and Decisions relative to BANKRUPTS and INSOLVENTS, in the several States and U. States; and of legal obstructions or facilities, in the recovery of debts.
6. ——of Laws and Decisions, on subjects of a CONSTITUTIONAL nature, or of general interest as relating to Crimes and Punishments; to Slavery; to real and personal Estates: to personal Injuries; to Creditor and Debtor; *expost facto* laws, and laws *impairing* the obligation of contracts.
7. ——of Laws, Regulations, and decisions, respecting NAVIGATIONS, TRADE, and COMMERCE, and which immediately concern those engaged in *commercial* transactions: such for instance, as relate to Ships, and vessels employed in the foreign, or coasting trade; to Bottomry; Insurance; Charter Parties; Bills of Exchange; and promissory Notes, &c. such also as respect the customs, and other branches of revenue &c.
8. —— in respect of PUBLICK Lands, Stocks, Pensions, Treasury Payments, Military land titles, &c. with directions and *forms*.
9. —— of *Law Books*, and *Law Reports* in general: Under this head will be exhibited, complete *lists* of books, comprising the *Statutes* of the U. States, and particular States; Books of *Reports*, foreign and domestick; their prices, and where to be procured, so that a *library* may be more readily made up, or supplied by orders.
10. —— of the *organization* of Courts of Law and Equity in the U. States, and the several States: the names of Judges and Law Officers in each: the times and places of holding Courts; the terms of admitting attornies and counsellors &c. and whatever else is peculiar and important in these respects.

It will be observed, that the preceding *prospectus*, refers to Summaries and Digests, of *American* Statutes, Laws and Decisions; and the *principal* object of the work is, to present, (what has hitherto been a *desideratum*, and is becoming more and more necessary) a "COMPENDIUM of *American* Statute and Common Law, with Forms and Precedents," sufficiently expanded however, to convey to the inquirer, a full and correct knowledge of the subject under examination. But besides this, it will contain full accounts of, and references to *foreign* reports, and judicial intelligence of importance or novelty, which may be useful to Judges, Professors of Law, or others in the U. States.

And generally, the Editor proposes to make this a REPOSITORY, of all that he deems useful to be known throughout the Union, falling within the department of "Law.

It will be perceived, that this is a work not *merely* designed for Courts and Lawyers; to them indeed it may yield much information, and certainly relieve them from expense and no small share of research and trouble, on many occasions: But the Editor flatters himself, it is a publication which, if executed as it should be, will prove eminently useful to the *people* of the U. States at large."

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## TERMS OF SUBSCRIPTION.

"The work to be in Royal Octavo, each volume to contain at least 500 pages closely printed.

One volume (entire, or in halves as may be convenient,) stitched—will be delivered annually: price to Subscribers *five* dollars a volume, payable on delivery of the volume, or the first half of any volume.

Gentlemen who subscribe, will please to address (POST PAID) to *Mr. David Allinson*, City of Burlington, New-Jersey, designating their residence—and where that is much in the interior, naming, if convenient, an *agent*, in some place near the Atlantick waters.

Notice will be given by the publisher, when any part of the work is ready for delivery.

## OPINIONS.

We have considered the plan and purposes of Mr. Griffith in his prospectus, for the establishment of a periodical "LAW REGISTER," in the United States, and do not hesitate to say, they promise a work of great interest and usefulness, to all persons, engaged in prosecuting or administering the law.

If nothing more had been proposed, but a *Summary* of the Federal and State systems of jurisprudence, including legal adjudications, precedents, and practical directions, that of itself, if accomplished, would undoubtedly, be a very important acquisition to the Bar, and the Publick.

But it is as a *Periodical General Repository* of law intelligence, that the intended Register appears to us to possess peculiar attraction. The multiplicity and diversity of municipal authorities and legal regulation in the United States, respecting persons and things, are immense; and necessarily so, arising out of the condition and circumstances of so many governments and judicatures; yet, from a community of rights and obligations among the citizens of the Union, they operate more or less upon all.

A publication designed, *periodically*, to collect, methodize and condense, from bulky volumes and scattered memorials, these multiplied and varying materials, and to serve as a history and record of passing legislation, and judicial opinions, cannot but prove highly useful, we think almost indispensable, to practising Lawyers, and gentlemen engaged in the daily prosecution of forensick and judicial employments.

The *annual* Law Register, proposed by Mr. Griffith, seems predicated upon this practical basis, and promises, at a very moderate expense, to accomplish these results: Indeed, so obvious is the utility of the design, on its face, as to make it quite unnecessary to specify more particularly the reasons which induce us, to express our entire approbation of it, and to wish for the establishment of the Register, as a permanent and widely extended Law Book. The only question that can be made is, upon the *execution* of the extensive plan which is delineated, in the proposals submitted by the Editor, and on this point, we think no apprehension need be felt.

A long Professional intercourse with Mr. Griffith, at the New-Jersey Bar, and the knowledge we possess of his personal character and qualifications, fully authorize us to say, that the work, in our opinions, will be conducted in a manner adequate to its proposed objects, and satisfactory to the publick.

The conviction we entertain, on this head, as well as our high respect and regard for the Editor, induce us to hope that his undertaking, will meet with encouragement as ample, as it must prove laborious and useful; and more especially, we recommend it to the patronage of the American Bar.

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| RICHD. STOCKTON. | JOS. M'ILVAINE. |
| AARON OGDEN. | CHARLES EWING. |
| LUCIUS H. STOCKTON. | GARRET D. WALL. |
| SAML. L. SOUTHARD. | |

*Trenton, Nov. 14th* 1820.

We have read Mr. Griffith's *Prospectus* of a Periodical Work, to be entitled "*The Law Register of the United States.*" The utility of such a publication will readily be perceived by the practising Lawyer, in every part of the union: and its many advantages are fully pointed out, by the very respectable gentlemen who have signed the preceding papers.(1) We beg leave to unite with them in recommending it to the American Publick, and, in their wishes for its success. Mr. Griffith is personally known to most of us; and to all, by the high rank he holds among the distinguished Jurists of our Country.—We therefore entertain the fullest confidence, that the *Law Register*, will be entitled to the liberal patronage of the Profession, and add to the reputation, which that gentleman now so deservedly possesses.

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|---|---|
| RICH. HARISON. | DAVID B. OGDEN. |
| THOS. ADDIS EMMET. | JOHN WELLS. |
| S. JONES. | SAML. BOYD. |
| | JOS. OGDEN HOFFMAN. |

*New York, December 21st*, 1820.

(1) Alluding also to the opinion of *Jared Ingersoll, Wm. Rawle, Ch. Chauncey, Horace Binney, William Meredith and John Sergeant*, Esqrs. expressing in very strong and flattering terms, their approbation of the Editors design.

## CORRECTION.

For *No.* 14. at page [ 5 ] read *No.* 17.

# VERMONT

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

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(1) *Note.* The QUESTIONS being the SAME relative to *each* state, this Index will serve for every other, as well as *Vermont*; except the *appendixes*: for each of which a separate index will be given. (2) *See act Nov.* 1, 1821, *p.* 4. *Vermont.*

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### CORRECTIONS.

At No. 15. p. 8. in the *form* strike out, after husband, the mark of parenthesis.
No. 21. p. 9. in answer, read "affidavit."
No. 82. p. 15. after 'barred,' place a semicolon.

## VERMONT. *Postscript*, to follow after p. 26.

### RULES OF SUP. COURT.

*Since the article for Vermont was printed, the following alterations, and additions to the* RULES *of the* Sup. Court *of Vermont, made in* December Term, 1821, *have been received.*

5th *Rule*—at the end *add*, " And if the motion is founded on the absence of a witness, the affidavit shall state the name and place of residence of the witness, and the substance of the testimony expected from him."

6th. Instead of 50 cents, the clerk's fee for filing affidavit to be 25 cents.

10th. *Altered*, so as to exclude "*heads of argument*," in briefs.

12th. For confession, read *concession.*

13th. *Omitted.*

15th. For *law* term, read *stated* term.

The following are *new* rules adopted at the above term.

*New trials on discovery of new evidence, how proceeded for.*

1. " *That* every petition or motion for new trial, founded upon the discovery of new evidence, be accompanied with a statement of the preceding trial and the evidence given upon that trial, so far as to show the applicability of the evidence relied upon as new discovered, and also with the affidavit of the party and witnesses."

*Dilatory Pleas, proceedings on.*

2. " *That* all dilatory pleas in actions originally entered in this Court, shall be filed with the clerk by the opening of the court on the second day of the first term, to which the plaintiff shall reply on the opening of the court the fourth day."

*Pleading, on 5th Proviso of 3d sec. Jud'y act, & in Error, when.*

3. " *That* in all actions, brought pursuant to the fifth proviso in the third section of the Judiciary act; the defendant shall plead by the opening of the court on the third day of the first term, to which plea the plaintiff shall reply by the opening of the court on the fourth day of the term; and that, in all cases in error, the defendant's plea shall be filed with the Clerk by the opening of the court, on the third day of the first term."

*Pleadings, in other actions, how put in.*

4. " *That* in all other actions, all pleas shall be filed with the Clerk within thirty days after the first day of the first term. Replications shall be filed

within twenty days after the expiration of the said thirty days; and twenty days shall be allowed to each party for filing every succeeding plea, until the pleadings are closed, and each party shall file his plea with the Clerk, within the twenty days allowed to him for that purpose."

*Examining witnesses, how by counsel.*

5. " *That* in any trial at law, of an issue of fact, no witness shall be examined by more than one counsel on each side."

*Exceptions to opinion of court, within what time to be presented.*

6. " *That* all exceptions to any opinion of the Court on any trial of an issue of fact, shall be drawn up by the party excepting, and presented to the Court for allowance within forty-eight hours, after the verdict or other decision of issue of fact."

*Files of Court, not to be taken out of office.*

7. " *That* no files, or other record of the Court, be suffered by the Clerk to be taken out of his office."

*Depositions on trial of causes, to be kept in Clerks office.*

8. " *That* all depositions read on the trial of any cause, shall be lodged with the Clerk, and remain in his office subject to the inspection of both parties."

*Form of depositions not excepted to at trial, no exception after.*

9. " *That* whenever a deposition is read on the trial of any cause, without any exception to the caption or form of taking, no exception shall thereafter be taken to the caption or form of taking such deposition."

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## CONVEYANCES.

In *explanation* of answers to the 2d and 9th *questions*, (under No. II. Conveyances, p. 7,) my *correspondent* suggests, that it may be proper to give the *words* of the *Stat.* which make the conveyance though not *acknowledged* and *recorded*, valid as between the parties. In this respect, the Statute, after enumerating the requisites as to the manner of executing a deed &c. enacts, " *That no deed &c. shall be good and effectual in law to hold such lands, &c. against any other person or persons but the grantor or grantors and their heirs only, unless the deed or deeds thereof be acknowledged and recorded as aforesaid.*"

He *adds*, " the *other* requisites of the Statute, which require sealing and witnessing by two witnesses, though necessary as between the *original* parties at *law*, in order to passing the *estate*, yet an instrument——wanting any or all these requisites, (except signing,) would be sufficient to induce the Court of equity to decree a conveyance."

## REGULATIONS OF THE BAR IN VERMONT.

The *same* "General Regulations for the Gentlemen of the Bar," exist in the state of *Vermont*, as in New Hampshire, (*see appendix to N. H.*) except that the words in *italick* in the 9th rule, are repealed; and the 17th rule, my correspondent remarks, "is not in force"

## STATE OFFICERS.

It appears, by the Vermont "Register and Farmer's Almanack" published by Walton at Montpelier for the year 1822, that the *Hon.* C. P VAN NESS, has been appointed *Chief J. of the Sup. Court.* (*see p.* 1, *No.* 3. *post.*)

☞In the NOTE, (*post. p.* 28, preceding *New Hampshire*) on the propriety of publishing these articles of "state law and regulation" in the form adopted, I have mentioned my communications, as being received from gentlemen of the *Bar* only; it is proper for me to say, that several of them are from persons in high *judicial* stations. I have with no small degree of solicitation endeavoured, to prevail on my respectable correspondents to allow me to mention, to *whom* the publick will be indebted for this gratuitous service, as well in justice to themselves, as to give a sanction to the statements received.

Except in a very few instances, and in these with great reluctance, I have not been able to succeed: my intention at present is, to *postpone* a reference to *any* of the gentlemen; first, in the hope of obtaining the consent of all, and secondly, that they may have an opportunity of revising what is published, before any notice is taken of the source from which it is derived.

*Ed.*

# VERMONT.



## No. 1. STATE OFFICERS.

1. Who is *Governor* of your state: his residence: title: term of office: how appointed: and salary?
*A.* RICHARD SKINNER, Manchester, Bennington c. title, "Governor and commander in chief in and over the state of Vermont," term of office 1 year, app. by the people, salary $750.

2. Who is *Secretary of State*: his residence: term of office: how appointed?
*A.* WILLIAM SLADE jr. Middlebury, Addison c. term of office 1 year, app. by the legislature.

3. Who is *Chief Justice* of the Supreme Court of law, or of law and equity: his residence: term of office: how appointed: salary?
*A.* DUDLEY CHACE: Randolph, Orange c. term of office 1 year, app. by the legislature, salary $1000. style of court, "the supreme court, and Court of Chancery."

4. Who are *Clerks* of the Superior or *Supreme* Court; and of the Court of appeals and error, in the last resort: their residence: term of office?
*A.* The *supreme court*, is the court of appeals and error in the last resort, and has also in many cases original jurisdiction in suits both civil and criminal; there is a *clerk* of this court in each of the counties, app. annually by the court.

5. Who is *Attorney General*: his residence: term of office: how appointed?
*A.* There is none—but an *Attorney for the State* in each of the counties, app. annually by the legislature.

6. What *place* is the *seat* of Government in your State: when does the legislature first assemble there?
*A.* MONTPELIER, Washington c: assembles *annually 2d thursday in October.*

### UNITED STATES OFFICERS.

7. Who is *District Judge:* his residence: if *two* Districts, the name and res. of each Judge?
*A.* ELIJAH PAINE: Williamstown, Orange c.

8. Who is *Clerk* of the District court: his residence: if *two* Districts, the clerk and residence of each?
*A.* JESSE GOVE: Rutland, Rutland c.

9. Who is *District Attorney:* his residence: if *two* Districts, the attorney and residence of each?
*A.* WILLIAM A. GRISWOLD: Burlington, Chittenden c.

10. Who is *Marshal*: his residence: if two districts, the Marshal and residence of each?
*A.* HEMAN ALLEN: Burlington, Chittenden c.

11. What *Justice* of the Supreme Court of the U. States holds the Circuit courts in your State: what states compose the circuit?
*A.* BROCKHOLST LIVINGSTON: *New York Connecticut* and *Vermont*; compose the 2nd Circuit.

12. At what *times* and *places*, are the *District* courts of the U. S. held in your State?
*A. Windsor 27th May, Rutland 10th October.*

13. At what *times* and *places*, are the *Circuit* Courts of the U. States holden?
*A. Windsor 21st May, Rutland 3d October.*

LAWS—LAW BOOKS.

14. What *number* of volumes does the *compiled* body of your *Statute* law consist of: in what year does it commence: up to what time is the *last* compilation: by what name is it quoted?
*A.* It consists of 3 volumes; the first Statutes were passed in 1779, and from time to time, down to 1797; they were then revised by the legislature and published: were again revised in 1808 and published in 2 volumes, though part were bound in one. In 1817, those subsequently passed, were collected and published in an additional volume. They are quoted *Ver. Stat.* 1, 2, 3, vol.

15. Can the publick Laws contained in pamphlets, be procured: where and of whom?
*A.* They are printed by different printers, and probably cannot be procured, except by application to some individual, who may undertake to collect them.

16. Is there any *Digest* of the State Laws, and by whom: or any in preparation?
*A.* None has been published, nor is any known to be in preparation.

17. Are there any *Reports* of cases in your *State* Courts: who are the reporters: what number of volumes: during what periods: are any in preparation: is there a state reporter: his name and residence?
*A.* In 1793 *Nathaniel Chipman Esq.* then chief justice of the supreme court, published a small volume of *reports*, comprising a period from 1789 to 1791 inclusive; the same volume contains *dissertations* on the statute adopting the common law of England, the statute of *conveyances*, the statute of *off-sets*, and on the *negotiability* of notes, with an appendix containing *forms* &c. This is a valuable little volume, but nearly out of print: it is well known that the author has since taken many reports and notes of cases, and it has been hoped, that he would publish a *new* edition of this book, including his reports &c. taken since, but this is uncertain.

In 1804, *John Simmons* published a small volume of *forms*, entitled the *Gentleman's Law Magazine*, which however never came into general use, and is now out of print.

In 1809 and 1810, *Royall Tyler*, chief justice of the supreme court, published *two* volumes of *Reports* of cases decided in the *supreme court* of Vermont in the years 1800, 1, 2, 3. (1)

(1) The gentleman who favoured me with these *answers*, observes, "that these cases have been found to be so inaccurately and unfaithfully reported, that they are rarely cited, and never relied on as authorities, even in our own courts: nor are the decisions made while he presided in the court, at all regarded as law in this state."

About the year 1813, *Thomas Greene Fessenden,* published a volume under the title of the *law of Patents,* of which he is now about publishing a *second* enlarged edition. In 1815 the same gentleman published a volume of *forms,* entitled the *American Clerk's Companion, and Attorney's Prompter.*

In 1820, *William Brayton,* a judge of the supreme court, published a volume of *Reports of cases adjudged in the supreme court* of the state of Vermont in the years 1815, 1816, 1817, 1818 and 1819. cited *Brayton's Reports.*

18. Is there any *Digest* of *Cases* in your *State* Courts; by whom: what number of volumes: or any in preparation?

*A. None,* nor any in preparation.

19. Are there any *Treatises,* on the law or practice of law in your *State:* or applicable to particular Officers, or Jurisdictions: their titles and how quoted?

*A. None.*

20. Have any *Foreign law books* been republished in your state: what, and by whom?

*A. None.*

21. Are there any *Reports of Cases* in the *District* or *Circuit Courts* of the *U. States,* in your State: who is reporter: what number of volumes: during what period?

*A. None.*

22. Is there any *Digest* of adjudged cases in those Courts, or either of them, or any *rules* of practice? (*rules requested.*)

*A.* There is no digest of adjudged cases. Rules of practice have been adopted in the circuit and supreme courts. The rules forwarded. (*To be given in appendix.*)

23. Have any books been *composed,* and published in your State, on law, or legal subjects of any kind?

*A.* None, except those previously noticed.

ATTORNIES— COUNSELLORS.

24. Is there any *distinction* in the profession of Attorney and Counsellor: in what does it consist?

*A.* There is none, except that between attornies of the supreme court and solicitors in chancery, and attornies of the county courts.

25. By *whom* are Attornies, or Counsellors admitted: on what previous term of study, or examination: on admission to one court, do they practice in all: are their names registered, and where?

*A.* Attornies are admitted in the *county* courts, to practice in such courts: persons of a publick education, are required to study *three* years in the office of some practising attorney; and persons of a private education, having been by previous study qualified to enter college, may be admitted to the practice after *five* years study: an admission in one county, authorizes the party admitted to practice in every other county. Attornies of the *supreme court* and solicitors in *chancery,* are admitted after *three* years respectable practice in the county court, provided they are found qualified, on examination by a committee appointed by the court.

26. On what *conditions,* are attornies and counsellors from *other* states admitted to practice law, in your State?

*A.* By the rules of the *bar,* attornies and counsellors from other states, in which the same term of study is required, and in which the same comity is extended to attornies from this state, are recommended for admission to the respective courts, without any previous study here.

COURTS. (1)

27. What are the *names* of the several *courts* in your State, beginning with the lowest?

*A.* Courts of *Justices of the peace*; of *probate*; *county courts* in the several counties; the *supreme court*; and court of chancery.

28. Their *style or title*, (as Justices of the Supreme or Superior Court; &c.?)

*A.* "Justices of the supreme court;" "Judges of the county court;" "Judges of probate;" "Justices of the peace."

29. The *extent* of their several *territorial* jurisdictions: how *classed*, into circuits, &c.?

*A.* The *supreme court* has general jurisdiction, and holds sessions in each of the counties. Civil suits between citizens of the state, must be commenced in a county where one of the parties resides. If deft. only be a citizen, he must be sued in his own county. If neither party be a citizen, the suit may be commenced in any county in the state.

The *county courts* have jurisdiction strictly speaking, only in their respective counties. Yet suits of a transitory nature, may be commenced in any county court in the state, with the same limitation as to citizens and strangers, as in the supreme court. *Justices of the peace* are county officers, having however civil jurisdiction to the amount of *fifty-three* dollars in personal actions general-

(1) Since receiving the replies under this head, the gentleman who communicated them, has transmitted to me an act passed by the legislature of Vermont, *Nov.* 1 1821, as follows:

AN ACT, Making further provisions in the Judiciary department, and for repealing certain acts and parts of acts therein mentioned.

SECT. 1.—*It is hereby enacted by the General Assembly of the state of Vermont*,—that from and after the passing of this act, the supreme court of judicature shall be annually holden by two or more of the judges of said court, for the trial of all questions of law and fact, in and for the several counties in this state, at the times and places following: viz. At St. Albans, for the counties of Franklin and Grand Isle, on the last tuesday save one, in December; at Burlington, in and for the county of Chittenden, on the first tuesday of January; at Middlebury in and for the county of Addison, on the third tuesday of January; at Rutland, in and for the county of Rutland, on the first tuesday next following the fourth tuesday of January; at Bennington and Manchester, alternately, in and for the county of Bennington, beginning at Bennington on the third tuesday next following the fourth tuesday of January; at Irasburgh, in and for the county of Orleans, on the first tuesday of July; at Guildhall, in and for the county of Essex, on the second tuesday of July; at Danville, in and for the county of Caledonia, on the third tuesday of July; at Montpelier, in and for the county of Washington, on the first tuesday next following the fourth tuesday of July; at Chelsea, in and for the county of Orange, on the third tuesday next following the fourth tuesday of July; at Woodstock, in and for the county of Windsor, on the fifth tuesday next following the fourth tuesday of July; at Newfane, in and for the county of Windham, on the seventh tuesday next following the fourth tuesday of July—And it shall be sufficient in any process issued by, or returnable to said court, in the proceedings thereof to style the same, as the tuesday of the month on which the said court shall actually commence its sitting. And all questions of fact, when the parties shall so agree, shall be tried by the court.

SEC. 2.—*And it is hereby further enacted*—That said court shall have, and take cognizance of all complaints, informations, indictments, actions, suits, and every other matter or thing, in law, or equity, that are now pending in the supreme court of judicature, in the several counties in this state—and the same, and all appeals, writs, recognizances, and every other matter or thing, that should be returned or entered at the supreme court of Judicature, at the times and places heretofore by law appointed: and all persons and parties that may be required to appear, or attend, at such times and places, shall be returned and entered, appear and have day, in said

ly, but with some exceptions. Suits may be commenced before them with the same restrictions as to residence of the parties, as in the higher courts. The state is divided into *probate districts*, of which there are generally two in each county; in each of which a judge of probate is appointed, having jurisdiction of the probate of wills, and settlement of estates.

30. Which have *original* jurisdiction, and over what *subjects* respectively?

*A.* The supreme court has *original and exclusive* jurisdiction of all capital and other *high* crimes and misdemeanors, and of all civil suits in favour of the state. It has also original jurisdiction *concurrent* with the several county courts, of all actions and causes of action of a civil nature, *excepting* such as are cognizable before a Justice of the Peace, actions on bonds conditioned for the payment of money, or jail bonds, actions of debt on judgment, debt on recognizance, or actions on bills, notes, liquidated accounts, or on book accounts. In the actions excepted, an *appeal* lies to the supreme court in favour of either party, which is allowed by the county court on motion of the party, and entering a recognizance to prosecute the appeal, &c.

In all other actions, if commenced at the county court, defendant on motion made, on or before the *third* day of the return term of the writ, may *remove* the cause to the supreme court, in which case no proceedings

---

court, at the next term thereof, in said counties respectively, as are appointed in this act.

Sec. 3.—*And it is hereby further enacted*—That all original writs, returnable to the supreme court of Judicature, may be signed by the clerks, or either of the judges of the said court, or by any judge of the county court, or by a justice of the peace.

Sec 4.—*And it is hereby further enacted*—That either of the chancellors of the court of Chancery, may, at any time in vacation, make all orders and decrees, and issue all writs and processes, necessary or proper to be made or issued, preparatory to the final hearing of any suit in chancery, reversible at the next term of said court, in which said suit is pending.

Sec. 5.—*And it is hereby further enacted*—That an act, entitled "an act, in alteration and amendment of an act, entitled 'an act, constituting the supreme court of judicature, and county courts, defining their powers and regulating judicial proceedings—and of an act entitled 'an act making further provisions in the judiciary department," passed Nov. 10, 1820—and an act entitled "an act in amendment to an act entitled an act, constituting the supreme court of judicature, and county courts, defining their powers, and regulating judicial proceedings," passed Nov. 16, 1819; and also all other acts and parts of acts contrary to the provisions of this act, be, and the same are hereby repealed

Sec. 6.—*And it is hereby further enacted*—That the secretary of state be, and is hereby directed to cause this act to be published in all the Newspapers printed in this state, as soon as may be."

*Note.*— My correspondent remarks, that "the alterations produced, result more from the *repeal* of certain preceding acts, than from the provisions apparent on the face of the act. As 1st. That the jurisdiction of *Justices* will extend to $100 in most cases.

2. That the *county court* will have *exclusive* original jurisdiction in all civil actions, except those in favour of the state.
3. That a *review* will be allowed to each party in the county court, or an *appeal* to the supreme court; and a review in that court, unless there has been a verdict twice one way.
4. That only *one* term of the supreme court, can be held in each county; and the attendance of *two* of the judges made requisite at jury trials.

The effect of all which he adds, is, the abolishing the *nisi prius* system, blending the law and jury *terms* and proceedings and chancery, together in one term.

It is proper to add, that the letter communicating this, is written with no view to a precise analysis of the act and its consequences, but as presenting some of its general features, and I may not quite understand the writer's letter in this statement of it.

can be had on the action in the court below, but the cause proceeds *de novo* in the supreme court. If deft. does not remove the cause as above, the judgment of the county court is final. A *writ of error* or *certiorari* lies in all cases, from the county to the supreme court, and the latter in cases proper, from a justices court. In all cases, an appeal on motion merely, lies from a justice's court to the county court.

31. Which have partly original, and partly appellant jurisdiction; over what subjects, and from what courts?

*A.* Answered above.

32. Which have *appellant* jurisdiction only, from what courts, and in what cases?

*A.* We have no courts which have appellate jurisdiction only.

33. Which are courts of equity, and which of law; or exercising both equitable and legal powers: are the proceedings by bill and Subpœna, as in the English chancery?

*A.* The *supreme court* is the only court which, strictly speaking, is a court of *Equity*, and this exercises both legal and equitable powers. The ordinary mode of proceeding is by bill and subpœna. The plaintiff may however file his bill in term, and take an order of notice: and where defendant is beyond the reach of *process* of the court, one of the chancellors in the vacation, may prescribe the mode of notice. The *county court* may however by statute, *chancer* bonds &c. or prescribe the time of redemption, in ejectment on mortgages &c.

34. What methods are used by parties aggrieved, to carry up judgments from Inferior Courts?

*A.* This may be done by an appeal, on motion of the party aggrieved, or by writ of error, or in cases proper, by writ of certiorari.

### MISCELLANEOUS.

35. Who is State *Printer*: and his residence?

*A.* We have no state printer. The legislature from year to year, and sometimes for a longer time farm out the state printing at discretion.

36. Who is the principal *Book-seller* at the seat of Government?

*A.* —— *Goss* is a printer, and *principal* book-seller, at the seat of government. *(Montpelier.)*

No. II. CONVEYANCE BY DEED, &c.

1. What is the *kind* of Deed, most in use in your State, for the conveyance of estates in fee, and of freehold interests: is it that of *bargain and sale?*

*A. It is*: the *form*, is that of a deed poll.

2. Does the legal *possession*, where the grantor is seized, pass to the grantee, without livery of seizen, or any other act to be performed by either party; and is this by operation of the statute of uses, by any local acts, or by usage?

*A.* When the grantor is seized, the legal possession passes to the grantee, without livery of seizen, or any other ceremony of the law; this is by statute: but in order to this, the *method* of executing the Deed pointed out by the statute must be pursued; that is, the deed must be signed and sealed by the party granting the same; be signed by two or more witnesses: must be acknowledged by the grantor or grantors before a justice of the peace; and recorded at length in the office of the clerk of the town in which the lands &c. lie.

3. In the creation of estates in fee, or fee tail, are *technical* words necessary, as "heirs and assigns," or "heirs of the body?"

*A.* In the creation of estates in fee or feetail, technical words are necessary as at common law.— We have however no entailments in this state: the constitution declares, "that the legislature shall so regulate entailments as to prevent perpetuities;" the legislature has never acted on this subject, nor is it known that any attempt has been made to create an entail: the operation of the constitution on a deed of entailment, has not come in question.

4. Is the *construction* and operation of common assurances, governed *generally* by the rules of *common law;* or by the *intent* ascertained from the whole instrument, as upon wills?

*A.* The construction of common assurances, is governed generally by the rules of the common law; their operation may probably in many instances, be controlled by statute.

5. Are attesting *witnesses*, and how many, required to conveyances by *deed* of real estate in fee, or for life; and whether absolute, or by way of mortgage?

*A. Two* attesting witnesses are required in all cases, in all conveyances by deed of real estate in fee, for life, or leases for a term of more than one year, whether absolute or conditional.

6. Must the deed be *sealed?*

*A* Deeds must be sealed.

7. Is a *scroll* sufficient?

*A.* A scroll is not sufficient.

8. Are the common law *requisites*, for the formal perfection of Deeds or common law assurances, altered in practice or by statute, in any particulars in your state?

*A.* Acknowledging and recording, are *added* by the statute, to the common law requisites.

9. Is it necessary to the validity of a Deed, as between the *parties* and their heirs, that it should be *acknowledged* by the grantor, or *proved* by the witnesses, before some court or officer, and be recorded?

*A.* It is not.

10. As against *bonafide* subsequent *purchasers* and *mortgagees;* must the prior deed or mortgage to affect them, be *recorded:* within what period from the time of execution, respectively; and in what office: will *notice* of the prior title, though the Deed is unrecorded, bar the second incumbrancer?

*A.* A Deed as against subsequent bonafide purchasers, or mortgagees, must be *first* recorded in the town-clerk's office, and for want of such office, in the county-clerk's office, in the town or county where the lands lie: no particular period within which &c. is specified: notice of a prior title, though unrecorded, will bar a subsequent purchaser, or incumbrancer.

11. May a *feme covert*, convey or mortgage lands, or freehold estate held in her *own* right, and her *dower* in the husband's estate, so as to bar her and her heirs?

*A.* A feme covert may convey any estate of which she is seized in her own right, with consent of her baron.

12. Is this done by *joining* with him in the conveyance to the grantee or mortgagee, or how?

*A.* This may be done by joining in a deed with her husband.

13. Is a private or other *examination* of the *feme* as to her free consent necessary, before the conveyance as against her and her heirs, takes effect?

*A.* A private examination is necessary, and she must declare, "that she executed the deed freely, and without fear or compulsion of her husband."

14. What *officers* may take this examination, by the law of your State?

*A.* This examination may be taken by a *Justice* of the peace, or any *Judge* of any court of law in the state.

15. What is the proper form of a *certificate*, to be endorsed or annexed to the deed by the officer, where a *feme covert* joins in it for the purpose of conveying *her* estate, and *acknowledges* the execution before such officer?

*A.* "STATE OF VERMONT.

*Windsor to wit. At W——on—— personally appeared A. B. signer and sealer of the foregoing deed, and being by me examined (privately, and separate and apart from her husband,) acknowledged, that she did voluntarily, and without any fear or compulsion of her husband, sign, seal, and deliver the said deed for the purposes therein mentioned, before me,*

*C. D. Justice of Peace.*"

16. To bar the *feme* of *dower* in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in *all* cases: Is it so, where the husband's land is sold on execution, for the debt of the wife, before marriage; or for the husband's debt: or where the conveyance is by the husband, or husband and wife, who are non-residents?

17. Generally, is there any thing *peculiar*, and variant, from the common law rights of the widow, in respect to dower in your state?

*A.* A widow in this state is endowed only of lands of which her husband dies *seized*, and consequently need not sign a deed with her husband, to bar her right of dower in his lands.

18. What *officers* in your State, are authorized to take *acknowledgments* and *proofs* of deeds and mortgages?

*A.* In ordinary cases, a *judge* of any court of law in the state, or *justice* of the peace, may take the acknowledgment of deeds: when the grantor is abroad out of the state, or dead, the proof of such deed by the oath of one or more of the witnesses, whose names are thereto subscribed, made before any *counsellor* (of the council of state,) *judge* of the supreme or county court in this state, is equivalent to an acknowledgment &c: if the grantor and all the wit-

nesses are dead or out of the state, the proof may be made before the supreme or county court, by proving the hand writing of the grantor or witnesses, or by adducing other evidence to the satisfaction of the court; and such evidence being entered on the back of the deed, or annexed thereto, is equivalent to an acknowledgment &c: an acknowledgment or proof of a deed, taken *out* of the state, if agreeably to the law of the place where the same is taken, is valid here.

19. What is the form of a *certificate*, to be endorsed on, or annexed to a *deed* or *mortgage* by such officer, when the *grantor* (not being covert,) *acknowledges* the execution?

*A.* The same as the form above mentioned in case of a *feme covert*, omitting the words within ( ). (*see No.* 15.)

20. What is the proper *form* of a *certificate*, to be endorsed or annexed to the Deed or Mortgage by the *officer*, when the execution is *proved* before him, by the deposition of one or more of the subscribing *witnesses*?

*A.* "STATE OF VERMONT!

*Windsor to wit; at W——on—— personally appeared A. B. one of the subscribing witnesses to the foregoing deed, and made oath, that he saw C. D. the grantor, sign, seal, and deliver the same for the purposes therein mentioned, and that the said A. B. and E. F. the other subscribing witness in the presence of said grantor and of each other, then and there severally subscribed their names to the said deed, as witnesses of the signing, sealing, and delivery thereof by the said grantor.*

*Before me*, G. H. Judge of the supreme (or county court.")

21. Must the grantor or witness *subscribe* the acknowledgment, or deposition?

*A.* Neither the grantor or witnesses need subscribe the acknowledgment or proofs, except when the proof is taken before the county or supreme court in the case above specified, then the deposition, or affadavit, should be subscribed, sworn to, and together with the order of court, be annexed to the deed, and recorded with it.

22. Is the *certificate* of acknowledgment by the grantor, or deposition by the witness, to be under the *seal*, as well as the hand of the officer? *A.* No seal in this case is required.

23. If a *Quaker*, or one conscientiously scrupulous of taking an oath is the witness, what is the *form* of *affirmation* prescribed by your law? *A.* "*I do solemnly, sincerely, and truly affirm*" is the form prescribed by statute for the declaration or affirmation of Quakers, and other persons who are scrupulous of taking an oath.

24. If a Grantor, Mortgagor, or witness, is in *another* state or territory, what *officers* in such *other* state or territory, may take the *acknowledgment* of the grantor, or deposition of the witness, to the execution?

25. Where the *officer* is of *another* state or territory as aforesaid, (whether a Notary, Magistrate, Judge, or Mayor &c.)—what *proof* or instrument must be made or annexed, to the *certificate* of acknowledgment or deposition, showing *he is such* officer, as he describes himself?—Or will the deed be admitted to record, or be evidence on a trial, without any authentication from some authority in the state, that he holds the office or commission he assumed?

26. If Grantors or Witnesses are *dead*, or *removed* from the state, or *cannot* be *found* by the grantee or his

assigns: is there any *provision* in those cases or any of them, for *secondary proofs* on which the deed or mortgage may be admitted to record —or be evidence on trial? as by proof before the proper officer, of the *hand writing* of the witness, or party, and that he is dead, out of the state, or cannot be found?

27. If the grantor and witnesses are in a *foreign* country, and living or dead, is there any *provision* for taking an acknowledgment or proof *in such foreign* country, and what?

*A.* Already answered. (*see* 18)

28. Are Deeds and Mortgages duly recorded *evidence*, on trials; how, and by *whom* are *copies* of the record exemplified?

*A.* Records of deeds and mortgages are evidence on trials, *except* the deed is immediately, to the party offering it: in such case, he having the custody of the deed, must produce or account for not producing it: the record is exemplified by the town or county clerk of the office where the record remains; though probably, the testimony of a witness who had compared the copy offered with the record, would be admissible.

29. In what *order* do *mortgages* take *preference* of each other; is it by priority of execution, or of recording?

30. Is any *term* of days or months, allowed after execution; within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* Already answered. (*see* 2. 9. 10.) Mortgages and other deeds, stand on the same footing in these respects.

31. May Deeds of *mortgage* be acknowledged and proved by the grantors and witnesses, in *like* manner, before the same officers in and out of the state, recorded in the several offices, and have the like competency in evidence as *absolute deeds*; if not, in what do they differ?

*A.* The same.

32. In regard to the execution, acknowledgment, proof and recording of *deeds* and *mortgages* in your state, in order to make them *effectual* between the parties, is there any *other* thing to be observed, not comprehended above?

*A.* There is nothing, not comprehended in the above.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do *judgments* bind real property, and may it be sold on execution in your state?

34. From what *time* is a *judgment* (or decree in equity,) a lien on real estate, against the alienation of the *debtor*, is it from the actual *signing* or entry, or by its *relation* to the term &c.?

35. What is the *order* of *priority* among judgment *creditors* in respect of lands; is it determined by the priority of *judgment*, or by *delivery* of *execution* to the officer?

36. Does a judgment bind, *after* acquired land?

*A. Judgments* merely as such, do not in any way bind real property, no lien can be created on real property by legal process, except by *attachment* on the original process, or the *actual* levy of an execution: if attached, it must be described in the officers return, and a copy of the writ, and return endorsed thereon, left in the proper office for the recording of deeds; in which case it is holden till the suit is ended, and for *five* months after judgment, in order that the *plaintiff* may set it off on execution: if the

levy is not made in that time, the lien is discharged, which during its continuance, is valid against subsequent conveyances by defendant, and against all other creditors.

37. In respect of *chattels*, as between creditors, has the first judgment, or the first *execution* delivered, the preference?

*A.* The case is much the same as to *chattels*, and no lien is created, except by *actually* seizing them on the original by attachment, or, in execution: the *delivery* of execution has no effect, except to the same officer, in which case the one first delivered, must be first levied and satisfied.

38. In respect of *chattels*, may the *debtor* alienate, before execution delivered, as he may at common law?

*A.* The debtor may alienate, either before or after the delivery of execution, provided, there be no fraud in the transaction: if there be fraud, the sale would be void as against all creditors: in other words, delivery of execution has no effect to bind the property.

39. Is a prior judgment in an *Inferiour* court, a lien on lands without its jurisdiction, as against alienation of the debtor; or has it any effect, against a subsequent Judgment *creditor* in a different court, and lands, within a different jurisdiction?

40. Is there any Court in which a Judgment entered, will bind the lands of the defendant as against other *creditors* in *every* county?

*A. Answered* in replies to the preceding questions. (*see* 33, 4, 5, 6.)

41. Can Execution be taken out at *once*, in every county: and if not, may the lien &c. be lost by subsequent Judgments, and Executions in other counties?

42. Can Execution issue *immediately* after Judgment, against the *real* estate of the debtor, and that be sold, (after advertizing) without any previous appraisement; and on what conditions as to payment?

*A.* Only *one* execution on the same judgment can be taken out at the same time, and this cannot be done till after the rising of the court, in which the judgment is rendered, without the special order of the court; the execution is in nature of a *capias*, and of a *fieri facias*, and is directed against the goods, chattels, lands, and tenements of *defendant*, and for want of them against the body: the sheriff cannot take the body, till after having demanded, and being unable to find goods and chattels: the creditor may, but is not obliged to take *lands*, instead of the body: lands cannot be *sold* on execution, but creditor may take it at appraisement; and there is *six* months for redemption given to the defendant, after the levy.

43. In such case is a Deed made by the officer, and delivered to the party, before acknowledgment of it by such officer in court; or confirmation of the sale by the court, valid: If there be fraud or irregularity, is there any *summary* redress?

*A.* The officer gives no *deed*, but merely returns his proceedings on the execution, which with the return, is to be recorded in the office of the clerk of the court where judgment was rendered, and in the town-clerk's office, and these give a complete title as against defendant, and all subsequent purchasers and creditors.

44. Before *real* Estate can be sold on execution, must it be *appraised*; and sale *delayed*, until it brings the appraised value, or some proportionate rate of the valuation; how long is this suspension to continue?

*A.* Already answered. (*see* 42.)

45. Is there any writ of *levari fa-*

*cias, elegit, extent,* or similar modes of execution in your state?

*A.* There is but one form of execution known to our laws, and this is regulated by statute; *see* 42 but *rents,* issues and profits of lands and tenements leased for life or years, are liable to be taken in execution by any creditor of the lessor, or of such person or persons as have a right to receive such rents, issues and profits; and the officer levying such execution, may cause the tenants to attorn to the creditor, and if he refuse, to turn him out of possession, and give livery of seizin to the creditor, who may retain possession, till his debt with interest is satisfied out of the rents and profits.

46. Are there any recent or other laws in operation, tending to *delay* or impair the creditor's remedy on his execution, by *suspension, appraisement,* or a *minimum* fixed, below which real or personal property, or both, may not be sold: or constraining the creditor to receive other than lawful money &c. or what else: do these laws expire, and when?

47. What *security* is required, during such suspension, that the property shall not be wasted, or be forth coming?

*A.* There is nothing of this kind.

48. May the debtor *redeem* land sold on execution, and within what time and on what terms?

*A.* The debtor may redeem at any time within *six* months, by paying into the hands of the clerk of the court from which execution issued, the amount of the judgment, and 12 *per cent.* interest.

49. May Judgments on *warrant* of *attorney* for that purpose, be entered in *vacation*?

50. Can Judgments be entered up in all cases, on a warrant of atty. *before* the debt is payable?

51. In such case is the Judgment an incumbrance on the debtor's estate, against subsequent Judgments for debts due, and followed by immediate execution?

*A. Warrants* of attorney to confess judgment, are wholly unknown to our laws and practice of our courts.

52. If after sale and conveyance of *land* on execution the judgment is *reversed*; does the estate revert, or must the debtor look to the creditor for the price the land brought, or what is your law in such case?

*A.* We have no statute or decisions, bearing directly on this question. My opinion is, that a reversal of the judgment would vacate the levy.

53. Is the *Ca. Sa.* allowed at the election of a judgment creditor, in the first instance: are *bail* to the action exonerated by surrender of the principal?

*A.* This question as to the *state* laws and practice, is already answered. *(ante* 42.*)* In the circuit court of the U. States, the creditor is at liberty to take either a *ca. sa.* or a *fi. fa.* at his election: bail to the action are exonerated by surrender of the body, at the term in which the judgment is rendered; or to the sheriff having the execution, before a return of *non est inventus*; or on the return of a *scire facias,* and paying the cost of the *scire facias.*

54. May the debtor be *imprisoned* for any sum; and are none exempted, as females, fathers of families, aged, &c.?

*A. Debtors* may be imprisoned for any sum however small, and none are exempt, except married women, and they only according to the rules of the common law.

55. Is the Ca. Sa. regulated, and its effects determined generally by the common law; or in what parti-

culars are the rules of the common law departed from?

*A.* Already answered. (*ante* 42, 53.

56. Are any kinds of *personal* estate exempt from sale on execution; absolutely, or how?

*A.* One cow, ten sheep, and necessary bedding and apparel, and necessary household furniture, and the necessary tools of defendant's trade or profession, are absolutely exempt from execution: what *are* necessary in these particulars, is not defined by statute, nor by any known decisions of our courts.

### No. IV. INSOLVENT (LAW.)

57. Is there a standing *insolvent* law in your state, under which debtors may be released from imprisonment, on surrender of their property: Are there any persons on account of the nature of the debt, or cause of action, excepted out of it?

58. What length of time is usually required, to effect a discharge: Is the claim of the debtor for a discharge, determined by the court or a jury?

59. Must the debtor be actually in the gaol, or on the limits, when his petition is made, and while depending: or may he apply for the benefit of the law, at any time before a suit brought, or after suit, and before execution and imprisonment?

60. Is there any thing *peculiar* in the insolvent law of your State?

*A.* We have no *general* law on the subject of insolvency: the *legislature* frequently pass laws in individual cases, which may be regarded as insolvent laws; the provisions of these acts are various, and dictated by the circumstances of the case.

### No. V. WILLS, &c.

61. Are lands and Freehold interests, *devisable* at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?

*A.* Lands and freehold interests *are* devisable at the pleasure of the testator, and to the entire disinherison of his children or issue.

62. What *formalities* of execution, are *essential* to a will of *lands*, in respect of the *number* of witnesses, *co*-attestation, *sealing*, &c.?

*A.* "All devises of land, tenements, or hereditaments must be in writing, and *sealed* by the party devising the same, and *signed* by him or her or by some person in his or her presence, and by his or her express direction; and must be attested and subscribed in the presence of the devisor, by *three* or more credible witnesses, all signing in the presence of the testator, or the same will be void and of no effect."

63. What *formalities* are required, in the *revocation* of wills of land?

*A.* "No devise &c. or any clause thereof is *revocable* otherwise, than by some will or codicil in writing declaring the same; or by burning, cancelling, tearing, or obliterating the same by the testator, or in his presence, and by his direction or consent." These requisitions seem to be conformable to 29 *Car.* 2. c. 3.

64. Are the provisions of the *statute of frauds* 29 C. 2. c. 3. in force, or adopted in regard to the execution of *wills* of land, or to what extent?

*A.* Answered, in the two preceding questions.

65. Before what court, or officer, are wills of lands and personalty, exhibited for *proof*: does the proof in the probate court, or before the Surrogate, affect the right of the heir, to question its execution at law?

*A.* The state (as remarked under the head of courts &c.) is divided into probate *districts*, of which there are usually, but not in every instance,

two in each county; before the *court of probate* in the district in which the testator last dwelt, (or if not an inhabitant of this state, in some one of the districts in which the testator left estate,) the will must be proved. So far as my information extends it has been considered, that probate of the will before the court of probate and no appeal taken, (for in most cases an appeal lies to the supreme court from a decree of the probate court,) is imperative upon all persons having an interest in the estate: this question is not known however to have been determined here, but in *New Hampshire* where the statute is much the same, it is decided, that the probate does not affect the right to question the execution of the will at law.

66. Is the execution proved by the witnesses, or oath of the Executors, or both in the first instance?

*A.* The *execution* of a will is to be proved by the subscribing witnesses; others may be called to show the *sanity* or insanity of the testator.

67. In what *office* is the will and inventory registered: are office copies evidence?

*A.* In the office of the *register* of the court of probate; and in cases of a devise of real estate, in the *town-clerk's* office also: office copies are evidence in most cases.

68. What *formalities* are required, to the execution of Testaments, or wills of *chattels*?

69. Are any *number* of subscribing witnesses, or the signature, or seal of the testator required; or is a will of personals proveable by the rules of the common law: or what law?

*A.* Our statute has left wills of *chattels* when in writing, as to the formalities required in their execution, the same as at common law. As to *nuncupative* wills, the statute makes the same requisitions, as in the 29 *Car.* 2. c. 3. except, that instead of 30l. a nuncupative will by our statute, may be good for 200 dollars.

70. May *executors*, having letters testamentary, or *administrators* letters of administration, granted in *another* state, *sue* in *your* state?

71. If not, what is to be done to enable them to sue?

*A.* Executors having letters testamentary, or administrators letters of administration granted in *another* state, cannot as such sustain actions in this state; to enable them to sue here, letters of administration must be taken from some court of probate in this state.

72. Are *exemplifications* of wills and testaments, by the proper officer in *other* states, evidence in your courts; or must the originals be produced and proved?

73. How are *foreign* Wills and Testaments proved in your state: are there any statutes, or provisions regarding wills and administrations &c. in other states, or foreign countries: How are foreign Wills, Deeds, Judgments, &c. exemplified, to be evidence in your courts?

*A.* Exemplifications of testaments by the proper officer in *other* states, are by *Stat.* made evidence in our courts; copies of wills and testaments and the probate thereof, which have been proved and allowed in any court of probate in any of the U. States, or in a court of probate in any other state or kingdom, according to the laws of such state or kingdom, where the testator had estate real or personal, whereon the will may operate, may be filed and recorded in the registry of the *court* of probate here, in whose district such estate is found; and in such case, if letters are granted, it would be with the will annexed, and if real estate is devised in

such will, it must also be recorded in the *town-clerks* office, in which the land lies, and *copies* of such records are made evidence in all cases.

### No. VI. DESCENTS.

74. How do *Inheritances* in fee simple *descend* upon Intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the *common* law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

*A.* Our statute adopts in general, the provisions of the statutes, 22 & 23 *Car.* 2. c. 10 & 29—*Car.* 2. c. 30. called the statutes of *distribution*, as rules of descent for *real* estate. The instances wherein it varies, will now be pointed out.

1st. *Male* children take twice the amount of female children.

2d. The widow takes only an estate for life, in one *third* of the real estate, whereof the husband dies seized.

3d. If the *child* of any intestate die, *before* he or she arrive at full age, and unmarried, his or her share of the real estate descends to the *brothers* and *sisters*, and such as legally represent them in the same proportion; that is, a double portion goes to the brothers; if the child die *after* arriving at full age, and in the lifetime of the mother, she inherits equally with each of the sisters.

4th. If any person die *after* marriage, or becoming of full age, without lawful issue, the father being alive, he inherits the whole estate; unless there be a widow, in which case, she takes one half in fee in lieu of dower, and the father the other; in case the father be dead and the mother living, she takes a share equal with the sisters, or their representatives: These provisions respecting the mother, seem to be taken from the statute 1 *Jac.* 2. c. 17. though instead of taking equally with the brothers and sisters generally, she takes equal with the sisters; that is, half as much as the brothers.

### No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon *intestacy*, how is the *surplusage* of the intestates personal property distributed between the widow, children, and representatives?

80. How among collaterals?

81. Are the provisions of the 22nd and 23rd Car. 2. c. 10, and 29 Car. 2. c. 30, called the *Statutes* of *distribution*, in force or adopted in your state, in what does your law differ?

*A.* The *surplusage* of personal estate not bequeathed, is distributed by our statute in the same manner as real, except that the widow takes one third forever.

### No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May *entails* of real estate be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred Dower; Curtesy; Waste &c.?

83. Are entails abolished; converted into fees; or otherwise *modified* by your laws, and how?

84. How barred by the tenant?

*A.* We have no statute or decisions, on the subject of *entails*; nor is it known that any attempt has ever been made in this state, to create an estate-tail.

The *constitution* merely says, that "The legislature shall regulate entails in such manner, as to prevent perpetuities."

85. Is the widow entitled to *dower*; and the husband to *Curtesy*; as by the common law; or how altered? *A.* The widow is entitled to *dower* of estate only, of which the husband *dies seized.* The husband is entitled to an estate by *Curtesy*, in the real estate belonging to the wife as at common law; with these restrictions, that the children of the wife and their representatives, who would legally inherit, must have deceased, and he can hold by the curtesy lands only, whereof the wife was seized in *fee simple.*

No. IX. LIMITATION OF SUITS.

86. What *length* of adverse possession of *lands* is a bar to the right owner, and his heirs, being under no disability?

87. What *savings* are there, which prevent the running of the time, against the owner or his heirs?

88. Is there a *saving* in favour of *foreigners* or *citizens* of other states?

89. Are the general *principles* of English law, on the bar of these Statutes, *adopted* in your state?

90. Is there any thing *peculiar* to be remarked on the Statutes of Limitation, in your state?

91. What length of time bars recovery of *debts* by specialty; Assumsit; Trover; Detinue; on the Case; Slander; and other personal actions?

92. What *savings*?

93. Are there any in favour of citizens of *other* states, or Foreigners? *A.* This whole subject may be most satisfactorily disposed of, by copying the 6th, 7th, 8th, 9th, 10th, and 11th, sections of the statute of limitations.

*Limitation of real actions,* "*Sec.* 6th, That no writ of Right or other real action; no action of ejectment or other possessory action, of whatever name or nature, shall hereafter be sued, prosecuted or maintained, for the recovery of any lands, tenements, or hereditaments, if the cause of action shall accrue after the passing of this act, but within 15 years, next after the cause of action shall accrue, or have accrued to the plaintiff or demandant, or plaintiffs or demandants, or those under whom he she or they claim. And that no person, having right or title of *entry* into houses, lands, tenements, or hereditaments; shall hereafter thereunto enter, but within 15 years next after such right of entry shall accrue, or have accrued.

*Limitation of personal actions, Sec.* 7th, "That all actions of trespass, *quare clausum fregit,* all actions of trespass, detinue, trover, or replevin for goods or chattels; all actions of account, and upon the case, (other than such as concern the trade of merchandize, between merchant and merchant, their factors and servants;) all actions of debt, grounded on any lending or contract, without specialty; all actions of debt, for arrearages of rent; and all actions of assault, menace, battery, wounding, and imprisonment, or any of them, which shall be sued or brought, after the passing of this act, shall be commenced and sued, within the times hereafter limited, and not afterwards; *that is to say:* The said actions of account, the said actions of debt, and actions upon the case, (other than for slander,) and the said actions of trespass, detinue, and replevin, for goods and chattels; and said actions of trespass, *quare clausum fregit,* within 6 years next after the cause of such actions or suits respectively, shall accrue, and not after: And the said actions of assault, menace, battery, wounding, or imprisonment, or any of them, within 3 years next after the cause of such ac-

tions or suits respectively shall accrue, and not after. And the said actions of assault, menace, battery, wounding or imprisonment, or any of them, within 3 years next after the cause of such actions or suits respectively shall accrue, and not after. And the said actions upon the case, for slander, within 2 years next after the cause of such actions or suits shall accrue, and not afterwards.

*Limitation of sundry civil actions*: *Sec.* 8th, "That all actions upon promissory notes in writing, (attested by one or more witnesses) executed after the passing of this act, shall be commenced and sued within 14 years, next after the cause of action shall accrue thereon, and not after. And all actions on promissory notes in writing unattested, executed after the passing of this act, shall be commenced and sued within 6 years, next after the cause of action shall accrue thereon, and not after. And all actions of debt, or *scire facias* on judgment, within 8 years, next after the rendition of such judgment, and not after. And all actions of covenant, (other than covenants contained in deeds of conveyances of lands, for securing the title of said lands,) within 8 years after the cause of such action shall have accrued, and not after. And all actions of covenant, brought on any covenant or covenants, contained in any deed of conveyance of lands, as aforesaid, within 10 years next after there shall have been a final decision, against the title of the covenantor, in such deed.

PROVISO, *Sec.* 9th, "*Provided always, and it is hereby further enacted,* That if, upon any of the said actions or suits, judgment shall be rendered for the plaintiff, and the same be reversed by writ of error, or a verdict pass for the plaintiff, and for matter alledged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing for (by) his plaint, writ or bill; as also when judgment, in any action or suit, shall be rendered against the plaintiff, on any plea in abatement, or on demurrer, and the merits of the cause shall not be tried; that in all such cases, the plaintiff, his heirs, executors or administrators, (as the case shall require,) may commence a new action or suit, from time to time, within 1 year after such judgment reversed, or such judgment given in arrest, or rendered on plea of abatement, or upon demurrer, against the plaintiff, and not after.

*Infants, feme coverts, &c. not barred, Sec.* 10th, "That this act shall not extend to bar any infant, *feme covert*, person imprisoned, or beyond seas, without any of the U. States, or *non compos mentis*, from bringing either of the actions before mentioned, within the term before set and limited for bringing such actions, calculating from the time such impediment shall be removed. And if any person, against whom there is or hereafter may be any cause or suit, for any or every the species of *personal* actions before enumerated, who at the time the same accrued, was without the state, and shall not have known property or estate therein, which could by the common and ordinary process of law, be attached; that then and in every such case, the person who was entitled to bring such action or suit, shall have liberty to commence the same, within the respective periods before limited, after such absent person's coming or return, into this state.

*Writ of error to be served within one year after judgment on which predicated, Sec.* 11th, "That no judgment or

proceedings, in course of justice, in any real or personal action, shall from and after the passing of this act, be reversed or avoided for any error or defect therein, *unless* the writ of error, or suit for reversing such judgment, or proceedings in course of justice, be commenced and duly served on the defendant or defendants in error, according to law, within 1 year next after the rendition of such judgment, or within 1 year next after such error or defect shall have intervened; *saving always* unto *infants, feme coverts*, persons *non compos mentis*, persons in prison, beyond seas, or without the U. States, the right of bringing any writ of error, or suit for reversing any judgment, or proceedings in the course of justice, at any time within 1 year next after such impediment shall be removed, and not after.

### No. X. TAXES.

94. May *lands* be sold in your state for the payment of *taxes*: has an absentee any privilege?

*A. Lands* are liable to be sold for the payment of state, county and town taxes; but ordinarily, taxes are levied only on improved estates; when it is otherwise, the act assessing the tax makes particular provision for the mode of sale, and directs what officer shall collect, and assigns the time of redemption, which is generally 1 year: undivided lands, *that is*, lands holden in common among the proprietors of a *township*, are liable to be taxed by a vote of the proprietors for all proprietary purposes, such as making surveys, divisions of the lands &c. It is common also, for the legislature to grant taxes on particular townships, (especially new towns or towns partially settled,) for the purpose of making roads, bridges, and for other purposes calculated to facilitate the settlement, or promote the general interest of the proprietors and land owners. In none of the cases, have absentees or non-residents, any special privileges.

95. Before a sale, is notice to be given of the property taxed; the amount; and the time and place of sale?

96. What *officer* is to give this notice?

97. In what *manner*: for what *length* of time; and in what places?

*A. Notice* is to be given of the property taxed, and the amount of tax, and the time and places of sale in the newspapers printed in *Windsor*, *Bennington*, and *Rutland*, 3 weeks successively 30 days before the day of sale, by the officer whose duty it is to collect the tax.

98. If a sale takes place, is the *deed* given to a purchaser *absolute*?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

*A.* There is usually 1 year's redemption allowed, during which time the officer is not to convey. When the time of redemption has expired, he gives an absolute deed.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time, to be redeemed?

*A.* Lands on which the taxes are not paid, do in no case vest in the state.

101. What *officer* in any county, ought a *non resident* desirous of keeping his taxes paid, *correspond* with for that purpose: or what is most prudent for him to do?

*A.* Payment of the tax, or for the redemption of the land, must be made to the officer, who is the *collector* of the tax. There have been several private *land offices* established by in-

dividuals, to whom application for information, or for the payment of taxes, or redemption of lands may be made. It is not known that any now exist, except one at *Ryegate*, kept by *James Whitlaw* esq. There are now no tracts of wild land belonging to the state. The uncultivated lands, are principally owned by persons living within the state, and non-residents generally, have agents here to take care of their interests. The acts of the legislature respecting land taxes are very numerous, and frequently varying; to make an analysis of them, would be to compose a volume, which when made would be useless.

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained by attachment of property, or otherwise, from alienating it: Is the debtor liable to be holden to bail, on the principles, and in cases allowed by the common law generally?

*A.* Debtors *pendente lite*, cannot be restrained by *attachment* or otherwise, from alienating by the courts of law. Writs of sequestration may issue out of chancery, when a bill is pending.

A debtor, is always liable to be arrested, on an original writ of *attachment*, and may be committed unless he find bail, to the acceptance of the officer: the bail become such by endorsing their names on the original writ. The party thus endorsing becomes bail, not only for appearance, but to the action, but may at any time pending the action, or on the return of a *scire facias*, surrender the principal in court, paying the cost on the *scire facias* if one has issued. If the principal is not surrendered, the bail becomes liable to execution against him on the *scire facias*, for the whole judgment, and additional costs.

### LETTERS OF ATTORNEY.

103. Is there any provision in your laws, for the proof and recording of *letters of attorney*, made in other states, or in foreign parts, for the conveyance of lands or chattels in your state?

*A.* Letters of attorney for the conveyance of lands, are to be acknowledged and recorded in the same manner, as deeds of conveyance. *(See ant. 2.)*

### ALIENS.

104. Do *aliens* stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case purchase, or hold real estate under your laws; as for example, in Mortgage?

*A.* Aliens, as to the subject matter of this question, stand on the footing of the common law. We have no statute on the subject.

### ADMINISTRATION. GUARDIANSHIP.

105. Is the *right* of *administration* regulated as in England by the statutes of 31. Edw. iii. c. 11. and 21. H. viii. c. 5. or by local acts?

*A.* In general, our statute has adopted the regulations of the statutes 31. *Edw.* iii. c. 11. and 21. *Hen.* viii. c. 5. as to the right of administration. The next of kin must be 21 years of age, and both executors and administrators, must give bond, before they can proceed to administer the estate.

106. May *Guardians* be appointed by will: Does the common law regulate guardianship:

*A.* We have no statute authorizing the apointment of guardians, by *will.* Whether our courts would adopt the provisions of 12. *Car.* ii. c. 24. has never been decided. The courts of *probate* are empowered to approve of such guardians, as may be chosen by minors of the age of 14; and to appoint them in their discretion, for such as are under that age; and for such as are over that age, who neglect or refuse to choose one. Also, in case one be chosen who is unable to give satisfactory bonds, or who refuses the trust, or when the minor being 14 years old, shall be without the government; in any of these cases, there is nothing to limit the discretion of the judge of probate.

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order and priority of *paying* debts by Executors and Administrators, in force in your state: if not, what is the law there?

*A.* If the estate is not represented as insolvent to the court of probate, the executor or administrator becomes liable, (after order for payment of debts by the court of probate) to pay all the debts. If the estate is represented insolvent, *commissioners* are appointed, before whom all the debts must be proved; the creditor not proving his debt in a given time assigned by the court of probate, is barred. When the debts are all ascertained, they are paid *pro rata* without any priority, except debts due to the state, rates and taxes, and debts for the last sickness, which are always paid in full: if there is property sufficient for the purpose of paying debts, the personal estate and real if necessary, (except the widow's dower) are assets in the hands of the executor, and may be sold by him, under the authority of the court of probate. From the commissioners, an *appeal* lies to the supreme court.

108. May executors and administrators give a preference by confessing Judgments? Are lands ever sold on Judgment against Executors or Administrators?

*A.* The executors or administrators can give no preference, in any way. Lands in case of a solvent estate, may be taken, appraised and set off on execution, as in other cases on Judgment against the executor &c, but can in no case be *sold* on execution.

### JOINT-TENANCY.

109. Is *Joint-tenancy* in land created, as at common law, and its incidents the same: If not, how modified?

*A.* By statute, the common law on this subject is reversed; in deeds to two or more persons, they hold, as tenants in common, *unless* the deed expressly declare, that they shall hold as *Joint-tenants, and not as tenants in common.*

### SEALS.

110. Is the common law, in regard to the effect and operation of instruments *sealed,* and not under seal, generally in force: how changed?

*A.* The common law, in regard to instruments sealed, and not under seal, is generally in force in this state.

111. Is a *scroll,* ink, or printed seal, equivalent to wax, in any and what instruments?

*A.* A *scroll,* ink, or printed seal, is not equivalent to wax or wafers, in any instrument.

BASTARDS.

112. Are *bastards* subject to the common law disabilities, in your state?
*A.* Bastards are capable of inheriting and transmitting inheritance, on the part of the *mother*, in like manner as if they had been lawfully begotten, of such mother.

113. Are *antinuptial* children, legitimated by the marriage of the parents?
*A.* They are legitimated by the intermarriage of the parents, if they are recognized by the father.

ALLUVION.

114. Does the common law in respect of *alluvion*, prevail?
*A.* The common law is supposed to prevail as to alluvion.

FISHERIES.

115. Is the *owner* of lands, bordering on a navigable river, where the tide flows and reflows, and on arms of the Sea, entitled to the rights of *several Fishery*, in those waters in *front* of his land?

16. Is this so, by statute, or usage?
*A.* We have no statute, or decisions on this subject, and doubtless the common law prevails.

FRAUDULENT CONVEYANCES.

117. Are the Statutes of 13. and 27. E. or similar provisions *against fraudulent conveyances* to defeat creditors, and purchasers, in force in your state: or similar acts?
*A.* Our statute on this subject is copied very nearly, from 13. *Eliz.* c. 5.

STATUTE OF FRAUDS.

118. Is the Stat. of 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* Our statute "regulating the conveyance of real estate, and for the prevention of frauds therein," has adopted nearly in terms, all the provisions of the Stat. 29. Car. ii. c. 3. which relate to the conveyance of lands, &c. that is to say, the 1st, 3rd, 7th, 8th, and 9th sections of that act, and all that part of the 4th, which relates to the same subject.

USES.

119. Is the Stat. of 27. H. viii. called the *Stat. of uses*, (or similar provisions) in force?
*A.* We have no statute of this kind.

120. Is the *English* law of Uses and trusts, in force in your state?
*A.* We have a statute, adopting generally, the *common law* of England, so far as the same is applicable to the situation of the people in this state, and consistent with the constitution, and statutes of the state; but few or no decisions have been made, in relation to the subject of uses and trusts.

BARON AND FEME.

121. Is the *common law of Baron and Feme* adopted in your state: does the wife's chattels, real and personal, (if reduced to possession) vest absolutely in the Baron?
*A.* The common law of Baron and Feme, is generally adopted here; and the wife's chattels if reduced to possession, do absolutely vest in the husband.

USURY. INTEREST.

122. What is the rate of *interest* in your state?
*A.* The rate of interest established by law in this state, is 6 per cent.

123. What are the provisions against usury?

*A.* Our statute does not make the security void, but directs that no more shall be recovered than 6 *per cent*, and inflicts as a penalty on those who receive more, a forfeiture of the whole *usurious* interest, and 25 *per cent* interest, on the whole sum of the contract, in which is reserved more than 6 *per cent*. Whether the 25 *per cent* interest is intended to be an accruing sum, and if so, when the computation is to commence, and when or whether, it is to be merely a forfeiture of 25 *per cent* on the contract, without relation to time, has never been satisfactorily decided, the better opinion is, that the latter doctrine will prevail.

BOOK ACCOUNTS.

124. Are *book accounts* evidence of debt in your state: for what things furnished: on what *preliminary* proof respecting the books, as containing the original entries &c.

*A.* We have a statute giving the *action of book account*, directing, that if *defendant* plead any plea, which if true he ought not to account, the issue shall be tried by a jury. If found for *plaintiff*, the court is to appoint auditors. Original books of entries, and the oath of the parties, are admissible evidence before the auditors; and *perhaps*, on any question arising on the acceptance of their report, before the court.

125. Is *interest* recoverable on a book debt, from what time?

*A.* The court allow *interest* on book accounts after the customary time of credit has expired.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are *foreign* and *inland bills* of *exchange* and *promissory notes* negotiable; and generally governed by the Law Merchant of England?

*A.* We have so little to do with foreign bills of exchange, that we can scarcely be said to have any law on the subject. *Inland* bills of exchange and promissory notes are negotiable here, to a limited extent; and where not varied by statute, the common, or law merchant, may be considered as generally applicable to them.

127. Must *demand* be made by the *holder* on the *drawee*, or *maker*, and *notice* of non-acceptance, or non-payment be given to the *drawer*, or *endorser*, by the rules adopted in the *English law merchant*, in order to entitle him to recover?

*A.* This question may be answered generally, in the *affirmative*.

128. Is a *protest* for non-acceptance or non-payment, *necessary* on *inland* bills and promissory notes, in your state?

*A. Protest* for non-acceptance, or non-payment, is not necessary in these cases.

129. Is there any *peculiar* practice, or statute regulations in your state, *varying* the general rights of parties to *bills of exchange* and *promissory notes*, as established in England and most of the states, and what?

*A.* Our statute, makes bills and promissory notes negotiable, but expressly permits defendant to plead an offset of all demands proper to be plead in offset, which he may have had against the original payee, before notice of the endorsement; and to plead or give in evidence on the trial, any matter or thing, which would equitably discharge the defendant, in an action brought in the name of the original payee.

130. What *damages* are recoverable, upon the non-payment, protest and return, of foreign bills of exchange?

*A.* No instance is known where more than common damages, (*id est*, the sum and interest,) has been allowed, or ever asked for.

DIVORCE.

131. Are *Divorces*, a *vinculis* granted in your state: for what causes: by what court: must the cause of *divorce* arise in the State, and the parties be resident there?

*A.* Our law on this subject has undergone many changes; the *causes* are, *impotency, adultery, intolerable severity, wilful desertion* for 3 years, with *neglect of duty* in either party; and 7 years unheard of *absence*. Divorces are granted by the *supreme court* only. The petitioner must have had his permanent residence in this state 1 full year, before granting the bill: the parties must both have resided in this state, at the time the act complained of took place, except where both parties shall have resided in this state, and one of them shall have deserted the other and left this state, or have removed therefrom, and shall thereafter have committed any act, which would be a sufficient cause of divorce, had such act been committed, while both parties resided within this state. Divorces are in all cases *a vinculis matrimonii, except* when the cause is for intolerable severity, in which case it may be *a vinculis*, or *a mensa at thoro*, at the discretion of the court.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your State, to compel the payment of debts, from absconding, absent, or foreign debtors?

*A.* Foreign attachments may issue, to compel the payment of debts from absent, or absconding debtors.

LANDLORDS AND TENANTS.

133. Is the law of *Landlords and Tenants*, in regard to *distress for rent*, similar to the English law; or how is it?

*A.* The law of landlord and tenant, in regard to distresses for rent, is not in force here; either ejectment to oust the tenant, for non-payment of rent or covenant on the lease, will lie.

SET-OFF.

134. Is the law of *set-off* of mutual debts, similar to the English law, and that of other States?

*A.* By our statute we do not plead an off-set in bar, but when there are mutual claims between the parties, *defendant* may plead the general issue, or confess *plaintiff's* demand, and also plead an off-set in nature of a declaration, with one or more counts, to which *plaintiff* pleads as in other cases. Or, he may plead the general issue to *defendant's* counts in off-set, and also plead a set-off to *defendant's* claim, and so on till the pleadings are closed; and the jury are to find the sum in arrear to either party, and judgment is to be entered accordingly for the balance found, either for plaintiff or defendant.

But *defendant* cannot plead in off-set any demand not due, at the time of the service of plaintiff's writ, or any promissory note assigned to him, unless notice of such assignment was given to *plaintiff*, before the commencement of his action.

CHOSES IN ACTION.

135. Are *choses in action*, other than bills of exchange and promissory notes, assignable: may the assignee sue in his own name: is there any

liability of the assignor over, unless expressly stipulated?

136. Is the common law in respect of choses in action, adopted; or how modified?

*A.* These questions have been already answered, except the last clause of the first question: the endorser of any promissory note, or other chose in action, when the endorsment is general, is liable as at common law. If the endorsment is limited, he is liable only according to the conditions of such limitation.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled generally to the same rights, and subject to the same liabilities, as by the common and statute laws of England?

*A.* We have no statute or decisions varying the rights, or liabilities, of tenants for life, from the common law.

DECREES IN CHANCERY.

138. How are *decrees* in *equity executed:* where the decree is for payment of money; or on foreclosure of Mortgages &c. does the Court issue execution against the body, goods and lands, &c. or decree a sale &c. What officer executes the process?

*A.* Our *supreme court* is by statute, clothed with all the powers of the chancery in England: decrees are enforced by "attachment," by "writs of execution of a decree," and by statute, the court may issue an execution in common form, in cases proper.

INSOLVENT ESTATES.

139. In case the Testator, or Intestates estate is *insolvent*, are creditors paid *pro rata*, and how, &c?

*A.* Already answered. *(No. 107)*

PUBLIC OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how are they obtained by one desirous of purchasing: Is there any *proprietary* land yet to be taken up, or located, and how obtained?

*A.* We have none such belonging to the state.

141. Are English law books, allowed to be read in your *State* courts: if so, under what limitations?

*A.* Our courts consider themselves bound by the common law, in all cases applicable to our situation, and when not varied or restrained by the constitution, or statutes of the state: all decisions made in Great Britain before the revolution, are considered as authorities. All modern decisions in England and the other states, are read in our courts, and are considered and valued according to the weight of the reasons assigned, or rather as evidence, of what the common law on the subject under consideration, is.

# APPENDIX.

## RULES of the SUPREME COURT, adopted *Jan. term*, 1817.

1. *Ordered*, *That* all actions cognizable before this court shall be entered before the opening of the court on the first day of the session thereof.

2. *That* all causes brought to this court by appeal, from any county court, shall be heard, tried and determined, upon the pleadings in the court below; unless the party, wishing to change his plea, shall give notice to the adverse party, in writing, of the alteration, amendment, or new plea intended to be made, at the time of granting such appeal, or not less than thirty days before the session of the court to which said appeal shall be taken.

3. *That* on the entry of every writ of error, the plaintiff in error shall deliver to the court a fair copy of the writ of error, with the assignment of the errors. And whenever an issue of law is joined, the party demurring, shall furnish the court with a fair copy of all the pleadings in the cause.

4. *That* the orator, in every suit in chancery, shall deliver to the court a fair copy of the bill at the opening of the court, on the second day of the term, and the defendant shall deliver to the court a fair copy of his answer, plea, or demurrer, at the time of filing the same.

5. *That* all motions for the continuance of causes, shall be made on the first day of the sitting of the court, founded on affidavit in writing, of the person in whose favour the motion is made, or his attorney, which affidavit shall be lodged with the clerk of the court.

6. *That* there shall be paid to the clerk, for his use, on the filing each affidavit for continuance, fifty cents—whose duty it shall be carefully to endorse the true day when the same was filed in court, and to keep the same on file.

7. *That* in all cases where an order has been made by the court, or either of the judges, for publication in any newspaper, it shall be the duty of the clerk to inspect such publication, whose certificate that the same is made in pursuance of said order, shall be received by the court as *prima facie* evidence that such order has been complied with, and the clerk shall receive twenty five cents as a fee for such inspection and certificate.

8. *That* whenever a party, plaintiff, shall enter a writ of error in this court, he shall, on or before the second day of the term, file and lodge with the clerk, a full record of the judgment of the court below, on which such writ of error was founded, properly certified by the clerk of said lower court; and the same shall be kept for the information of this court, and the inspection of the parties.

9. *That* all bills in chancery, hereafter to be brought, and all decrees for signature, shall be endorsed or signed by some solicitor of the court, subscribed with his own hand at the foot of such bill, petition, or decree, and who shall be answerable for the propriety of the form and language of the same, and the correctness of such decree.

10. *That* every case to be heard in this court in error—on demurrer—in arrest of judgment—on a case stated—case reserved—and on a motion for new trial—the counsel for each party shall, before the cause shall come on to be argued, make out and deliver to each of the judges, a brief therein, fairly written; which shall contain the principal point or points intended to be relied on, and the heads of the intended argument, distinctly and concisely noted, and properly arranged under each head; the authorities to be produced in support, with fair and distinct references to the case, book, and page.

11. *That* every case to be heard in chancery, on demurrer, on plea, on bill

and answer, and on traverse of the answer; the counsel for each party shall, before the same shall come on to be heard, make out and deliver to each judge, a brief therein, fairly written, to contain the point or points of law, equity, and fact, intended to be relied on, distinctly and concisely noted, and properly arranged; and under each, the authorities to be produced, with fair distinct references to the case, book, and page; and, as far as shall depend on confession or proof, with distinct and concise references to the concession, document, and other proof in the cause.

12. *That* whenever any bill in chancery, against a person resident without this state, shall be presented to a judge of this court, such judge may make an order, either directing personal notice by a copy of such bill and order thereon, to be left with the respondent by some suitable indifferent person, whose return shall be verified by oath; or directing a publication of the substance of such bill and order in some publick newspaper, three weeks successively, the last of which publications shall not be less than four weeks before the session of the court to which the respondent shall be cited to appear; either of which orders made and complied with, shall be sufficient notice for the respondent to make answer to such bill.

13. *That* in all causes originally entered in this court, the defendant shall plead therein, by the opening of the court on the second day of the term—to which plea the plaintiff shall reply, by the opening of the court on the third day of the term.

14. *That* whenever the guardians of any minor, ideot, lunatick, or distracted person, shall think it necessary to the support, or conducive to the interest of their ward, to sell and convey his real estate, and shall present his petition therefor to either judge of the supreme court; such judge may direct the substance of said petition and his citation thereon, to be published in such publick newspaper, as he shall judge will most probably give notice to all concerned of the premises, for such number of weeks as he shall think proper, the last of which publications shall be at least sixty days, before the session of the court to which such petition shall be addressed, which shall be deemed sufficient notice to appear, &c.

15. *That* hereafter, when any attorney who has been admitted to the county court, and has practised with reputation therein for three years, shall apply for admission as an attorney of this court, which application shall be made at the law term of the court in the county where such candidate resides; the court, on the recommendation of the bar of such county, will appoint a committee of the members of such bar, to examine into the character and qualifications of such candidate; and if such committee find the candidate qualified, they shall recommend him to the court for admission.

16. *And* whenever the attorney applying for admission as aforesaid, shall wish to be admitted as solicitor in the court of chancery; it shall be the duty of the said committee, so appointed as aforesaid, to examine into the qualifications of the candidate, who shall be admitted by the court on the recommendation of such committee, in writing.

17. *That* when any attorney of this court shall apply for admission as solicitor in the court of chancery, on the recommendation of the bar of the county in which he resides, the court shall appoint a committee of such bar, to examine into the qualifications of such candidate, who shall be admitted on the recommendation of such committee, in writing.

18. *That* no attorney or solicitor, of this court, shall enter bail in any suit or process which is or shall be pending, in the supreme court or court of chancery.

# NEW HAMPSHIRE

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# NOTE.

*The* replies, *from gentlemen in each state on the subject matter of the several questions, so immediately depend upon the* terms *of the question, that it was necessary, in order to prevent mistakes and avoid prolixity, to retain the method of "question and answer," without change.*

*It presents to the reader the knowledge sought for, in the most concise, perspicuous and* authentick *form: much more so, than could possibly have been given in any attempt of my own, to compose the matter of the several answers, into an elementary digest of state law and regulation on the several points of inquiry, independent of any reference, to the manner and form under which it was communicated.*

*Such an* account *must necessarily have been diffuse, desultory, and prolix; it would have stood on no* original authority: *my version might be faulty, both in the comprehension of what had been communicated, and in the manner of stating it: and gentlemen who had made the communications, might have felt some chagrin, at seeing their meaning paraphrased away in a new dialect: It is obvious, that in no shape could this species of information be elicited in so distinct and condensed a form, as that which has been assumed. The answers, applying to the terms as well as the scope of the question, can frequently, only be understood by a reference to the particulars of the interrogation; and in respect to respondents, as they best understand the subject, their own language will best interpret their meaning.*

*The* repetition *of the questions, seemed necessary: as by a mere insertion of* answers, *leaving the reader to refer back always, to the general set prefixed to the work, the inconvenience would be excessive: I have therefore continued the questions in an* abridged *form, and merely as introductory to the subject of them, in all the states, except the leading one of Vermont: It will for this reason happen, that the answer may not always be quite intelligible, as applying to parts of the question which do not appear; in such case, the reader must recur to it as stated at large in the corresponding number, under the head of "Vermont."*

*Another reason is decisive for this form of publication, that it enables me and my correspondents to rectify errors and supply omissions, at all times hereafter, with ease and despatch, and without the circumlocution which would otherwise be unavoidable.*

*It is hardly necessary here to state, that gentlemen who gave these answers, universally disclaimed any intention of conveying more than a mere outline in many instances, such as respects courts &c; the* particular *provisions of acts of the legislature, &c.— My design was, to obtain practical information, in regard to all the essential* forms, *to be understood in the disposition of property, and the* effect *and* results *of state legislation, &c. in all important cases alluded to in the questions:—This purpose will be found essentially attained: indeed it is not too much to say, if I can rely upon my own judgment, that this part of my work, will put the publick in possession of a mass of information, which, considered in reference to its various subjects and details, will be found equally curious and useful to citizens of the U. S. whether in private or publick capacities:—A work, which I could scarcely have hoped to publish in so short a time, and for which the community are indebted, to the liberality of gentlemen of the bar, who, amidst professional cares and perplexities, have devoted themselves to a task, requiring no small share of research, and much of skill in the performance.*

# NEW HAMPSHIRE.



STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. Samuel Bell*, Chester; title, "His Excellency:" (1) term of office one year; app. by election of the people; salary $1200.

2. ——Secretary of State &c.?
*A. Samuel Sparhawk*, Concord; term of office one year; app. by joint ballot of the two houses of the legislature.

3. —— Chief Justice of the Supreme Court of law, &c.?
*A. William M. Richardson*, Chester; term of office during good behaviour, or until 70 years of age; salary, $1400.

4. —— Clerk of the Superior or Supreme Court, &c.? (2)

5. —— Attorney General: &c.?
*A. George Sullivan*, Exeter; term of office five years; app. by the governor and council.

6. What place is the seat of Government in your State, &c.?
*A. Concord*: the legislature assembles on the *first wednesday* of *June* annually. (3)

UNITED STATES OFFICERS.

7. Who is District Judge, &c.?
*A. John Samuel Sherburne*, Portsmouth.

8. —— Clerk of the District court, &c.?
*A. William Claggett*, Portsmouth.

9. —— District Attorney, &c.?
*A. Daniel Humphreys*, Portsmouth.

10. —— Marshal, &c.?
*A. Michael M'Clary*, Epsom.

11. What Justice of the S. Court of the U. S. holds the Circuit in your State, &c.?
*A. Joseph Story*: Maine, New Hampshire, Massachusetts, and R. Island, being the *first* circuit.

12. At what times and places, are District courts of the U. S. held, &c.?
*A.* At *Portsmouth*, 3rd tuesday of

(1) By the Constitution, he is appointed Captain-General Commander in chief, and Admiral, of the army and navy.

(2) My correspondent answered this question, but the clerks of these courts being numerous, (two generally in each county,) their names are omitted. This is of no consequence, as New Hampshire is one of the states, where a yearly *calendar* is published, which supplies the bar with all necessary information, in respect of officers, courts, &c. *Ed.*

(3) In a book I have, containing the constitutions of the different states, published in 1820, the time for the annual meeting is stated to be *the last wednesday in October*.

I presume there has been some alteration, legislative or constitutional, since the adoption of the constitution, 2d wednesday *Feb.* 1792. Ed.

*March and September; Exeter,* 3rd tuesday of *June and December.*

13. —— Circuit Courts &c.?
*A.* At *Portsmouth,* 1st of *May,* and *Exeter,* 1st of *October.*

LAWS—LAW BOOKS.

14. What number of volumes does the compiled body of your Statute law consist of, &c.?
*A.* The *compiled* body of statute law is in *one* volume, published in 1815, and contains all the statutes then in force, price $3 50. quoted "1. N. H. Laws."(1)

Statutes enacted since 1815, are printed in uniform pamphlets at the close of each session of the legislature, and will form at a proper time a 2nd volume.

15. Can the publick Laws in pamphlets, be procured, &c.?
*A. Pamphlets* since 1815 can be procured, at many book stores in the state, and particularly at Concord, of *Isaac Hill,* by whom most of them were printed.

16. Is there any Digest of the State Laws, &c?
*A.* There is no *digest* of the *statute* or common law of this state, nor any in preparation.

17. Are there any Reports of cases in your State Courts, &c.?
*A. One* volume of *Reports* of decisions of our *Superiour Court,* from 1816, to 1819; has been published by *Nathaniel Adams,* price $3, 75cts. Another is now nearly ready for press. There is no established *state Reporter,* but it is expected, that the publication of decisions will be continued from time to time, under the direction of the court.

*Report of the case* of the *Trustees of Dartmouth College,* against *Wm. H. Woodward: argued and determined in the Sup. Court of Judicature of the state of New Hampshire, Nov.* 1817, *and on error in the Sup. Court of the U. S. Feb.* 1819.

By *Timothy Farrar, Counsellor at Law. Portsmouth N. H.* 1819.(1)

18. Is there any Digest of Cases in your State Courts, &c.?
*A.* There is no *digest* of cases, in our state courts, and none in preparation.

19. Are there any Treatises, on the law in your State &c.?
*A.* No *treatise* on any branch of the law or its practice has been published in this state.

20. —— Foreign law books republished in your state, &c.?
*A.* No *foreign* law books have been republished here, except "*Lawes Elementary Treatise on Pleading*" *A. D.* 1808.

21. —— Reports of Cases in the District or Circuit Courts of the *U.S.* in your State, &c.?
*A.* There are no *reports* of decisions in the *District* Court of the United States in this state.

There are *three* volumes of *reports* in the U. S. *Circuit court* for this circuit, *two* of them by *John Gallison,* and the *third* by *Wm. P. Mason:* they embrace the period from 1812 to 1818.

22. Is there any Digest of cases in those Courts, &c.?
*A. None.*

23. Have any books been composed, in your State, &c.?

(1) Antecedent editions were published; 1st, in 1780, *one* vol. 2nd, in 1789, 1 vol. 3d, in 1792, 1 *vol.* 4th, in 1797, 1 *vol.* 5th, in 1805, 1 *vol* 6th and last, as above, by *Norris & Co.* Exeter.

(1) The report of this important case by *Mr. Farrar,* occupies upwards of 400 pages, and should be in every lawyer's library, as affording not only the most profound judicial opinions on constitutional law, relative

*A.* No *original* law books have been published in this state.

The late *Ch. Justice Smith* has however some valuable manuscripts, which are very much wanted by the profession, particularly an elaborate *treatise, on the law of "Descents and Last Wills:"* but whether the learned author will consent to give any of them to the publick, I am sorry to say, yet remains doubtful.

ATTORNIES— COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

*A. None.*

25. By whom are Attornies, or Counsellors, admitted, &c.?

*A.* Students at law, having been regularly admitted to the degree of Bachelor of Arts at some college, and pursued a course of legal study under the direction of a counsellor for the term of 3 years, (the last of which must be in the county where they apply for examination) are admitted to an examination by a *standing committee of the Bar*; if reported by the committee to be qualified, they are recommended by the *Bar* to the *superiour* court, and on that recommendation are admitted to practice by an order of court, and sworn in open court, after which, they may

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to legislative powers over contract, and corporation rights, yet published; but the greatest display of professional erudition and talent: It will be noticed in the proper place in a future *vol.* of the Law Register; in the mean time, I subjoin *Mr. Farrar's* advertisement.

*"Advertisement."*

"Upon the decision of the questions involved in this case, depended the title to the whole property and corporate franchises of a useful and respectable literary institution. Its importance therefore to that seminary alone, would seem to require the publication of a full report of the arguments and reasonings, which preceded and led to it. But the importance of the decision is not limited to a single institution. It is perhaps of equal importance to every other literary and charitable corporation of our country. They are all, or nearly all, of the same nature, and hold their property and franchises by the same tenure. Whether this be a permanent, vested interest, or a mere estate at the will of the legislative body, is the general question here discussed and settled. The singular ability and success, with which every part of the subject has been investigated and developed, not less than its general and particular importance, have given an interest to the cause, that would hardly be satisfied with any report, which should fall short of giving its entire judicial history.

Mr. Wheaton, the learned reporter of the decisions of the Supreme Court of the United States, will undoubtedly give, in his valuable work, a condensed account of this case, necessarily omitting all that part of the discussion, which took place in the State court. This case will however form but a small part of the volume, and the volume itself will form the fourth of a series, the size and expense of which will exclude it from the libraries of many, who would be desirous to see a more enlarged account of the case.—

For these reasons, the Reporter trusts he has not rendered an unacceptable service to the profession, in presenting them with this volume. The arguments and opinions have in most instances been taken from the original minutes of their authors, and corrected by themselves. To their goodness in this respect, the Reporter gladly embraces this opportunity of publickly acknowledging his obligations. In one or two instances, where the counsel could not render the same assistance, their arguments have been carefully prepared from notes taken at the time they were delivered.

The papers relating to this case, which are thrown into the Appendix, are all the documents disclosing any legal views originally entertained of the constitutional rights of this corporation at the time, and subsequent to the passing of the legislative acts. The other papers in the Appendix, it is hoped will not be thought to diminish the value of the publication.

*Portsmouth, August,* 1819."

practice in any state court: the order for their admission is recorded by the clerk, with the other proceedings of the term.

26. On what conditions, &c. from other states, &c.?

*A.* Attornies and counsellors *belonging* to *other* states are admitted to all the privileges of members of the Bar in this state, by courtesy. Those *removing* from other states to this state are admitted, on certificate of their standing, to a similar standing here, *provided* the requirements in the state from whence they came are similar to those of this state, and provided the rules and practice of the profession in that state, are equally liberal towards gentlemen of the profession going from this, to reside among them.

COURTS.

27. What are the names of the several courts in your State, &c.?

*A.* "Justices court," "Probate court," "Court of Sessions," "Superiour court of Judicature."

28. Their style, &c.?

*A.* "Justices of the Superiour court of Judicature, Justices of the court of Sessions, Judge of Probate, and Justice of the Peace."

29. The extent of their several territorial jurisdictions, &c.?

*A.* The *territorial* jurisdiction of each of these courts, is confined to one county, except the Superiour court, which extends to all the counties in the state.

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

*A. Justices of the Peace* have original jurisdiction in *civil* causes, where the sum demanded in damages, does not exceed $13, 33 cts. In *criminal* causes, their jurisdiction extends to slight punishments for certain petty offences.

The *Judge of Probate* has original jurisdiction of the probate of last wills and testaments; granting letters of administration; letters of guardianship for minors, &c. and the settlement of all administration and guardianship accounts, &c. &c. The *Courts of sessions* have original and conclusive jurisdiction of questions, of laying out roads, and settling accounts, for the maintenance of county paupers.

The *Superiour court* has original and final jurisdiction of all civil and criminal causes, not included in the jurisdiction of a justice of the peace, and also, appellant jurisdiction of all causes, whereof a justice of the peace, or a judge of probate, has original jurisdiction.

33. Which are courts of equity, and which of law, &c.?

*A.* We have no courts of *equity*; but a recent statute has given to the *Superiour court* chancery jurisdiction, in cases of property appointed to charitable uses: under this statute no proceedings have yet been had.

34. What methods are used to carry up judgments &c.?

*A.* Within the limited time after judgment in the court below, an *appeal* is claimed and entered of record, and in some cases bonds filed to prosecute the appeal, with effect, &c. The appellant, then takes out a copy of the *whole record*, including the papers filed in the case, and enters the action in the Superiour court.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A.* Messrs. *Hill* & *Moore*, Concord.

36. Who is the principal *Book-seller* at the seat of Government?

*A. Isaac Hill.*

The above answers show the different courts and jurisdictions as they exist at the present time: until recently, the *Superiour* court had no original jurisdiction in *civil* causes.

There was a court of *Common Pleas* in each county, which had appellate jurisdiction of civil causes, of which a Justice of the Peace had original jurisdiction; and original and conclusive jurisdiction of all causes, where the sum demanded in damages did not exceed $50,00; and original jurisdiction of all other civil causes.

Before this court was abolished, the usual course of business was, for those actions which were not for trial, to be terminated there; and those which were disputable or intended to be litigated, to go up by *appeal* directly to the Superiour court. The appeal was claimed and entered of record, in the manner mentioned in answer to No. 34. The pleadings, (which were usually either a general demurrer to the declaration, or a general demurrer to the plea of the general issue, according as the plaintiff or defendant had agreed to appeal the cause,) were filed with a reservation to each party, of a right to plead anew at the Superiour court, where the action was entered by the party appellant, and stood for pleading, trial, and judgment, precisely like an original action in that court. It was however in the option of either party, to put the cause to a *jury* in the court below, on the pleas intended to settle the cause. But no advantage was gained by this course, for the appeal vacated the judgment and the verdict, so that, the cause was entirely open for a new trial both as to fact and law, in the appellate court. This shows the meaning of an *appeal* in this state.

Causes were removable by writ of error, certiorari, &c. to the Superiour court for the correction of errors appearing on the record, as at common law, in cases where the Inferiour court had final jurisdiction, that is, where no *appeal* lay.

## No. II. CONVEYANCE BY DEED, &c. (1)

1. What is the kind of Deed most in use in your State &c. is it that of bargain and sale?

2. Does the legal possession pass without livery, &c.?

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

5. Are attesting witnesses &c. required to conveyances?

6. Must the deed be sealed?

7. Is a scroll sufficient?

8. Are the common law requisites for the perfection of Deeds &c. altered, in any particulars in your state?

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

12. Is this done by joining with him in the conveyance, &c.?

13. Is a private examination of the feme necessary, &c.?

14. What officers may take this examination, &c.?

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c.?

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

17. Generally, is there any thing peculiar in respect to dower in your state?

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

20. what is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

22. Is the certificate to be under the seal, as well as the hand of the officer?

23. If a quaker is witness, what is the form of affirmation by your law?

24. If a Grantor, Mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

25. Where the officer is of another state &c. what proof or instrument

(1) The Gentleman who favoured me with the information relative to "New Hampshire," has under this head, as well as some others, instead of particular answers to each question, found it most convenient to convey what was sought for in one connected view. It will be found, on examination, that he has combined in a very brief and lucid manner, all that the questions called for; yet in this instance, as in all others, for reasons which will be explained in the preface, the questions are all prefixed in an abridged form; and sometimes in order to understand answers fully, it will be requisite for the reader to recur to the question at large, which will be found at the corresponding *No.* under *Vermont.*

must be made or annexed to his certificate, showing he is such officer &c. ?

26. If Grantors or Witnesses are dead, removed from the state, or cannot be found: is there any provision in those cases for secondary proofs, &c. ?

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country ?

28. Are Deeds and Mortgages recorded evidence, by whom are copies exemplified ?

29. In what order, do mortgages take preference of each other ?

30. Is any time allowed after execution within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering ?

31. May deeds of mortgage be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c ?

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c. ?

*A.* The mode of conveyance by *deed* in this state, is regulated by statute. The provisions of the one now in force, and which for substance has been in force ever since the year 1701, are as follow—

"That all deeds or other *conveyances* of any *lands*, tenements, or hereditaments lying in this state, *signed* and *sealed* by the party granting the same, having good and lawful authority thereunto, and *signed* by *two* or more witnesses, and *acknowledged* by such grantor or grantors before a *justice of the peace*, [or by another statute, a Notary Publick] and *recorded at length* in the *registry of deeds* in the county where such lands, tenements, or hereditaments *lie*, shall be valid to *pass* the same, without any other act or ceremony in law whatever: and no deed of bargain and sale, mortgage or other conveyance, in fee simple, fee tail, or for term of life, or any lease for more than *seven* years from the making thereof, of any *lands*, tenements, or hereditaments in this state, shall be good and effectual in law to *hold* such lands, tenements, or hereditaments against any *other* person or persons, but the grantor or grantors, and their heirs only, *unless* the deed or deeds thereof be acknowledged and recorded in manner aforesaid."

The instrument of conveyance under this statute must be in writing, signed, sealed, and delivered; that is, it must be a *deed*. It must also be attested by two witnesses, acknowledged before a magistrate, and recorded. These are the only requisites of the statute. The *form* of the instrument is no way material, and *technical* words are *unnecessary* Such words must indeed be made use of, as by a fair and liberal construction will show *what* estate or interest was *intended*, and the land or property, which was the subject matter of the deed.

The ancient feoffment, or perhaps even a naked release, without covenants express or implied, would be sufficient to pass the title of the grantor, or the estate and interest which he had authority to convey, which is all that can pass by any form of conveyance under our statute. But the deed in most general use, is called a deed of "*bargain and sale*," and in form, resembles the English deed of that name under the statute of Uses.

All conveyances however, have their operation under our statute, and not under the statute of uses. It is

immaterial whether the lands be in possession, remainder, or reversion; whether holden jointly with others or in severalty; whether the estate to be conveyed be a freehold, or a term of years, conditional or unconditional. The words "bargain, sell, grant, enfeoff, convey, &c." transfer the lands, or the *right* of the grantor if he has a right merely.

Livery of seizin, or any other act or ceremony whatever beyond the deed itself, is not necessary. *Recording* the deed gives publicity to the transaction, and preserves the evidence. The acknowledgment and recording, form no part of the deed: that, takes effect from the making. The acknowledgment is a mere warrant for recording, and aids, in the proof and authentication of the instrument.

When the grantee neglects to record his deed, it shall not in certain cases, and under certain circumstances, be effectual to *hold* the lands, which had passed by it. But as it respects the *grantor* and his heirs, the acknowledgment and recording are unnecessary. They need no notice; the grantee therefore shall *hold* in all cases against them.

But when *others* may be supposed to suffer for want of recording, then recording is essential. The deed *to pass* lands is the same as it respects the grantor, his heirs, and all other persons. But these other persons may be injured for want of *notice*, that the lands *have* passed from the grantor; therefore, the requisites of acknowledgment and recording are *superadded*, as it respects them.

As the statute *limits* no time for registering, but requires it for notice to *purchasers &c.* it is sufficient that the notice, be given, when necessary. That is, if the deed be registered *before* the purchase by the second purchaser, or he has *otherwise* notice equivalent to the registry, the grantee shall hold.

Any *Justice of the Peace*, or *Notary Publick* in this state, or any *other* state or nation, is competent to take the acknowledgment, and probably (by a liberal construction, which the case requires) any person exercising the *powers*, which those officers here exercise.

The following is the *form* commonly used.

"*State of* NEW HAMPSHIRE. } On the
*Rockingham ss.* } On the
*day of* *A. D.* 1822,
*the above named* *personally appearing, acknowledged the above written instrument by him subscribed, to be his voluntary act and deed,*
*Before me* *Justice of the Peace.*"

If the grantor or lessor *refuses* to acknowledge his deed, the grantee may put it on record without acknowledgment, and it shall be good as though acknowledged for *sixty* days; and a *justice* of the peace of the *Quorum*, at the request of the grantee, his heirs, executors, administrators, or assigns, may *summon* the grantor to hear the testimony of the *subscribing* witnesses, and upon proof of the execution, by one or more of the subscribing witnesses, the justice's *certificate* thereof, shall be equivalent to acknowledgment.

It is not known, that a resort has ever been had to this course; but it is conceived however, that a certificate in the following form, would embrace all the matters required by the statute.

"*State of* NEW HAMPSHIRE. } *On*
*Rockingham ss.* } *On*
*the day of* *A. D.* 1822,
*the within named* *and*
[or one of them as the case

may be,] *subscribing witnesses to the within deed, personally appearing made solemn oath before me, one of the Justices of the Peace of the Quorum for said county, that they saw the within named* [*the grantor*] *voluntarily sign, and seal the said deed, and that they subscribed their names as witnesses thereto at the same time. The said* [the grantor] *at the request of* [the grantee, his heir, executor, administrator, or assignee as the case may be,] *was duly summoned to appear before me at the time and place of said examination, to hear the testimony of the said subscribing witnesses, by an original summons delivered to him the said* [or left at his usual place of abode as the case may be] *by the sheriff* [deputy sheriff, or constable as the case may be] *in said county, on day of A D.* 1822, [which must be at least *seven* days before the examination] *and was* [or was not, as the case may be] *present at said examination*"

(Signed as the other) "*Justice of the Peace of the Quorum.*"

If the grantor or lessor is beyond *sea*, or *removed* out of this *State*, or *dead*, before acknowledgment, proof of the execution of the deed by one or more of the *subscribing* witnesses, is equivalent, to the grantor's acknowledgment before a Justice of the Peace; and if the *witnesses* are dead, or beyond sea, or removed out of the United States, and the grantor is also dead, proof of the *hand writing* of the grantor, and of the subscribing witnesses, made by oath of *two* witnesses, is also equivalent to such acknowledgment; but in these cases, it must be made to appear to the *court* taking the proof, that the grantees, during the *life time* of the grantors, took actual possession of the estate conveyed by the deed, and that they or others claiming under them, have ever since continued in the quiet enjoyment thereof; and the proof must be taken before some *court of record* in this state.

Other cases, as for instance, where the grantor *refuses* to acknowledge, and the *witnesses* are dead &c. remain unprovided for by our statutes.

*Copies* of the record are certified, [*a true copy, attest* ] by the *recorder*; and such copies are evidence, *prima facie*, of the execution of such deed in all cases except, where the party claims immediately under the deed, and then, he is bound to produce the original, and prove its execution in the first instance.

In the particulars above noticed, it is not recollected, that any distinction is to be observed between absolute, and conditional deeds or mortgages.

The rights of the *widow* in respect to *dower*, are generally the same as at common law; but a *feme covert* may bar herself from this right, by *joining* her husband in the conveyance, *inserting a clause in the deed, to show the intent with which she joins.*

A *feme covert* may also freely convey her *own* estate, by *uniting* with her husband in a deed thereof; and the deed may be executed and acknowledged in the *same* manner that other deeds are, without any additional ceremony whatever.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

35. What is the order of priority

among judgment creditors, in respect of lands?

36. Does a judgment bind, after acquired land?

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

38. In respect of chattels, may the debtor alienate, before execution delivered?

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

40. Is there any Court in which a Judgment will bind the lands, in every county?

41. Can Execution be taken out at once, in every county, &c.?

42. Can Execution issue immediately after Judgment, against real estate of the debtor, and that be sold, without any previous appraisment &c. and on what conditions as to payment?

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

44. Before real estate can be sold on execution, must it be appraised, and sale delayed, until it brings the appraised value, or some proportion, &c.?

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

46. Are there any laws to delay or impair the remedy on execution, by suspension; appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

47. What security is required, that the property shall not be wasted, and be forth coming?

48. May the debtor redeem land sold on execution, &c.?

49. May Judgments on warrant of attorney be entered in vacation?

50. Can Judgments be entered on warrant of atty. before the debt is payable?

51. In such case, is the Judgment an incumbrance against a subsequent Judgment for debts due, and followed by immediate execution?

52. If after sale and conveyance of land on execution the judgment is reversed; does the estate revert, &c.?

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

55. Is the Ca. Sa. regulated by the common law, &c.?

56. Are any kinds of personal estate exempt from execution?

*A. Judgments* as such, form no *lien* or incumbrance on the debtors estate real or personal; nor can *real* estate be *sold* on execution.

We are disgraced by no *suspension* laws, appraisment laws, or others constraining the creditor to receive any thing else, than the *lawful* currency of the United States, in payment of his debt.

These *negations* in strictness, dispose of nearly all the inquiries under this head, and yet perhaps, communicate no information.

*Personal* actions are commenced, either by writ of *attachment*, or *summons*. In most cases the plaintiff may take his election. On the writ of attachment, the goods, estate, (or body for any sum exceeding $13. 33) of the defendant, may be *attached* for any cause of action, on which a judgment for debt or damages may be recovered. *Goods* when attached, are taken into the possession of the officer, and are either retained by him, or delivered to some other person, who is responsible to him, and is for this purpose considered as his agent.

When *real* estate is attached, a *copy* of the writ with the officers *return*, is left at the office of the *town clerk* of the place where the land lies, for publick notice. If the *body* of the deft. is arrested, he is either detained in the custody of the officer, or admitted to the more friendly custody of his bail.

A *lien* thus acquired continues, until *thirty* days after the rendition of judgment; and in case of a debtor afterwards *surrendered* by his bail, until thirty days after the surrender, when if the execution is not levied, the lien is discharged.

The execution (which may issue in 24 hours after final judgment is rendered, and is either a *fieri facias*, an *extendi facias*, or a *capias satisfaciendum*, at the *election* of the judgment creditor) commands the sheriff, to cause the judgment to be paid and satisfied, out of the goods, chattels, or lands of the debtor, and for *want* of goods, chattels or lands, to the acceptance of the creditor, to take the *body* of the debtor, and detain him in custody until he is discharged by order of law.

If the execution is *levied* on the debtors *goods*, (whether they had been previously attached on mesne process or not,) they are to be advertised, and *sold* at publick auction in *four* days after the levy. If it is levied on the debtors *lands*, *appraisers* are to be appointed, to value and *set off* the land to the creditor by metes and bounds, after which, he may take the land or not as he pleases. If he chooses to take it at the appraisment, *seizin* is delivered to him or his attorney by the officer, and the proceedings recorded in the office of the *recorder of deeds*, which makes as perfect a transfer of the debtor's title, as would his own deed, *excepting* the *right to redeem* the same, by paying the debt, interest, and cost, at any time within *one year*.

Should the creditor prefer to levy his execution on the *body* of his debtor, he may be detained within the four walls of the prison, or within the liberties (on giving bond with sufficient sureties for his remaining there,) until he pays the debt, or is discharged under the act for the relief of poor debtors.

The *priority* of liens on the debtor's goods or lands is determined, by the priority of the *attachment*, or *seisure*, whether on mesne or final process; and no lien *exists*, where an attachment, or seisure has not been made.

No personal property, but a few articles of small value and of the first necessity, is allowed to the debtor or his family, and no real property is exempted from this liability to creditors.

*Bail* may be discharged, by delivering up their principal at any time before *scire facias* brought against them; and at any time afterwards and before final judgment rendered against them, they may be discharged by surrendering the principal and paying the costs of the *scire facias*. We have not two different kinds of bail as in England,—bail to the sheriff, and bail to the action. The contract of our bail is, for the *appearance* of the defendant to answer the suit, and to abide the order or judgment of the court thereon.

Persons become bail, either by giving a bail bond, or by endorsing their names on the back of the original writ. This latter mode originated in the practice of writing the bond on the back of the writ, which was at first omitted in the hurry of business, and the signatures permitted to stand alone It is now the only mode in use, when bail is given before commitment. If bail is given

*after* commitment and return of the writ, a bond is made to the sheriff. The remedy against bail, is by *scire facias*.

No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

60. Is there any thing peculiar in your insolvent law?

*A.* We have no *insolvent* law applicable to any class of debtors, but those actually in execution, *confined* within the gaol or on the limits: these, it is believed without any exception, may at the end of 30 days from their commitment, having given 15 days previous *notice* to the judgment *creditor*, have a hearing, before *two justices* of the peace of the quorum, on a *petition* to be admitted to take the *poor debtors oath*, so called; and if no sufficient objection is offered, that is, if no proof is made satisfactory to the justices, that the debtor has property or has fraudulently disposed of property &c. he is admitted to the oath, which is in substance, "that he has no property real or personal, in possession, remainder, or reversion, excepting what is by law exempted from attachment and execution, nor has he disposed of any in such a manner, as that his creditors may be defrauded." He is then discharged from his imprisonment, and his body can no more be taken for the *same* debt. (1)

No. V. WILLS, &c.

61. Are lands and Freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?

*A.* They *are* substantially, though not nominally; for any *child*, or his representatives in case of his death, not having a *legacy* in the will, and not having been *advanced* in equal proportion before, shall inherit in the same manner as though the parent had died intestate.

62. What formalities of execution, are essential to a will of lands &c?

63. What formalities are reqtired, in the revocation of wills of land?

64. Are the provisions of the 29 C. II. c. 3. adopted in regard to the execution of wills of land &c?

*A.* The 5. § of the Stat. of frauds 29 C. II. c. 3, is re-enacted in this state, but the 6. § was omitted. (*see* 5. *Bac. abr. upon Wills* 306.)

Probably, no revocation of a will of lands would here be held sufficient, but by actual cancelling &c. by the testator, or another instrument executed with the same formalities, as the will itself.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir, to question its execution at law?

*A.* Wills are *proved* in the *probate court*, and their execution can never be questioned in any other court, (2) (*see Vermont, No.* 65.)

66. Is the execution proved by the witnesses, or oath of the Executors, or both, in the first instance?

(1) It would appear from this, that in New Hampshire, no insolvent law exists, by which, a debtors person may be discharged, but as against the particular creditor or creditors, at whose suit he is imprisoned, at the time of his petition. (2) An appeal lies, p. 32.

*A.* Usually by one or two of the *subscribing* witnesses, though we have no statute altering the common law in this respect.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* The office of the *register of probate,* whose attested *copies* are evidence.

68. What formalities are required, to wills of chattels?

69. Are any number of subscribing witnesses, or the signature, or seal of the testator required; or is a will of personals proveable by the rules of the common law &c?

*A.* Wills of *personals* are proveable as at common law, unless they purport to dispose of *lands* also, in which case they are void for the *whole,* unless they are executed with the requisite formalities, to take effect as wills of lands.

We have no statute regulating the *execution* of wills of personals, except nuncupative wills: our statute on this subject re-enacts, the 19, 20, 21, 22, and 23rd. §. of the Stat. of *Frauds,* 29 *C.* II. c. 3.

The provisions of the St. 26 *G.* II. c. 6. relating to devisees, creditors &c. being *witnesses,* are re-enacted in this state, (*see* 5. *Bac. ab.* pr. Wilson, 331, where it is called 25. *Geo.* II.)

70. May executors, or administrators having letters in another state, sue in your state?

71. If not, what is to be done to enable them to sue?

*A.* No, they must take out letters in this state.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

73. How are foreign Wills and Testaments proved, in your state: &c?

*A.* A *copy* of a will with the probate thereof made in another state of the union, or in any *foreign* state according to the laws thereof, duly authenticated, may be filed and recorded in the *probate office* of any county in this state, where the testator had real or personal estate whereon the said will may operate; and such filing and recording will have the same force and effect, as an original will proved and allowed in the same probate court. Letters of administration with the will *annexed* may then be taken out, and the will enforced here.

*Letters* of administration on the property (lying in this state) of any person deceased, may be taken out here, and the rights of the personal representative enforced.

As to the *manner* of authenticating *foreign* records, we have no peculiar statutes or usages. The authentication of the records of other states and territories, is of course provided for by the act of congress, (*vid. const. U. S. art.* 4. § 1. c. 1. *L. U. S.* 2 *vol.* 102. *May* 26, 1790. 3 *vol.* 621. *Mar.* 27, 1804.)

## No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon Intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

*A.* Inheritances in fee simple descend upon intestacy in *equal* shares among the *children,* and such as legally re-

present such of them, as may be dead.

Where there are no children, the inheritance descends equally to the *next of kin* in *equal* degree and those who represent them, but no representation is admitted beyond the degree of brothers and sisters children.

When any of the *children* of the intestate die within 21 years of age, and unmarried, their shares go to the other children and their representatives; but if any of them die after 21 years of age, unmarried and intestate, living the mother, she inherits equally with the other children.

If any person dies intestate after marriage, or arrival at 21 years of age, and without issue, living the father, the whole estate, except the widow's dower, goes to him; but if the father be dead and the mother living, she is entitled to an equal share of the estate with the brothers and sisters, and their representatives. The provisions of our law on this subject will be seen, to be very similar to those of the civil law, and the English statutes of distribution.

No distinction is here made, between the half blood and the whole blood.

### No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* The surplusage of the personal estate, is distributed in the same manner as the *real* estate, with the exception, that the widow shall have one third, and if there are no children, one half of that surplusage forever.

### No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being Barred; Dower; Curtesy; Waste &c?

*A. Yes.*

83. Are entails abolished; converted into fees; or otherwise modified &c?

*A. No.*

84. How barred by the tenant?

*A. Answered in* 82.

85. Is the widow entitled to dower; and the husband to Curtesy; as by the common law?

*A. Yes.*

### No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

*A.* No person can maintain any action for the recovery of lands, unless upon a *seizen* within 20 years.

87. What savings &c?

88. Is there a saving in favour of foreigners or citizens of other states?

*A.* There is a saving of 5 years after disability removed, to such as were, at the time the right or title descended or accrued to them, either *under 21 years of age, feme covert, non compos mentis, imprisoned,* or *without* the limits of the U States.

89. Are the general principles of English law, on the bar of these Statutes, adopted in your state?

*A. They are.*

90. Is there any thing peculiar in your state on this head?

*A.* I recollect nothing.

91. What length of time bars recovery &c. in personal actions?

*A.* We have no statute limiting the time, within which debts by *specialty* may be recovered; they are governed by the principles of the common law. Other personal actions in general are limited to be brought within 6 years after they accrue; but actions of trespass, assault, battery &c are limited to 3 years, and actions of slander, to 2 years.

92. What savings?

93. Are there any in favour of citizens of other states, or Foreigners?

*A.* With a *saving,* in favour of persons *infant, feme covert, imprisoned,* or *beyond seas, without the U. States,* or *non compos mentis,* of the whole time aforesaid, after disability removed; and if the person against whom the suit is brought left the state, before the action accrued, and left no property here that could be attached &c. then the whole time is allowed after he returns.

## No. x. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

95. Before a sale, is notice to be given &c?

96. What officer is to give this notice?

97. In what manner &c.

98. If a sale takes place, is the deed absolute?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time, to be redeemed?

101. What officer in any county, ought a nonresident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* (1) *Unimproved* lands of non residents, may be sold for taxes The taxes are to be made out and delivered to the collector, by the 30*th* of *May,* annually: the collector is to lodge a copy of his *non resident* list with the *deputy secretary* of state, within the first eight days of the next session of the legislature, which commences on the *first wednesday* of *June.* The *dep'y sect'y* is to keep the list at his office for the inspection of those concerned, and to discharge such taxes as may be paid to him, till the first day of *September,* when the copy is to be returned to the collector: the collector is then to *advertise* such as remain unpaid, in the New Hampshire *Patriot,* and in some *other* paper printed in the county where the lands lie, *three* weeks successively, beginning eight weeks before the day of sale, that at a particular time and place in the town where the lands lie, so much of the same will be sold at publick auction, as may be sufficient to pay the taxes and incident charges; if the taxes are not previously paid, he is bound to sell accordingly, and to give a deed to the purchaser at the end of *one* year from the day of sale, unless the land is *redeemed* within the year, by the payment of the taxes and charges to the collector.

*Improved* lands 1) and buildings of residents and nonresidents may also, under peculiar circumstances, and where goods or the body cannot be found on which to make distress, be sold for the payment of taxes assessed on the owner.

Lands on which taxes are not paid, do not in any case vest in the state.

A non resident owner, desirous of keeping his taxes paid on *improved* lands and buildings, should have an agent for this purpose in the

(1) This is the language of our law.

town where they are situated; for *unimproved* lands, he may have an agent in the town, or at the seat of government, or correspond with the deputy secretary.

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c? *A.* [*See ante* no. III. *Judgments.*] The debtor's property may be attached, or his person held to bail on the writ by which the suit is commenced, at the time of the service thereof, but not afterwards *pending* the suit.

After final judgment on the execution, the property or body may be seized, whether previously attached or held to bail or not, and whether the suit was commenced by writ of attachment or summons.

In reference to the *questions* (1) on this head in your letter of the 16th *inst.* (*Jan.*) I would mention, that although the usual process for commencing suits is the writ of attachment, yet generally when actual *security* is not wanted, no other than a nominal attachment is made: the sheriff returns, that he has attached a "hat," &c. of the "value of three cents," and at the same time given the defendant a *summons* notifying him of the cause of action, time of the court &c. according to law.

The execution is the same in all cases, however the suit may have been commenced: the substance of its direction to the sheriff was stated in No. III. [*Judgments.*] Instead of saying "*it is a fi. fa.*" an "*extendi fa.* &c. at the election of the creditor, it would have been more correct to have said, "it has the *operation* of a fi. fa. an extendi fa. or a ca. sa. at the election of the creditor: in his use of these remedies, the creditor is not

(1) The questions referred to were stated, thus "There is one part however of your exposition under the head of 'Judgments and Executions, No. III.' on which I should wish at some future time a little further explanation. Your law of *attachment*, is not at *all* understood among us: yet I think its *principle* excellent.

You observe, after a judgment upon process commenced by *attachment*, the execution which may issue is, *either* a *fi. fa.* an *extendi facias* or a *ca. sa.* at the election of the judgment creditor:

1st. Are these writs issued *successively*, or does the writ of execution first issued, comprehend an order to sell the goods, the real estate, and take the body, if the goods and lands are insufficient?

2nd. Must the goods be *sold*, and the lands be appraised in such case, *before* the sheriff can take the *body*, and does the writ *continue* in his hands, beyond the time of its *return*, for the purpose of taking the body *pro residuo*?

3rd. If the goods and land are *levied* upon or seized on the execution, is it at the *election* of the plaintiff, to direct a sale of the goods, *or* an appraisment of the land?

4th. If *real* estate is attached and levied upon, is the sheriff *compelled* to go on and make the appraisment: you observe, that the sheriff is to have the lands set off, and the creditor *may* accept them or not: what is the effect in regard to his future remedies if he refuse to accept?

5th. Though, the *plaintiff* should omit after the 30 days to take out his execution of *extendi facias*, and thereby loses his lien, yet if he take it out before *alienation* by the debtor or a lien acquired by another creditor, will it not be as valid, as if taken within the 30 days?

6th. If the *pitff.* elects a *ca. sa.* in the first instance, is his future remedy against the *estate* gone; or may he abandon the *ca. sa.* and revert to the estate by an *extendi facias*, where there has been an attachment?

7th. When the suit is commenced by *summons*, and a judgment is obtained, does the same process of execution take place, as where property has been attached, if the estate is the debtor's at the time of judgment and execution?

restricted to any particular order: if he takes the *body* in the first instance, as he may, and that is finally discharged from the execution under the act for the relief of poor debtors, (*see* 57, *ante*,) the creditor has still a right to take out another execution, and levy it on the debtor's goods or estate if any he has: the execution does not remain in the hands of the officer *after* the return term, for the purpose of obtaining further satisfaction when only a part of the debt has been paid; but a new execution of the same tenor, called an *alias*, is issued for this purpose.

If *goods* are seized in execution they must be sold, (that is, the creditor has no right to dispense with a sale, without the consent of the debtor,) but if they were attached on the writ, the execution may or may not be levied on them as the creditor chooses: if not *levied* on within *thirty* days after final judgment, the lien is discharged, and the debtor may demand his goods again.

But *lands* seized on the execution may be appraised or not appraised, accepted at the appraisal or not, at the creditors election: in fact the whole process is under his controul, and he may stop it where he pleases. The lien will continue after the levy or seizure, during the life of the execution; but if the levy is not *completed*, that is, the land appraised, set off by metes and bounds, and *seizin delivered* by the officer and accepted by the creditor, before or during the return term, the *lien* will be discharged: the creditor may break off, at any stage of the pursuit of his remedy against the lands, before the *receipt* of seizin, and resort to the debtors goods or body, or other lands.

If the lien acquired by attachment of goods or lands is lost, by reason of the execution not being *levied* on them within thirty days after judgment, the creditor has thereby lost no right but what he gained by the attachment, that is, the right of priority: if no alienation or subsequent lien has intervened, he may proceed in the same manner as he could within the thirty days, and in the same manner as he may against the other property of debtor.

Property acquired *after* the judgment was rendered, is equally liable to the *execution*, as property owned at the time.

### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states, or foreign parts, for the conveyance of lands &c. in your state?

*A. Letters of attorney*, authorising the conveyance of land, and executed with the same formalities as a *deed* of land, may be recorded without proof, in the same manner, and in the same office as a deed of the same land, and the recording will have the same effect as that of a deed.

### ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in Mortgage?

*A.* We have no peculiar laws in regard to *aliens*: they stand on the footing of the common law, except so far as they may be affected, by the constitution, laws, or treaties of the United States.

### ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31

Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* The *right* of administration is regulated by local laws, but in the same manner as it is in England by the statutes mentioned.

106. May Guardians be appointed by will: Does the common law regulate &c?

*A.* Both parts of the question answered in the *affirmative.*

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by Ex'rs and Adm'rs, in force &c?

108. May ex'rs and adm'rs give a preference by confessing Judgments? Are lands sold on Judgment against Ex'rs or Adm'rs?

*A. No,* all persons having claims on the estate of a person deceased, are to exhibit them to the executor or administrator within *two* years next after the probate of the will or taking out letters of administration, with a saving of one year more in favour of persons out of the state, or in captivity, otherwise the claims are barred.

No *action* can be commenced on any such demand, until one year after the probate of the will or taking out letters of administration: if the estate is sufficient to pay all the debts, the adm'r or ex'r is then liable to be called on to pay them: the estate is presumed to be sufficient, unless a *commission* of insolvency is taken out.

If it is *insufficient* to pay all the debts, the ex'r or adm'r makes a representation of that fact to the judge of probate, who thereupon appoints commissioners to examine and liquidate the demands; after this, no *suit* at law, whether previously or subsequently commenced, can be sustained, except for *funeral charges,* expenses of the *last sickness,* and debts due to the *state* and *U. S.* which debts are entitled to priority and to be paid in full: the commissioners are allowed from six to eighteen months, as the case may require, to liquidate the other claims, giving publick notice of their appointment, times of meeting &c. all claims not substantiated before them, or before the court on appeal, are barred.

When the time allowed the commissioners is expired, their report is made to the judge of probate, and a decree passed distributing the residue of the estate, (after paying the privileged debts and expenses of administration,) among the creditors agreeably to the report of the commissioners, in proportion to their demands.

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* A statute of this state requires, that all conveyances to two or more persons shall be adjudged tenancies in *common,* unless, the words "jointly," as "joint tenants," the "survivor of them," or other equivalent words be used, clearly showing a different intention in the parties.

### SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?

*A. Yes.*

111. Is a scroll &c. equivalent to wax &c?

*A.* In *none.*

### BASTARDS.

112. Are bastards subject to common law disabilities?

*A. Yes.*

113. Are antinuptial children, legitimated by marriage of the parents?
*A. No*, not by marriage after their *birth.*

ALLUVION.

114. Does the common law in respect of alluvion prevail?
*A. Yes.*

FISHERIES.

115. Is the owner of lands, bordering on a river where the tide flows and reflows, &c entitled to several fishery in front of his land?
116. Is this so, by statute, or usage?
*A.* We have no statute on the subject: ancient statutes and usages, may have altered the common law on this head: this however is disputable ground.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* The provisions of these statutes, are incorporated into our own statute book.

USES.

119. Is 27. H. viii. called the *Stat. of uses*, (or similar provisions) in force?
*A.* This statute is doubtless a part of the law of this state: a conveyance might be so framed as to operate under it; for instance, A conveys to B, for the use of C. Here the estate would pass from A, by virtue of our own statute, but it would vest in C instead of B, by the operation of the statute of uses.
120. Is the English law of Uses and trusts, in force?
*A. Yes.*

BARON AND FEME.

121. Is the common law of Baron and Feme adopted: does the wife's chattels vest in the Baron?
*A. Yes.*

USURY. INTEREST.

122. What is the rate of interest?
*A. Six per cent per annum.*
123. What provisions against usury?
*A.* Substantially the same as the *stat. of Ann*, (1) except as to the extent of the penalty: the *security* is not by our statute absolutely void for the whole, but only to the extent of *three* times the amount of the usury.
In addition to the mode of proof under the statute of *Ann*, our statute provides, "that in certain cases, when the security is sued, the oath of the *defendant* to the truth of his plea, shall be sufficient evidence to authorise the court to make the deduction, unless the *plaintiff* will make oath, that there is no usury.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?
*A. Yes*, for any kind of articles that, in the common dealings of traders,

(1) 12 *Ann*, which makes the security void, and inflicts a forfeiture of treble the money borrowed.

mechanicks, farmers, or professional men are the subject of book charge. The book to be proved by the clerk, or if none, by the party himself, who made the original entries.

125. Is interest recoverable on book debt?
*A. No.*

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?
*A. Yes.*

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law to entitle him to recover?
*A. Yes.*

128. Is a protest for non-acceptance or non-payment, necessary on inland bills and promissory notes?
*A. No.*

129. Is there any peculiar practice, in your state, on this subject?
*A. No.*

130. What damages are recoverable, upon the protest of foreign bills of exchange?
*A.* We have no statute on this subject, nor practice enough, to have established any legal usage.

DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?
*A. Yes,* for the *impotency, adultery, extreme cruelty,* or *absence for three years without being heard of,* of *either* of the parties: and to the *wife* in case of the husbands absence for the space of *three* years, without making suitable provision for her *support* and maintenance, when it was in his power so to do: By the *superiour court,* and the parties must have their *domicil* in this state.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your State, against absent, or foreign debtors?
*A.* We have a process resembling the English foreign attachment, by which the *goods, effects,* or *credits* of *any* debtor, may be attached in the hands of a third person having possession thereof, and who is stiled a trustee of the debtor; we do not understand the meaning of your domestick attachment.

LANDLORDS AND TENANTS.

133. Is the law of Landlord and Tenant, in regard to distress for rent, similar to the English law?
*A.* The remedy by *distress* has been so long disused, that it may be doubtful if it would not now be held obsolete.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other States?
A. *Yes.*

CHOSES IN ACTION.

135. Are choses in action, assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?

136. Is the common law in respect of choses in action, adopted?
*A.* The *common* law governs in this respect, and its principles have undergone the same melioration here, as in most other places.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?
*A. Yes.*

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?
*A.* [*See ante* No. I. 33.] We have had no practice, under our limited chancery jurisdiction.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?
*A. Pro rata, (see ante* 107, 8.*)*

PUBLIC OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?
*A.* We have no *publick* lands, that any body will be likely even to wish to purchase.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitations?
*A. Yes,* without any limitations.

# APPENDIX.

## GENERAL REGULATIONS *for the* GENTLEMEN of *the* BAR, in the *State of New Hampshire.*

### ARTICLES.

1. *The* members of the bar in the several counties, and those usually practising in the same, shall form themselves into societies, and be bound by the rules and votes by them respectively made and passed, not inconsistent with these regulations.

2. *The* members of the bar in their respective counties shall, at the time they adopt these regulations, elect a President and Secretary for the ensuing year, and who shall hold their offices until others be elected, provided always that the Attorney General shall, when present, preside in the county societies.

3. *It* shall be the duty of the secretaries to record the doings of their respective societies, and immediately to transmit copies thereof to the secretary of each society in this state.

4. *Each* county society shall appoint a committee for the examination of candidates, to hold their offices for one year and till others be appointed.

5. *No* person shall be admitted as a student, or recommended for admission to practise, unless he sustains a good moral character; and in case the candidate for admission as a student in an office has not had a degree in the arts, he shall (excepting a knowledge of the Greek language,) be duly qualified to be admitted to the first class of students at Dartmouth College; which qualifications shall be ascertained by the said committee of examination, and by a certificate from the preceptor or instructor of such candidate; and no county society shall recommend any candidate for admission to practise, until they have ascertained by their said committee of examination, that such candidate has made suitable proficiency in the knowledge of the law.

6. *No* candidate who has received a degree in the arts shall be recommended for admission to practise, unless he has, by the previous consent and approbation of a county society, regularly studied three years after having received such degree, in the office and under the direction of some respectable member or members of the bar, practising before the Superiour Court. And no candidate who has not received a degree in the arts shall be recommended for admission to practise, unless he has studied five years as aforesaid.

7. *No* member of the bar shall receive as a reward for the tuition of a student at law in his office, any sum less than two hundred and fifty dollars, for the time required by these regulations for admission to practise, and in that proportion for a shorter time.

8. *No* student at law shall be allowed the benefit of any perquisites or profits, arising from the business of the office in which he studies, or from any business whatever appertaining to the profession of the law; nor shall he engage in, or pursue any other employment, during any part of the term of his study.

9. No member of the bar *shall have more than three students in his office at any one time, nor* shall *he* keep a student at law in his office, without the consent of the county society had at some regular meeting at the term before, or the term after the commencement of his study in such office.

10. *No* student shall be recommended for admission to practise at the Court of Common Pleas, without having been propounded to the county society for such recommendation the term preceding.

11. *When* a candidate for admission to practise shall have received a vote of recommendation, notice thereof shall be given to the court in writing under the hand of the president, including a request for his admission to the bar.

12. *A* person having been regularly admitted in a Court of Common Pleas, and practised two years with reputation in such court, shall be entitled to a recommendation for admission to the bar of the Superiour Court.

13. *The* persons competent to vote for the admission of students to an office, and for the recommendation of candidates to be admitted to practise, shall consist only of that part of the county society who are admitted attornies at the Superiour Court: and no such votes shall be valid, unless passed by the concurrence of two thirds, of those who are present and entitled to vote on the occasion.

14. *All* admissions to practise shall be in the county where the applicant has last studied; and after the expiration of one year from the ratification of these rules, no person shall be recommended for admission to practise in any county, where he shall not have studied the last twelve months of his term.

15. *After* the denial of admission to an office as a student, or the denial of recommendation to be admitted to practise, no subsequent application of the same candidate for either of said purposes, shall be sustained at the same term of the court. And after the refusal of admission to an office by any county society, no application therefor by the same candidate shall be sustained in any other county.

16. *Any* person having studied conformably to these regulations a part of

his time in any other state, and having completed the residue in this state; or having been duly admitted to the bar in any other state, where the rules for admission are in all material points similar to the foregoing, and having conformed to the same; may be recommended for admission in this state, provided the rules and practice of the bar in the state from which such person comes, grant the same privileges to candidates going from this into such state, and not otherwise. In all applications however under such circumstances for admission to the bar, the person applying must produce satisfactory evidence, of his orderly standing at the bar from which he comes.

17. *To* avoid irregularities in practice, no member of the bar shall give aid or countenance to any suit or process commenced by a person not admitted to practise in conformity to these rules, except by licence of the county society.

18. *If* any member of any county society should violate any of the foregoing rules or articles, he shall upon the first conviction thereof before the county society to which he belongs, be reprimanded by the president thereof; and upon the second conviction, shall forever thereafter be excluded from any fellowship with said county society, or any county society in the state, and be considered as having forfeited all his right as a member of the bar; provided, that upon a vote of three fourths of the society he may be restored to fellowship.

19. *Any* member of the bar who shall be guilty of any species of maintenance or champerty, or of loaning or advancing directly or indirectly, any sum of money or other property to any suitor or client, or to any other person for the use or benefit of any suitor or client, for the purpose of procuring or obtaining retainers or engagements in any suits or business of any kind in his profession as a lawyer; shall for the first offence be reprimanded before the county society to which he belongs, by the president thereof, and for the second offence shall forfeit all his rights as a member of the bar, and thereupon it shall be the duty of the county society to which such member belonged, to move the Superiour Court if such member be an attorney of said court, and if not, the court of Common Pleas, to dismiss such offending member from his office as an attorney of said court: and it shall be the special duty of every member of the bar, having satisfactory information of any breach of this article, to give immediate notice thereof to the county society to which such offending member belongs.

20. *Any* county society may hereafter propose alterations in the foregoing rules, or additional articles, which when adopted by three fourths of the county societies in the state, shall be in force.

21 *The* foregoing regulations, when agreed to by a majority of the bar in any county shall be obligatory in said county, after which all bar regulations heretofore made in such county inconsistent with these, shall be void, and the secretary of such county society shall furnish every member thereof with a

copy of these regulations, for which he shall receive two dollars from each member. (1)

*Dec.* 1804.

(1) It appears that in this state, Gentlemen of the Law in each county form a society, acting under rules intended to promote uniformity in certain points of professional conduct, and preserve the dignity of the bar. The admission to county practice in the state, depends on the examination and recommendation of a *committee* of the society, to the court in which application is made; These *articles* having been received, from the Gentleman to whom I am indebted for all the information under this title of the L. Register, I presume (to some extent,) the associations are at this time organized in that state; this would be a sufficient reason for inserting them here, for their use. But independent of that inducement, many of the regulations appear to possess so much merit, as on the score of example, to be worthy of being communicated to the profession generally.

*Note.* My correspondent informs me, that the *Superiour Court* of this state, has not yet adopted any written *Rules* for regulating its practice.

By recurrence to *answer* 25, p. 31. it appears, that attorneys are admitted by the Superiour Court, and when admitted may practice in *any* State Court: I infer from this, that the rule of two years previous practice in the County Court, before admission to practice in the Superiour Court, has been altered. *Ed.*

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# CONNECTICUT

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# CONNECTICUT.



### STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. Oliver Wolcott,* Litchfield: title "His Excellency:" app. annually, by the electors of this state: salary $1,100.

2. ——Secretary of State &c.?
*A. Thomas Day,* Hartford: app. annually, by the electors of the state.

3. —— Chief Justice of the Supreme Court of law, &c.?
*A. Stephen Titus Hosmer,* chief Judge of law and equity: Middletown: term of office during good behaviour: app. by the general assembly: salary $1,100.

4. —— Clerk of the Superior or Supreme Court, &c.?
*A. Clerks of the Superiour court,* in their several counties, are clerks of the *supreme court of errors* in their respective counties: app. by the judges of the superiour court.

5. —— Attorney General: &c.?
*A. State attornies,* supply the place of an attorney general; there is one appointed in each county by the county court, term of office *two* years.

6. What place is the seat of Government in your State, &c.?
*A. Hartford & New Haven;* the state offices and records are kept at Hartford, the assembly meets annually on the *first Wednesday of May,* alternately at *Hartford & N. Haven*: will assemble at *N. Haven* in *May,* 1822.

### UNITED STATES OFFICERS.

7. Who is District Judge, &c.?
*A. Pierpont Edwards,* Bridgeport.

8. —— Clerk of the District court, &c.?
*A. Charles A. Ingersoll,* New Haven.

9. —— District Attorney, &c.?
*A. Hezekiah Huntington,* Hartford.

10. —— Marshal, &c.?
*A. Andrew Hull, Jr.* ——— †
The state forms one district.

11. What Justice of the S. Court of the U. S. holds the Circuit in your State, &c.?
*A. Brockholst Livingston*: Connecticut, New York, and Vermont compose the *(second)* circuit.

12. At what times and places, are District courts of the U. S. held, &c.?
*A. New Haven, 4th Tuesdays in February and August; Hartford, 4th tuesdays in May and November.*

13. —— Circuit Courts &c.?
*A. New Haven, 19th April; Hartford, 17th September.*

### LAWS—LAW BOOKS.

14. What number of volumes does

† Nat. Int. Mar. 11, 1822.

the compiled body of your Statute law consist of, &c.?

*A.* The "*statutes of Connecticut,*" as revised by the general assembly, *May* 1821, are published in 1 vol: cited *Stat. Conn. tit.* 56. *s.* 9. or by the *page.*

15. Can the publick Laws in pamphlets, be procured, &c.?

*A.* May be procured at the *Secretary's* office, or of *Hudson & co.* Hartford.

16. Is there any Digest of the State Laws, &c?

*A. None,* nor any in preparation.

17. Are there any Reports of cases in your State Courts, &c.?

*A.* "*Reports of cases adjudged in the Superiour court,* from May 1785, to May 1788, with some *determinations in the Supreme court of Errors,* By *Ephraim Kirby* esq." 1789. Cited "*Kirby's Reports.*"

"*Reports of cases adjudged in the Superiour court, and Supreme court of errors,* from July, 1789, to Jan. 1798, by *Jesse Root,* a judge, (afterwards ch. J.) of the Superiour court," 2 *vols.* published 1798, 1802, Cited *Root's Rep.*

"*Reports of cases adjudged in the Supreme court of errors, with some decisions in the Circuit court of the U.S. for the district of Connecticut,* from 1802, to 1810, inclusive, 4 *vols.* By *Thomas Day esq;*" published 1806, to 1813; Cited "*Day's Reports.*"

"*Reports of cases adjudged in the Superiour court of errors,* (prepared and published in pursuance of a statute law of the state,) commencing, *June* 1814, By *Thomas Day esq.*" of these, *two* vols are published, and Nos. — of the 3 vol. They are to be continued indefinitely: pub. at Hartford by *O. D. Cooke,* vol. 1, 1817, vol. 2, 1820, vol. 3, No. 1, 1820. Cited "*Conn. Reports.*"

18. Is there any Digest of Cases in your State Courts, &c.?

*A. None,* nor any in preparation. "The *Digest* of American Reports in 3 vols." published by *I. Riley,* contains the cases in Day's Reports. (*see ante* 17.)

19. Are there any Treatises, on the law in your State &c.?

*A.* "*A System of the Laws of the state of Connecticut, in six books* By *Zephaniah Swift,* (late Ch. J.)" 2 vols. pub. 1795, 1796.

A *new* edition, with additions and corrections, is preparing by the *author.*

"*A Digest of the laws relating to the offices of Sheriff, Coroner, and Constable,* by *Joseph Backus,* counsellor at law," 2 *vols.* 1812, Cited *Back. Sher.* 1.

"*The Connecticut Town Officer,* By *Samuel Whiting,*" 1814.

20. —— Foreign law books republished in your state, &c.?

*A.* "*Espinasse's Reports* (5 *vols.*) and *Peake's Reps.* bound in 3 *vols.* with *improvements,* By *Thomas Day* counsellor at law," Hartford 1810; *Hudson & Goodwin,* out of print; a *new* edition, with additional references, and including the 6*th* vol. *Esp. Rep.* is in preparation.

"*Bosanquet & Puller's New Reports,* 2 *vols.* with *corrections,* and the addition *of notes and references*; By *Thomas Day esq.*" Cited "*New Rep.*" (*O. D. Cooke,* proprietor of the edition, printed at Hartford, 1811.)

"*Bosanquet & Puller's Reps.* 3 *vols. a new edition* with *corrections, and the addition of notes and references,* by *Thomas Day esq.*" Hartford, 1811. Cited "*Bos. & Pull.*"

(*Note,* The 3 vols. of *Bos. & Pull.* and 2 vols. of *New Rep.* generally go together, constituting one set; the latter being sometimes cited as 4 & 5 of *Bos. & Pull.*)

"*East's Reports*, 16 vols. *with corrections and the addition of notes and references*, By *Thomas Day, esq.*" (*M. Carey & Son*, Philada. proprietors of the edition, printed Hartford, 1815.)

"*Ord's Essay on the Law of Usury*, 3d edition: *comprising the later decisions in England, Ireland and America, with notes and references*, By *Thomas Day, counsellor at law*," (Hartford, 1809, *O. D. Cooke*, proprietor of the edition.)

21. —— Reports of Cases in the District or Circuit Courts of the *U.S.* in your State, &c.?

*A. None*, except before mentioned, (*Vide ante* 17.)

22. Is there any Digest of cases in those Courts, &c.?

*A. None*, except "Rules of the District court of the U. States, for the district of Connecticut in *prize causes*," and "general rules in *cases of seizure*, for violation of the laws of the United States," *Pamphlet*, New Haven, 1812.

23. Have any books been composed, in your State, &c.?

*A.* "*A Digest of the law of Evidence in civil and criminal causes*," and a "*Treatise on bills of Exchange and promissory notes*, By *Zephaniah Swift*, one of the judges, (since Ch. J.) of the Supreme court," 1 vol. 1810, Cited "*Swift's Ev.*"

"*The law of Baron and Feme; Parent and Child; Guardian and Ward; Master and Servant;* and of the *Powers of courts of Chancery;* By *Tapping Reeve*," (late Ch. J.) 1 vol. 1816, Cited "*Reeve's Dom. Relat.*" published by the author. (*see no.* 18.)

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

25. By whom are Attornies, or Counsellors, admitted, &c.?

*A. Attornies or Counsellors*, (for we make no distinction in the profession,) are admitted to practice by the *county courts* after examination and recommendation, *by the members* of the bar of said courts; when regularly admitted in one county, they may practice in either of the other counties.

A record of their admission is made by the clerk of the court, where they are admitted: term of study for graduates, *two* years: for all others, *three* years: two years practice in the county courts is required, before admitted to the bar of the *higher* courts.

26. On what conditions, &c. from other states, &c.?

*A.* When examined and recommended by the members of the bar, and approved by the court.

COURTS.

27. What are the names of the several courts in your State, &c.?

*A.* "Justice courts, Probate courts, County courts, Superiour court, Supreme court of Errors."

28. Their style, &c.?

*A.* "Judges of the Supreme court of Errors," —— "of the Superiour court;" "——— of the County court;" "——— of Probate;" "Justices of the Peace."

29. The extent of their several territorial jurisdictions, &c.?

*A.* The *territorial jurisdiction* of the Supreme court of Errors, and of the Superiour court, extends through the state; both courts are *held* in the several counties; the former, annually; the latter, semi-annually.

The County courts, over their respective counties.

There are 32 Probate districts in

the state, and a judge to each, whose jurisdiction is limited to his own district.

Justices of the peace, have jurisdiction throughout the county in which they reside.

30. Which have original jurisdiction, &c.?

*A.* Justices courts and courts of probate, have *original* jurisdiction only. *Justices of the Peace* have cognizance of the *crimes* of drunkenness, profanity, and sabbath breaking, and of all offences punishable by fine or forfeiture, not exceeding *seven* dollars: and of all *civil* causes in which the title of land is not concerned, and the matter or thing in controversy does not exceed the value of *thirty five* dollars; but if the sum demanded be more than seven dollars, an *appeal* is allowed to the next county court, except in actions on notes or bonds, attested by two witnesses, and given for money only.

*Probate courts* are prerogative courts, having jurisdiction of the probate of wills and testaments; of granting administration; of appointing guardians; and of all other matters of a testamentary nature. An *appeal* lies from a decree of the court of probate, to the *superiour* court.

31. —— partly original, and partly appellant &c.?

*A. County courts*, and the *Superiour court*, are of this description.

1. The *original* jurisdiction of the *county courts* in *criminal* causes, is of all crimes not cognizable by a justice of the peace, and which fall short of the original jurisdiction of the Superiour court; and in cases, where the statute gives these courts concurrent jurisdiction; which is of the following offences, *namely*, the secret delivery of a bastard child, or for concealing its death; horse-stealing; stealing from a person at a fire, or at any other time, to the amount of 20 dollars; breaking and stealing from a building in the day time; perjury; subornation of perjury; riots; preventing proclamation against riots, and also for not dispersing after proclamation made.

In *civil* causes their *original* jurisdiction embraces, all actions not determinable by a justice of the peace) wherein the matter in demand does not exceed the sum of 70 dollars, and all actions brought on bond or note given for the payment of money only, and vouched by *two* witnesses.

They have *Appellate* jurisdiction of causes from a justices court, as above. (*See* 30.)

2. The *Superiour court* has *original* jurisdiction of all *offences* whereof any part of the punishment is, or may be, death, confinement in Newgate Prison, or incapacity to hold office, and of high crimes and misdemeanors at common law: also, of *divorce, relief in cases of insolvency* and other matters of a *civil* nature, not cognizable by the subordinate courts. For its *equitable* jurisdiction *see* No. 33, *infra.*)

The *appellate* jurisdiction of this court arises from the *county* courts, and the courts of *probate*: *appeals* lie from the judgments of the former, in all cases, where the *title* of land is concerned, or the value of the matter in dispute exceeds the sum of 70 dollars, *except* in actions on bonds or notes attested by *two* witnesses, on receipts given by *or* to officers, and on award of auditors; and from the determinations of the *latter*, in all cases, *except* from a decree accepting the report of commissioners, and even then, if the administrator be a creditor to the estate, and has a debt allowed him.

32. —— appellant jurisdiction only, &c.?

*A.* The *Supreme court of Errors* has no *original* jurisdiction: here all causes, brought by way of error or complaint, from the judgment or decrees of the *Superiour court*, in matters of law or equity, wherein the principles of either have been mistaken, or erroneously adjudged, are finally determined. But though in technical strictness, this court has cognizance only of writs of error from the superiour court; yet as all the individuals composing the former are judges of the latter, a convenient opportunity is afforded while they are thus assembled, for hearing argument on motions for *new trials*, and cases stated. (1)

33. Which are courts of equity, and which of law, &c.?

*A. Justice courts* and *courts of probate* are courts of law; the other *three*, of law and equity. In all causes in chancery, the proceedings are by bill and subpœna. The *county court* has original cognizance of all matters in *equity*, wherein the sum demanded does not exceed 335 dollars; and the *superiour court* of all other causes.

34. What methods are used to carry up judgments &c.?

*A. Appeals* must be made during the *session* of the court making the adjudication upon which they are founded: Bond with surety must be given by the appellant, and a duty of one dollar be paid. Writs of *error* may be brought at any time within *three* years from the time of rendering judgment, to be signed by a judge of the supreme court, and a duty paid, and bond given.

*Note*, There are *city* courts held monthly in each of the five cities in the state: They have cognizance of all causes, wherein the *title* of land is not concerned cognizable by county courts, if the cause of action arise, or both, or either of the parties live within the limits of the city: They have the same power of carrying their judgments into effect by execution &c. as the other courts.

### MISCELLANEOUS.

35. Who is State Printer, &c.?

*A.* Not any *state* printer.

36. Who is the principal *Book-seller* at the seat of Government?

*A. Oliver D. Cooke*, at Hartford: *How & Spalding*, at New Haven.

(1) These of course, occupy a considerable portion of the term The opinions of the judges upon them, are given by way of advice to that branch before which the cases are respectively pending; but this advice is always followed, and is considered as setling the law. See 3 *Day* 28. 1 *Conn. Rep.* Preface, xxv. xxvi.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your State &c. is it that of bargain and sale?

*A.* Our *instrument* for the conveyance of estates in fee, (with the exclusion of certain terms which relate to the system of feuds,) is the same as the English feoffment, and is denoted by the word *deed*; which, according to common acceptance, signifies this kind of conveyance only; but in law proceedings, it is considered according to its legal import.

Or, more concisely, our only instrument of conveyance, is a deed of *bargain and sale*, either with or without covenants of warranty and seizen.

2. Does the legal possession pass without livery, &c.?

*A. Livery of seizen*, either in deed or in law, is not necessary: On *delivery* of the deed by the grantor, the legal possession passes immediately to the grantee by operation of the statute: Or, as some jurists have held, on the *recording* of the deed, (*see* 1 *Conn. Rep.* 88, 89, 90. 2 *Conn. Rep* 98 *& seq.*

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* The *same* as in England.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* The *construction* is generally governed by common law.

5. Are attesting witnesses &c. required to conveyances?

*A.* To all conveyances of real estate, *two* attesting witnesses are required.

6. Must the deed be sealed?

*A. Sealing* is not made requisite by statute, but is universally practised, (the *stat.* requires *ealing*, when the *wife* conveys her estate, *Conn. L.* 304, Ed.)

7. Is a scroll sufficient?

*A.* "No statute, or judicial decision of the supreme court, has determined what is necessary to constitute *a seal;* a wafer covered with a piece of paper, is most *commonly* used: the deed must be on paper or parchment.

8. Are the common law requisites for the perfection of Deeds &c. altered, in any particulars in your state?

*A.* There are no essential alterations, but such as are noticed under this head.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* The statute requires *all* grants and deeds, made of *real* estate, to be *acknowledged* before some judge or justice of the peace. A deed of land, without a proper certificate of the grantor's acknowledgment, is no evidence of title. If the grantor refuses to make acknowledgment, the grantee may enter *caution* with the town clerk, which will secure his claim till a trial is had; and then, a copy of the judgment of the court, recorded in the register of the town, will establish his title. All deeds are required to be *recorded* in the office of the clerk of the town in which the land lies; and are of no validity, *except* as against the grantor and his heirs, until so recorded.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* The purchaser has "a *reasonable* time" allowed him to have his deed recorded in the records of the town where the land lies; and if it be not so recorded, nor any notice given,

the subsequent purchaser, by procuring a prior record of his deed, will take the estate.

Or, more concisely, all deeds recorded within a "reasonable time," will take effect according to the time of execution. It has been held, that the recording of a *mortgage* deed affords constructive notice of its contents to all subsequent incumbrancers.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

12. Is this done by joining with him in the conveyance, &c.?

*A.* The wife can have *dower* only, in the real estate of which her husband *dies seized*; and can convey her freehold in no case without *joining* with him, consequently, *she* cannot convey her dower.

But the wife *joining* with her husband may convey her real estate by deed under their hands and *seals*, and by them duly acknowledged and duly recorded.

13. Is a private examination of the feme necessary, &c.?

14. What officers may take this examination, &c.?

*A.* Such examination is unknown to our law.

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c.?

*A* The *same* as at 19, *mutatis mutandis*.

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A. See* 11, 12, *ante*.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* The widow is endowed of one *third* of the real estate of which her husband dies *seized*; but cannot, as at common law, be endowed in all he has possessed during the coverture: a divorce, (there is but one kind in this state, and that a *vinculo*,) will not bar the wife of dower, if she be the innocent party.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A. Vide, post.* 24, 25.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* "*Personally appeared*, A B, *signer and sealer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me, this day of* 1822.

*C D. Justice of the Peace.*"

20. what is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* According to our practice, the acknowledgment must be made by the grantor in person, or by his duly authorized attorney, which supersedes the necessity of any other certificate than that above mentioned, *see* 19.——The power of attorney must be for that special purpose, and executed and acknowledged, and recorded, as in case of deeds.

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* The grantor (or his attorney in his name,) signs the deed or mortgage, which is attested by two witnesses. He then acknowledges the same to be his free act, and the officer, whose attestation is sufficient without seal, certifies it accordingly. (*see* 19.)

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* "*A B, (conscientiously scrupulous of taking an oath,) did solemnly, and sincerely affirm and declare,* that, &c"

24. If a Grantor, Mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A* By Statute, "all grants and deeds of bargain and sale, and mortgages of houses and lands, *shall be acknowledged* by the grantor or grantors, to be his or their free act and deed, before a *justice of the peace,* or before a *judge* of the supreme or district court of the *U. States,* or of the supreme or superiour courts, or the court of common pleas or county court, of *any individual state,* or before a *commissioner* or *other officer having power to take acknowledgments of deeds*: and all grants or deeds of real estate, which have been, or shall be, acknowledged before such judges, shall be good and valid in law; and when deeds are executed by an attorney duly authorized, his acknowledgment shall be sufficient. (1)

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c.?

*A.* A deed acknowledged before an officer in *another* state, will be admitted to *record* here, without any other evidence of the fact of his holding the office he assumes, than what is purported by his signature, &c. but this will not be considered as *prima facie* evidence on trial. The execution must be proved by the attesting witnesses, or by secondary evidence, according to the rules of the common law.

26. If Grantors or Witnesses are dead, removed from the state, or cannot be found: is there any provision in those cases for secondary proofs, &c.?

*A.* The same as at common law.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* The acknowledgment must be taken, in conformity to our law. (*v.* 24)

28. Are Deeds and Mortgages recorded, evidence; by whom are copies exemplified?

*A. Copies* exemplified by the secretary or clerk of the office where recorded, are legal evidence; provided, the non-production of the original is satisfactorily accounted for.

29. In what order, do mortgages take preference of each other?

*A.* The first incumbrancer, who has a legal claim, shall be preferred to the second, and so on according to priority of title, as evidenced by the record.

Or, more concisely, by priority of *execution,* if the record of the first mortgage be made within a *reasonable* time; otherwise a subsequent incumbrancer may gain a preference, by priority of *recording.*

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* There is no other term specified than a *reasonable* time: and of this, the court or jury will judge, accord-

(1) It seems by the Connecticut law, that even as between the parties, no deed has any validity, unless, written, subscribed, witnessed, and acknowledged as above mentioned: nor against third persons, unless recorded also, or notice; but as to this last, the act makes no such exception. Ed.

ing to the circumstances of the case.

31. May deeds of mortgage be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* Mortgage deeds stand on the same footing in this respect, as absolute deeds.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* If a mortgagor dies, without directing how his estate shall be applied to discharge the mortgage, and the equity of redemption goes to his heirs or devisees, they must redeem with their *own* money; they cannot call for the application of personal estate for that purpose, as in England.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

35. What is the order of priority among judgment creditors, in respect of lands?

36. Does a judgment bind, after acquired land?

*A. Judgments* bind real property in this state in no case, unless the original writ, (being a writ of *attachment*,) upon which judgment is rendered, has been previously served upon the estate.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* The first execution *levied*, has the preference.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* We have no law to prevent him.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* (*See* 33, 36, *and* 40, 41.)

40. Is there any Court in which a Judgment will bind the lands, in every county?

41. Can Execution be taken out at once, in every county, &c.?

*A. No*, the court granting execution may direct it to the proper officer to serve, *any where within the state*; but the *judgment*, aside from the *levy of the execution*, binds no estate, (*see* 42.)

42. Can Execution issue immediately after Judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* Immediately after judgment is rendered, execution may issue against the estate, both real and personal, of the debtor, and for want thereof against his body: If *personal* property is to be had, the officer has no legal right to levy on the real estate; but the creditor may *elect*, whether to take real estate, or the body of the debtor: if land is taken, it must be *appraised* by three freeholders of the town where it is situated; and then the execution, with the officer's endorsement of satisfaction thereon, recorded in the records of the town, and by the clerk of the court from which it issued, will complete the creditor's title to the premises: land *attached*, must be levied upon within *four* months after final judgment, or the lien created by the attachment will be lost.

43. In such case, is a Deed made and delivered to the party, before

acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* Fraud and irregularity may be rectified by law: but no *summary redress* is provided. (*no deed is made*, 42)

44. Before real estate can be sold on execution, must it be appraised, and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* In case execution is levied on *landed* property, the creditor takes so much as, according to the valuation of the appraisers, will pay the debt and costs; and if any thing remains, it must be paid over to the debtor; but if there is not enough of the whole, the officer will take what there is, and endorse the receipt of it upon the execution according to the appraisment; we have no provision for a *delay of sale.*

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* Neither of these modes of execution is practised here, except in so far as our execution against *land* resembles an *elegit*, (*See* 42, 44.)

46. Are there any laws to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A.* We have no laws to embarrass the creditor in his remedy by execution, nor any *minimum* fixed, below which property of whatever nature may not be taken, though there are *certain* articles exempted from attachment, (*see post*, 56.) *For appraisement of lands &c.* (*see ante* 42.) When *personal* estate is taken on execution, the officer must advertise it for sale, naming the time and place, by posting an account thereof on a sign-post in the vicinity, for the space of *twenty* days; and if the debtor does not appear within that time, and pay the debt, and costs of suit, he must sell at the beat of drum to the highest bidder, such goods and chattels, or so much thereof as will satisfy the execution and discharge the expenses, and the overplus, (if any) must be returned to the owner.

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* There is no other security, than the officer's liability to make good all damage sustained by either party, through his mismanagement or fraud; or, more concisely, *none.*

48. May the debtor redeem land sold on execution, &c.?

*A.* Lands sold on execution, cannot be redeemed in any case, except when taken for payment of taxes (*see Nb.* x. 99.)

49. May Judgments on warrant of attorney be entered in vacation?

50. Can Judgments be entered on warrant of atty. before the debt is payable?

51. In such case, is the Judgment an incumbrance against a subsequent Judgment for debts due, and followed by immediate execution?

*A.* We have no practice of entering up judgment in any case, on a warrant of attorney.

52. If after sale and conveyance of land on execution the judgment is reversed; does the estate revert, &c.?

*A.* Upon the reversal of a judgment, estate taken by execution founded thereon, will also *revert.*

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* Surrender of the principal, exonerates the bail. (*as to ca. sa. v.* 42.)

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* No limit, nor any class of persons exempted.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* The distinctions, of *ca. sa.*, *fi. fa.*, *lev. fa.* &c. in the executions of the common law, are lost in our execution, which embraces the power of them all, [nearly but not exactly.] After judgment is rendered, execution issues, and is proceeded with, as before mentioned, (42 & 44.)

In addition to an execution for *cost* and *damages*, when not paid in an action of *disseisin*, the officer is commanded to *re-seize* the estate, and put the plff. into possession.

When judgment is rendered against *executors*, or *administrators*, for debts of the deceased, execution goes only against his estate in their hands. These are all the executions known to our law. In executions against *sheriffs*, the *ca. sa.* part is necessarily omitted: so against persons who have been discharged from imprisonment under a decree of insolvency.

56. Are any kinds of personal estate exempt from execution?

*A.* By statute, the following articles are absolutely exempted from attachment by warrant or execution, for any debt or tax whatever, to wit: "necessary apparel, bedding, and household furniture, necessary for supporting life; arms; military equipments; implements of the debtor's trade; one cow; any number of sheep not exceeding ten; and two swine; being the property of one person: that any quantity of wood not exceeding two cords; any quantity of hay not exceeding 2 tons; any quantity of beef or pork not exceeding 200 lbs. weight; any quantity of fish not exceeding 200 lbs. wt.; any quantity of potatoes or turnips not exceeding five bushels of each; any quantity of Indian corn or rye not exceeding ten bushels of each, and the meal or flour manufactured therefrom; any quantity of wool or flax not exceeding twenty pounds weight of each, or the yarn or cloth made therefrom; one stove, and the pipe belonging thereto; being the property of any one person having a wife or family: and that the horse, saddle and bridle of any practising physician or surgeon, of a value not exceeding one hundred dollars; shall be exempted, and not be liable to be taken, by warrant or execution, for any debt or tax whatever."

*Executions* are made returnable in *sixty* days, or to the *next* court. They may be renewed, and an *alias* granted by the clerk at any time without application to the court, unless there has been a mistaken levy, and the execution is endorsed satisfied; and in this case, application must be made to the court.

*Poor debtors* may be relieved in this state by statute. When any person is committed to goal on *civil* process, and is unable to pay the debt, he may make application to a *justice of the peace*, and after notice is given to the adverse *party* or to his attorney, if the party be not an inhabitant of the state, to show cause if any he has &c. he may proceed to inquire into the matter, and if no sufficient reason is shown to the contrary, he shall administer to such poor debtor the following *oath*, namely, "You A. B. solemnly swear, that you have not any estate, real or personal, in possession, reversion or remainder, of the value of seventeen dollars in the whole, or sufficient to pay the debt or demand for which you are imprisoned; (except what is by law exempted from being taken on execution,) and that you have not directly or indirectly, sold, or other-

wise disposed of, all, or any part of your estate, thereby to secure the same, to receive or expect any profit or advantage thereof, or to defraud or deceive your creditors: *So help you God.*" And the keeper of the gaol shall not, thereafter, stand charged with such prisoner, unless the creditor shall lodge with the keeper of the gaol, such sum of money for a weekly maintenance as the county court in the county shall establish, as the weekly allowance to be made by creditors, for their debtors, after such oath shall have been administered to them; which maintenance the several county courts are authorized to establish: and when any prisoner shall take such oath, upon two or more attachments or executions, such weekly allowance shall be paid, in equal proportions, by the plaintiffs or creditors, by whom he is detained in prison; and it shall be the duty of the gaol-keeper to pay such prisoner, every week, the amount of his weekly allowance in money, if by him requested."

### No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?
*A.* There is such a law, from which no persons, *inhabitants* of this state, are exempted, on account of the nature of the debt or cause of action.

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?
*A.* The *time* is variant, according to circumstances. The *petition* must be preferred to the *superiour court*, where the justice of the application will be inquired into, and the justice of the claim decided upon; and if it be allowed, commissioners are appointed, who immediately proceed to the execution of their powers. A certificate, under their hands, of the insolvent's having conformed to the requisitions of the act, will protect his person from imprisonment: the petitioner must state and prove, that he has a fair character for probity and industry, and is not justly chargeable with idleness or mismanagement in his affairs; *that he is insolvent*; and that he has not conveyed any of his estate, with intent to defraud his creditors.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?
*A.* Applications may be made by any person, and at any time, who can make out his case. *(see no. 58.)*

60. Is there any thing peculiar in your insolvent law?
*A. Nothing* in addition to what has been stated above, worthy of particular notice. *(v. no. 56. p. debtors.)*

### No. V. WILLS, &c.

61. Are lands and Freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* All persons of a sound mind, and of the age of *twenty-one* years, may dispose of their real estate by will or testament, to whom they please, even to the disinherison of their children.

62. What formalities of execution, are essential to a will of lands &c?
*A.* Wills must be in *writing*, on paper or parchment, *subscribed* by the testator, and attested by *three* witnesses, all subscribing in his presence; *sealing* is not made requisite by statute.

63. What formalities are required, in the revocation of wills of land?

*A.* By statute, burning, cancelling, tearing or obliterating the will by the testator himself, or in his presence, by his direction and consent; or by some other will or codicil in writing, declaring the same, signed by the testator in the presence of three or more witnesses, and by them attested in his presence, constitute an actual revocation: if a child be born to the testator, after he has made his last will and testament, and no provision is therein made for such contingency, it operates as a revocation of such will.

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?

*A.* The requisites of 29 *Car.* ii. c. 3. nearly resemble those in force here, (*see* 62, 63.)

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir, to question its execution at law?

*A.* Before a *court of probate*; and the decision of this court, upon the proof exhibited, is conclusive upon the heirs, unless they appeal, and obtain a reversal of the judgment.

66. Is the execution proved by the witnesses, or oath of the Executors, or both, in the first instance?

*A.* The execution is first proved in the probate court, by the attesting witnesses: wills may also be proved before a *justice of the peace*, who must enter the oath of the witnesses upon the back of the will, and attest the same: in this case no further evidence will be required when brought before the probate court: or, more correctly, the judge of probate will give the same effect to such evidence, as if it had been made before him personally.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* In the records of the court of probate: and certified copies from such records, are legal evidence.

68. What formalities are required, to wills of chattels?

*A.* By statute, *all* persons of sound mind of the age of *seventeen* years, have power to dispose of their personal estate by will or testament: *Married* women, may dispose of their estate, both *real* and *personal*, by *will*, in the same manner as other persons.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals proveable by the rules of the common law &c?

*A.* To wills of *personalty*, no subscribing witnesses are required: the subscription of the devisor is sufficient. The proof is generally the same as at common law. ☞By the 2*nd* § of the Stat. (see *Conn.* Statu. 199.) it would seem, that the testator must *subscribe* a will of *personalty*. Ed.

70. May executors, or administrators having letters in another state, sue in your state?

71. If not, what is to be done to enable them to sue?

*A.* They cannot sue in this state, unless they take out letters of administration, or prove the will here.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A.* The *originals* must be produced and proved; or, the non-production of the originals satisfactorily accounted for; in which case, *exemplifications* would be received.

73. How are foreign Wills and Testaments proved, in your state &c.?

*A.* *Wills* made in a *foreign* country

must be executed in the form prescribed by *our* law: they must be *exhibited* and proved in the district where the land lies, *unless* retained in the jurisdiction where the testator died, and then *sworn copies* may be exhibited, and the execution of the originals proved.

### No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon Intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

### No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A. Descents*, and *distribution on intestacy*, are both regulated by the same statute, and a transcript of those sections which relate to them will, perhaps, afford the most satisfactory answer to the interrogatories upon these subjects.

"*Sect.* 30. The distribution of the estate shall be in the manner following, that is to say, one third part of the personal estate to the wife of the intestate, (if any there be) forever; and one third of the lands and houses during life, where she shall not have been otherwise endowed before marriage: and all the residue and remainder of the real and personal estate, by equal proportions, according to its value at the time of the distribution, to and among the children, and such as legally represent them, if any of them are dead; excepting children, who shall receive estate by settlement of the intestate, in his lifetime, equal to the shares of the others; and children advanced, by settlement or portion, not equal to the shares of the rest, shall have so much of the estate as shall make all the shares equal; and the estate shall be so divided, as that the male heirs shall have their part in the real estate, so far as the estate will allow: but whenever the court shall find, that it will best accommodate the heirs of any estate, to distribute part of the personal estate to the male heirs, and part of the real estate to the female heirs, such court shall order such distribution to be made accordingly: provided, that where it shall appear to the court of probate, that any estate in houses and lands cannot be divided among all the children, without great prejudice and inconvenience, said court may order the whole to be set to the eldest son, if he accept it, or, on his refusal, to any other of the sons, successively; and the son accepting it, shall pay to the other children of the deceased, their equal and proportionable shares of the true value of such houses and lands, upon a just appraisement, to be made by three sufficient freeholders, on oath, or shall give security to pay the same in some convenient time, as the court shall limit, with lawful interest.

*Sect.* 31. And if any of the children die before he or she come of age, and before marriage, or before any legal disposition thereof, and before marriage, the portion of such child deceased, shall be equally di-

vided among the surviving children, and their legal representatives.

"*Sect.* 32. If there be no children, or any legal representatives of them, then one moiety of the personal estate shall be set out to the wife forever; and one third of the real estate for the term of life; and the residue of the estate, both real and personal, except as herein after provided, shall be distributed and set off equally, to the brothers and sisters of the intestate, of the whole blood, and those who legally represent them; and if there be no such kindred, then to the parent or parents; and if there be no parent, then equally to every of the brothers and sisters of the half blood, and those who legally represent them, and if there be no parent and no brother or sister, or those who legally represent them, then equally to the next of kin, in equal degree: kindred of the whole blood to take in preference to kindred of the half blood, in equal degree: no representatives to be admitted among collaterals, after the representatives of brothers and sisters. Provided, that all the real estate of the intestate, which came to him by descent, gift, or devise, from his or her parent, ancestor, or other kindred, shall belong equally to the brothers and sisters of the intestate, and those who legally represent them, of the blood of the person or ancestor from whom such estate came or descended; and in case there be no brothers and sisters, or legal representatives as aforesaid, then equally to the children, and those who legally represent them, of such person or ancestor; and if there be no such children or representatives, then equally to the brothers and sisters of such person or ancestor, and those who legally represent them; and if there be none such, then it shall be set off and divided in the same manner as other real estate. And if there be no wife, all the estate, shall be divided among the children and heirs, in manner aforesaid."

The most material departure of our law from the common law of descents, is the abolition of *primogeniture*; permitting the estate to ascend to *parents*; and giving the *half-blood* a preference to relations in a remoter degree.

## No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being Barred; Dower; Curtesy; Waste &c?

83. Are entails abolished; converted into fees; or otherwise modified &c?

84. How barred by the tenant?

85. Is the widow entitled to dower; and the husband to Curtesy; as by the common law?

*A. Entailments* are not allowed in this state, but for a *single life*. The statute enacts, that "no estate in fee simple, fee tail, or any less estate shall be given by deed or will to any person or persons, but such as are in *being*, or to the *immediate* issue or descendants of such as are in being, at the time of *making* such deed or will; and every estate given in *fee tail*, shall be and remain an absolute estate, in fee simple, to the *issue* of the first donee in tail."

Words of procreation must be used here (as in England) to *create* an estate in *fee tail*; and so far as our law of entailment corresponds with their's, the *incidents* to it are the same. The first *donee* or tenant in tail, may commit *waste*; the wife has her *dower* or thirds in the estate;

the *husband* of a female tenant in tail, may be tenant by *curtesy*; and *lineal* warranty, descending with assets to the heir, will bar the estate.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

*A.* By statute, "No person shall at any time hereafter make *entry* into any lands or tenements, but within *fifteen* years next after his *right* or title shall first descend or accrue to the same; and every such person so not entering, and his heirs, shall be utterly disabled to make such entry afterwards; and no such entry shall be sufficient, *unless* an action shall be commenced thereupon and prosecuted with effect, within *one* year next after the making thereof.

87. What savings &c?

*A. Provided* that if any such person &c. at the time of the *first* descending or accruing of the said right or title, be within the age of *twenty one* years, *feme covert, non compos mentis,* or *imprisoned,* then such person, or his heirs, may &c. bring such action or make such entry, &c. so as such person shall within *five* years next after full age, discoverture, coming of sound mind, enlargement out of prison, or the heirs of such person, shall, within *five* years after the death of such person, bring such action, or make such entry, and take benefit of the same. (1)

88. Is there a saving in favour of foreigners or citizens of other states?

*A.* *(See* 93.*)*

89. Are the general principles of English law, on the bar of these Statutes, adopted in your state?

*A.* The general principles of construction in the English law of limitations, so far as they are applicable to ours, may be considered as in force here; as where the stat. *begins* to run, a supervenient disability, will not stop it. 2 *Conn. Rep.* 27.

90. Is there any thing peculiar in your state on this head?

*A. Nothing.*.

91. What length of time bars recovery &c. in personal actions?

92. What savings?

*A.* In actions on *specialties* and *promissory notes,* not negotiable, the limitation is *seventeen years,* with a *saving* "that persons *legally incapable* to bring an action on such bond, or writing, at the accruing of the right of action, may bring the same within 4 years, after becoming legally capable."

Actions of *account, of debt on book,* on *simple contract,* or *assumpsit,* founded upon *implied contract,* or upon any contract in *writing* not under seal, (except promissory notes not negotiable,) within *six* years, *saving* as above, 3 years: In *trespass on the case,* there is a limitation of *six* years also, but no *savings.*

Actions founded upon *express* contracts *not* reduced to *writing*; upon *trespass*; or upon the *case for words*; *three* years, and no *savings.*

Actions founded on *penal* statutes, *one* year, after the offence committed.

Actions against *sheriff,* his *deputy,* or *constable,* for *neglect of duty, two* years, after the right accrues.

Where a *judgment* for the plff. is *arrested* or *reversed,* he (or his heirs &c.) is entitled to *one* year from that time, to bring a new suit.

93. Are there any in favour of citizens of other states, or foreigners?

*A.* In all the above cases, the time in which the deft. is *without* the state,

(1) It would seem, that this limitation in terms, would not bar an *action* on the *right.* Ed.

is excluded from the computation; but there is no *saving* in favour of the *plff.* who is a *foreigner*, or *absent* from the state. (*See stat. Conn.* 309 *to* 312. *tit.* 59.)

### No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

*A.* They *may*: and an absentee, has no particular privilege.

95. Before a sale, is notice to be given &c?

96. What officer is to give this notice?

97. In what manner &c.

*A.* The *collector* must give such notice, by advertising *three* weeks successively in a news-paper, printed in the county, or if there be none there, then in an adjoining county, at least *six* weeks before the time of sale.

98. If a sale takes place, is the deed absolute?

*A.* So much of the property must be sold, as is sufficient to pay the tax and costs. For this, the collector gives a *warrantee* deed, which must be lodged with the town clerk, there to remain *unrecorded one* year; and if the owner does not appear within that time, and redeem the land, the deed will be recorded, and title become absolute in the purchaser.

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

*A.* The land may be redeemed, as above, within a *year* after the sale, by paying to the *purchaser* the purchase money, and *twelve per cent* interest.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time, to be redeemed?

*A.* Lands taken for the payment of taxes, never vest in the state.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* He may appoint whom he pleases in the town or county where the land is situated, to transact his business for him. No other prudence is required, than to select a faithful and trusty agent.

### No. XI. MISCELLANEOUS.

#### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* The debtor may alienate his property at any time while the suit is pending, *unless* brought by writ of *attachment*, which operates as an effectual restraint upon the property attached. If the creditor has any apprehensions that the debtor will alienate his estate, it is the common practice to commence the suit by writ of attachment: In this case, bonds for *prosecution* must be given; so that, if the *plff.* fails to make his plea good, the *deft.* may be *indemnified*. *Bail* is allowed in all *civil* actions, and in most *criminal* prosecutions, except for capital offences; and generally upon the principles of the common law.

#### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states, or foreign parts, for the conveyance of lands &c. in your state?

*A.* We have no specific regulations, concerning powers of attorney executed *abroad*; except that they must be produced, proved, and recorded, with the conveyance.

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in Mortgage?

*A.* Aliens cannot take estate, by descent or purchase; nor hold real property till they have obtained liberty from the general assembly, or become naturalized.

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* Administration and Guardianship, are regulated by statute. If the *executor* dies before administration is closed, or is unable to act, the court of *probate* will appoint a person to administer upon the estate. The substance of the English statute upon this subject, is incorporated into ours.

106. May Guardians be appointed by will: does the common law regulate &c?

*A.* Guardians, may *not* be appointed by will; but must be chosen by the *wards*, (which may be done by *males* at 14, and by *females* at 12 years of age,) or, be appointed by the *probate court*. Guardianship is regulated by the common law generally; though by *stat.* the ward is disabled to contract, even for *necessaries*, without the approbation of the guardian.

PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* By statute, the *court of probate* directs the executor to make payment of the debts of the deceased, in the following order, *viz*:

1. "The funeral expenses, and incident charges of settling, and selling the estate.

2. Debts due for the last sickness of the deceased.

3. Taxes and debts due to the state.

4. The debts of the several creditors, as allowed by the *commissioners*, in *proportion* to the sum found to be due." Whether debts are secured by judgment, specialty, or simple contract, there is no preference.

108. May ex'rs and adm'rs give a preference by confessing Judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* The executor or administrator, after giving bonds for the faithful discharge of his trust, must make and render unto the court of probate, a true inventory of all the property of the deceased, and the court will thereupon grant him an *order of sale*, by which he is to be guided in the disposition of the estate. (*Ex'rs* as well as *adm'rs* must give bond, for the faithful discharge of their trusts, with sureties. *Conn. Laws*, 200.)

JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* The same as at common law, both in its creation and incidents, *except* that on the decease of a joint-tenant, his share descends to his heirs, instead of vesting in the surviving tenant.

SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?

*A.* Seals are not required by the statute, as requisite to the perfection of conveyances. They are, however, universally affixed to instruments, intended to have the effect of deeds.

111. Is a scroll &c. equivalent to wax &c?

*A.* A wafer covered with a paper is in most general use; though wax, and printed or stained seals, are not uncommon.

BASTARDS.

112. Are bastards subject to common law disabilities?

*A.* They are subject. to the common law disabilities.

113. Are antinuptial children, legitimated by marriage of the parents?

*A.* No children are legitimated by the marriage of the parents, but such as are born *after* the marriage.

ALLUVION.

114. Does the common law in respect of alluvion prevail?

*A.* The common law prevails.

FISHERIES.

115. Is the owner of lands, bordering on a river where the tide flows and reflows, &c entitled to several fishery in front of his land?

116. Is this so, by statute, or usage?

*A.* Our courts have professed to adopt the common law, in relation to the right of fishery. They have decided, that in the *sea*, and in *arms* of the sea, the right of fishery is *common*; in all other waters, *several*. They have, at the same time, considered *rivers*, arms of the sea, as far as the tide flows and reflows, but no further, whether navigable, in the popular sense, or not. In a river navigable above tide water, the proprietors of the adjoining land have an exclusive right of fishery, opposite to their land, to the middle of the river; and the *publick* have an easement in the river, as a highway, for passing and re-passing with every kind of water-craft. (*See* 2 *Conn. Rep*, 480.) It has been decided, that the taking of *shell-fish* on the sea-shore, between high and low water mark, is a *common* right. (5 *Day* 22.)

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

*A.* We have a statute, against fraudulent conveyances, abridged from the 13 *Eliz.* c. 5. and somewhat narrower in its provisions. Accordingly, it has been held, that a *voluntary* conveyance to defeat the claim of a third person for damages arising from a *tort*, which would be void under the *stat.* of *Eliz.* as well as at common law, was not within our statute against fraudulent conveyances. (1 *Conn. Rep.* 295.) It has also been decided, that where a conveyance was made to a *child* in consideration of natural affection, without any fraudulent intent, at a time when the grantor was free from *embarrassment*, (the gift constituting but a small part of his estate, and being a reasonable provision for the child;) such conveyance was valid against a *creditor* of the grantor, whose claim existed *when* that conveyance was made. (1 *Conn. Rep.* 525.)

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. (*called*

*the stat. of frauds,)* or similar provisions, adopted in your state?

*A.* Our statute of frauds and perjuries, is copied with little variation, from the 4th and 17th sections of 32 *Car.* ii. It has been judicially decided, that our legislature in adopting the English statute of frauds and perjuries, adopted the *construction* given to it by the English courts. *(See* 2 *Day* 225.*)*

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?

120. Is the English law of uses and trusts, in force?

*A.* The English law of uses and trusts, has never been introduced into this state; and there has been but one decision in our courts upon the subject; by which, "the *cestui que use* will take an absolute estate, as large as the use or trust given to him. If the use be to him and his heirs, then he takes an absolute estate in fee simple; if for life, or years, then an absolute estate for life or years; while the *feoffee* or trustee, takes not even the shadow of a legal estate." *(See Kirby* 368, *and* 1 *Swift's Syst.* 321, 2.*)*

BARON AND FEME.

121. Is the common law of baron and Feme adopted: does the wife's chattels vest in the baron?

*A.* The *common law* of baron and feme, is generally in force here. The following points have been recently decided by our supreme court.

1. A share of personal intestate estate, accruing in the right of the wife *during* coverture, vests, even before distribution made, in the husband absolutely, and does not in the event of his prior death, survive to her.

2. When a testator gave his daughter, a *feme covert,* a legacy of 200*l.* directing the interest to be paid her during her coverture, and the principal afterwards; it was held, that the *husband* alone was entitled to receive such interest, and that his receipt was sufficient evidence of payment.

3. Where a man deserted his wife and children, *leaving her keeping a boarding house,* without any other means of support, and did not return to them, or make any provision for them, and she continued in the business in which she was left, conducting herself in a reasonable and proper manner, to obtain support for herself and children; it was held, that *he* was *liable for her contracts,* made in the *course of such business.*

USURY. INTEREST.

122. What is the rate of interest?

123. What provisions against usury?

*A. Six per centum, per annum,* is the rate of interest established by law in this state; and if any person takes more, it is usury, and he forfeits the value of the money *loaned.* All *securities* for money, on which a higher rate of interest is reserved, are *void.* In the construction of this statute, our courts profess to follow the English decisions.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* Book accounts, containing a *quantum meruit,* and a *quantum valebat,* afford a ground of action in this state, denominated *debt on book,* which is, in some respects, peculiar to our law.

The parties must produce their books of entry, and, in addition to other evidence, may be admitted to their *oaths* in order to substantiate their claims. *(See Stat.* 93.*)*

125. Is interest recoverable on book debt?

*A.* Their is no time fixed by law, from which interest is recoverable. Where goods sold and charged on book, are to be paid for on a certain day, interest is allowed after the term of credit has expired: if no day of payment is agreed on, after the *customary* term of credit has expired. *(See* 1 *Conn. Rep.* 32.*)*

### BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

*A.* Our statute, borrowed from the Stat. *Ann.* enacts, "that all promissory notes, duly executed, to the amount of *thirty-five* dollars or more, for the payment of money only, and made payable to any person or persons; or to his or their order, or to the bearer; shall be *assignable* and negotiable according to the custom of merchants, and the law relating to inland bills of exchange," which, together with *foreign* bills, are negotiated here upon the principles of the Law merchant, as received in England generally.

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English, law to entitle him to recover?

*A.* We have adopted the English decisions on this subject as our law. The following points, among others, have been lately decided by our supreme court.

Promissory notes and bills payable at banks, are entitled to three days grace.

1. Promissory notes within the statute making notes negotiable, are entitled to the same days of grace, as inland bills of exchange.

2. In the contract of indorsment, it is a condition precedent, that the holder shall use due diligence in making demand, and giving notice.

3. The indorsment of a bill or note over-due, is equivalent to drawing a new bill, payable at sight.

4. Where the parties live in the same town, personal notice must be given of the non-payment of notes and bills; but in other cases, the putting of a letter into the mail addressed to the party entitled to notice, is legal notice.

5. Where a note or bill is made payable to two or more persons, and by them *jointly* indorsed in their individual names, each is entitled to notice of non-payment. Therefore, an acknowledgment of due notice by one, will lay no foundation for an action against all.

6. A, being insolvent, made a promissory note payable to B or order, which B, with full knowledge of such insolvency, and having given no value for it, indorsed, to give it credit and currency: held, that notwithstanding these circumstances, the indorser was entitled to regular notice.

7. A, made a negotiable note, payable in six months from date; after it was due, and while a suit on it, in which the body of A had been attached and committed to prison, was pending, B, the payee, indorsed it to C; shortly afterwards, C, indorsed it to D; and D to E, who took it ignorant that the note was over

due, when first negotiated. Held, that E could not recover against B, without showing demand and notice within a reasonable time.

8. Where the indorser of a promissory note, shortly before it became payable, agreed with the holder, in consideration of time being given, that he would pay the note; it was held, that this was equivalent to proof of demand and notice, and satisfied the usual averments of demand and notice, in the declaration.

9. The precise day of demand and notice, it is not material to allege in the declaration; it being sufficient to make out the proper time in proof.

10. Where a promissory note was made by one partnership, and indorsed by another, the acting partner in both being the same person; it was held, that this fact did not excuse the want of due presentment for payment to the makers, and notice of non-payment to the indorsers.

11. Where one having funds in the hands of his correspondent, drew a bill on him for the amount, which the latter accepted, but failed to pay; it was held, in an action brought by the payee,(*drawee*) against the drawer, that the acceptor was a competent witness for the drawer.

12. The acceptor of a bill, with funds, who has failed to pay, is not liable for the costs of a suit against the drawer.

13. A bill was drawn and dated in *Alexandria*, on persons residing in *New York*, who accepted it. The drawer's residence was, in fact, in *Fairfield* in *Connecticut*; which was publickly known, and was particularly known to one of the acceptors. The bill being protested for non-payment, immediately afterwards two letters containing notice, were put into the post-office at *New York*, one addressed to him at *Alexandria*, and the other addressed to him at New York, and a third letter addressed to him at *New York*, was left at the compting-house of the acceptors. It was held, that although the holder was ignorant of the drawer's place of residence, yet as it did not appear that he had used due diligence to make inquiry, the notice given was insufficient.

14. A being the agent of B, procured, for the purpose of raising money for his individual use, a bill of exchange to be drawn on him, as agent, which he accepted as agent, and then got it discounted, and appropriated the avails to himself; such acceptance being within the scope of A's agency, but without the knowledge of B. In an action brought by the indorser of the bill, against A, in his individual capacity, it was held, that the plaintiff could not recover on the bill, as the acceptance bound B only; nor on the money counts, for he held a written security, valid and uncancelled, on which alone his remedy must be sought.

15. Where a promissory note, or other obligation, is payable in a certain number of days from the date, the day of the date is to be excluded in the computation of time.

16. Where no time of payment is specified in a promissory note, the plaintiff must declare upon it, according to its legal effect, as payable on demand; otherwise the declaration will be insufficient, (*See Conn. Reps. Vols.* 1, 2, 3.)

128. Is a protest for non-acceptance or non-payment, necessary on inland bills and promissory notes? *A.* No: the term "inland bills" being understood in its strict sense; Bills drawn in this state upon persons in any *other* of the states, must be *protested* in order to entitle the holder to recover *damages*.

129. Is there any peculiar practice, in your state, on this subject?
*A.* Nothing but what has been stated.

130. What damages are recoverable, upon the protest of foreign bills of exchange?
*A. Twenty per cent.* according to the general understanding of our merchants, sanctioned, it is believed, by one or more decisions of the superiour court.

The damages, payable on the return of bills drawn or negotiated in this state on persons in any other *state*, territory or district of the *U. S.* are regulated by statute. (Note, the rate of damages over and above the principal sum and interest varies, according to the distance and situation of the states. *see Conn. Stat.* 360.)

DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?
*A. Divorce* is granted by the *superiour court*, for *adultery; fraudulent contract; wilful desertion* with total neglect of duty for *three* years; or for an *absence* of *seven* years by one party not *heard* of. All divorces must be from the *bond* of matrimony: the statute warrants no divorce *a mensa et thoro.* As to *where* the cause of divorce must arise, the law is silent.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your State, against absent, or foreign debtors?
*A.* Attachments, *foreign* and *domestick* are regulated by statute. The property of absent, and absconding debtors, may be taken by attachment for the payment of their debts. *(See Stat. 237.)*

LANDLORDS AND TENANTS.

133. Is the law of Landlord and Tenant, in regard to distress for rent, similar to the English law?
*A. Distress* of personal property for the payment of rent, is not admitted here, as in England, in favour of the landlord against the tenant.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other States?
*A.* We have a statute providing for a *set-off* of mutual debts, where the *plaintiff* lives or resides *out* of the state, or is insolvent. *See Stat.* 43, 4. (The statute is strictly confined, to sett-off against a non-resident, or insolvent plaintiff. Ed.)

CHOSES IN ACTION.

135. Are choses in action, assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?
*A. Bonds, notes,* (not negotiable) *and other written contracts,* cannot be assigned at law, so as to enable the assignee to bring an action in his *own* name for the recovery of the debt, yet he acquires such a property in the paper, that he may keep it,—receive the money due upon it, or destroy it, without being held accountable to the assignor.

"In *equity*, bonds, (and, by parity of principle, notes, or any other choses in action,) are assignable for a valuable consideration paid, so that if the obligor or debtor, after *notice* of the assignment, pays the money to the obligee, he will be compelled to pay it over again: but a payment to

the obligee will be good, where there is no notice of assignment: An *assignee* must take the bond, or other security, *subject* to the same equity, that it was in the hands of the obligee." *(2 Swift's Syst. 157.)* The following late decisions show, that the rights of the assignee, will be recognized and protected in a court of *law.*

1. An action will lie in favour of *one* of two *joint* covenantees, against the *covenantor*, for *fraudulently* taking and pleading a discharge from the other covenantee, who had assigned his interest in the covenant, and was a bankrupt, of which the defendant had notice.

2. The *assignee* of a negotiable note payable to order, by *sale* and delivery without endorsement, (on which, by direction of the assignee, a suit has been brought, and judgment obtained, in the name of the *payee,*) is the *creditor* of the *maker*, and is the proper person to be served with notice on a petition by the maker, for an act of insolvency. *(2 Conn. Rep. 324, 503.)*

136. Is the common law in respect of choses in action, adopted?

*A.* The common law in respect to choses in action is generally adopted here, with this exception, that *promissory notes* not negotiable, are considered as *specialties.*

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* Tenants for life, years, &c. are generally entitled to the same rights, and subject to the same liabilities, as by the common and statute laws of England.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

*A.* When the court decrees the payment of a certain sum of *money*, execution is granted; and when the performance of a *specifick* act is decreed, or the refraining therefrom is enjoined, it is done under a certain *penalty*; for the recovery of which, action of debt must be brought. Courts of equity have power by statute, to pass the *title to real estate*, by decree, without any act to be done, on the part of the defendant, *see Stat.* 196.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?

*A.* Creditors to insolvent estates, are paid *pro rata*, according to their claims allowed, subject to the restrictions before mentioned, *see ante* 107.

PUBLIC OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?

*A.* We have no *proprietary* lands, in the sense probably contemplated by the question. In some of our ancient *towns*, there are *proprietors of common and undivided lands*, who are authorized by statute, to hold their meetings, and to exercise the powers of a corporation. But these lands have been principally *aparted*, and are now holden in severalty.

ENGLISH LAW BOOKS.

141. Are *English* law books, al-

lowed to be read in your State courts: if so, under what limitations?

*A. English* law books are read in our courts, indiscriminately with the opinions and reasonings of eminent jurists in other parts of the civilized world, particularly in the sister states. Our courts are willing to receive *light*, from whatever source it emanates. No decisions however, but those of our *supreme court*, are considered as authoritative; except perhaps, decisions of the English courts made upon *statutes* which we have *adopted*, previous to their adoption here: in that case, we have considered our legislature as having adopted the *construction*, as well as the *letter*.

# APPENDIX.

## RULES OF PRACTICE in the SUPREME COURT of *Connecticut.*

*May Term*, 1807.

1. *The* presiding judge, in charging the jury, shall state to them the several points of law which may arise, and declare to them the opinion of the court thereon.

2. *Bills* of exceptions shall not hereafter be admitted, but motions for new trials shall be admitted, in all cases, in their room; to be filed within forty-eight hours after verdict, and during the session of the court.

3. *The* several circuit courts shall hereafter, at their discretion, reserve such motions for new trials as they think proper, for the opinion of the nine judges, either with, or without stay of execution.

4. *In* all cases of writs of error, the counsel for each party, before argument, shall furnish the court with a *brief*, containing a statement of the case, with the points and authorities intended to be relied on.

5. *In* all motions for new trials before the nine judges, the counsel for the party who makes the motion, shall go forward in the argument.

*June Term*, 1808.

6. *In* all cases before the superiour court, where the defendant pleads the general issue, and intends to rely upon a defence, which, by the rules of the common law, ought to have been spread on the record by special pleadings; and in all cases founded upon an express contract, where the defence proceeds upon the ground of the existence in fact of the contract between the parties, but attempts to avoid the effect of it, by matter arising at the time of entering into the contract, or subsequent thereto; he shall give notice in writing of such his intention, at the time when by the rule of the court, he is bound to plead, and state therein the ground of his defence; from which defence, so notified, the defendant shall not be at liberty to depart on the trial, and insist upon another defence: This notice, however, shall not be construed to admit, as special pleadings would do, the truth of the facts alleged in the plaintiffs declaration.

7. *All* motions, and other matters, reserved, on the circuits, for argument before the nine judges, shall be entered in the docket of the *supreme court of errours*, at the next succeeding term, before the second opening of the court.

*July*, 1809.

8 *That* hereafter, no attorney shall be admitted to practice in the superiour court, until he shall have practised two years in the courts of *common* pleas in this state; and unless he sustain a good moral character, and shall be found qualified for practice on a publick examination of his knowledge of the law, by a committee of the bar, in the county where the application is made, to be appointed by the superiour court: and on report of such committee, that such applicant has the requisite qualifications, the court shall direct an entry of record to be made, that he is admitted to practice in the same.

9. *That* all motions for new trial in the superiour court, shall state the facts on which such motions are grounded, and shall be submitted to the inspection of the court; who, at the term when the motion is made, shall direct that all the facts shall be correctly stated, on which the questions of law arise. If the party in whose favour the verdict is found, shall contend that the points or matters, on which the motion for a new trial is made, were immaterial in the final decision of the case, he may state such facts, or other points ruled in the case, as may be necessary to show it; to be corrected by the court as aforesaid, and added to the statement of facts on which the motion is made.

10. *That* no amendment shall afterwards be made of such motion, unless it shall be discovered that there has been a mistake or omission, so that the merits of the case cannot be tried: and then such amendment shall be made, only by the notes of the judges who tried the cause.

11. *That* in motions for new trials, the prevailing party shall be entitled to recover costs in the supreme court of errours, as in other cases, to be taxed in the superiour court.

12. *That* when a motion is made for a new trial, and the party making it neglects to carry it forward, he shall pay costs in the same manner as if it had been done, and withdrawn on the second day of the session of the supreme court of errors.

13. *That* when execution shall be stayed on a judgment for a debt, or damages, if a new trial shall not be granted, interest shall be computed thereon from the time of its being stayed, till the time execution can be issued, and added thereto.

14. *That* when, in the trial of a cause, any point shall be ruled against a party which may be a ground for a new trial, the court shall, on his motion, direct a statement of such matter to be made and lodged on file, though on a motion in arrest, judgment shall be rendered in his favour, if they judge that such matter is proper to be reserved for the opinion of the nine judges: and if such judgment shall afterwards be reversed in the supreme court of errours, then such party may enter his motion for a new trial in the docket of said court, and proceed therewith as in other cases.

*June*, 1810.

15. *That* hereafter, whenever the superiour court, at any of the sessions, shall stay execution for the purpose of taking advice of the nine judges upon any question of law reserved, they shall stay the same, subject to the order of the supreme court of errors.

*June*, 1814.

16. *After* the first week of the present term, the consent of parties, or their counsel, will not excuse a compliance with the rule passed *June*, 1808, requiring all motions and other matters reserved for argument before this court, to be entered in the docket before the second opening.

*June*, 1815.

17. *Ordered*, that the party who shall move for a new trial, in any case which shall be reserved for the opinion of the judges of the supreme court of errors, and the plaintiff in a writ of error which shall be brought in that court; shall furnish three copies at least of such motion or writ of error, and lodge the same with the clerk thereof for the use of the court, at or before the second opening of the court: unless the party moving for a new trial shall obtain an order of the court which shall allow such motion, dispensing with the same, and substituting in lieu thereof an abridgment of the case approved by said court; and a like order by the judge who shall sign said writ of error; in which cases, lodging said abridgment shall be a compliance with this rule.

18. *Ordered*, that it shall be the duty of the counsel on both sides, in every case to be argued before the judges of the supreme court of errors, to furnish for their use three copies of a brief, containing a statement of the points on which they rely, and of the authorities intended to be used in support of them.

*November*, 1817.

19. *Ordered*, that the party who shall move for a new trial, in every case which shall be reserved for the opinion of the supreme court of errors, and the plaintiff in every writ of error, which shall be brought to the said court, and the plaintiff in every case reserved for advice, shall furnish nine copies of such motion, writ of error, or case reserved, and lodge the same with the clerk for the use of the judges of the court, at or before the second opening of the court, so that each judge may be supplied with one of the said copies; unless the party moving for a new trial shall obtain a written order of the court, which shall allow such motion or reserve such case, or of the judge who shall sign said writ of error, dispensing with the same, and substituting in lieu thereof, an abridgment of the case approved by the said court or judge; in which events, the lodging nine such abridgments with the clerk, at the time aforesaid, shall be a compliance with this rule. And if this rule

is not complied with, in any case, the same shall be continued or non-suited, at the discretion of the court.

20. *Ordered*, that it shall be the duty of the counsel, on both sides, in every case to be argued before the supreme court of errors, to furnish to each judge of the said court, at the commencement of the hearing of the said case, a copy of his brief, containing a statement of the point or points relied on, and of the authorities intended to be used in support of them.

21. *In* any action of *indebitatus assumpsit*, on the motion of the defendant for the production of a bill of particulars specifying the precise ground of claim, the superiour court may, at their discretion, direct it.

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(1) It would seem, in Connecticut, that "copies of *motions* &c." mean, the '*whole case.*' Ed.

# RHODE-ISLAND

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# RHODE-ISLAND.



### STATE OFFICERS.

1. Who is Governor of your state &c.?

*A.* WILLIAM C. GIBBS, Newport; title, "His Excellency, Captain General Commander in Chief," app. by the freemen for one year; salary $400 beside perquisites.

2. ——Secretary of state &c.?

*A.* HENRY BOWEN, Providence; app. by the freemen for *one* year.

3. —— Chief Justice of the Supreme court of law, &c.?

*A.* ISAAC WILBOUR, Tiverton; app. by the Senate and House of Representatives assembled in "Grand Committee," for *one* year; salary $250.

4. —— Clerk of the Superior or Supreme court, &c.?

*A. William H. Smith*, Providence. *John Segar*, South Kingston. *Holmes Weaver*, Newport. *Samuel Coggshall*, Bristol. *Caleb Jerauld*, Warwick.

These clerks are appointed for *one* year, by the Senate and House of Representatives assembled in "Grand Committee."

5. —— Attorney General: &c.?

*A. D. I. Pearce*, Newport; app. *annually* by the freemen.

6. What place is the seat of Government in your state, &c.?

*A.* There is no established seat of government. The annual *election* is held at Newport, 1st Weds. in May; the general assembly by law, convenes, alternately at *Providence* and *South-Kingston* on the *last monday in October*.

Other sessions in the year may be holden either at Providence, Newport, South-Kingston, East-Greenwich, or Bristol, at the pleasure of the General assembly.

### UNITED STATES OFFICERS.

7. Who is District Judge, &c.?

*A.* DAVID HOWELL, Providence.

8. —— Clerk of the District court, &c.?

*A.* BENJAMIN COWELL, Providence, also of the circuit court.

9. —— District Attorney, &c.?

*A.* JOHN PITMAN, Jur. Providence.

10. —— Marshal, &c.?

*A.* EBENEZER K. DEXTER, Providence.

11. What Justice of the S. Court of the U. S. holds the Circuit in your state, &c.?

HON. JOSEPH STORY, Salem (Massachusetts.) *This* state, Massachusetts, New-Hampshire, and Maine, compose the *first circuit*.

12. At what times and places, are

District courts of the U. S. held, &c.?
*A.* On the 1st *Tuesdays in February and August*, at Providence; on the 2d *Tuesday* in May, and 3d *Tuesday* in *October*, at Newport.

13. —— Circuit courts &c.?
*A.* On the 15th of *November*, at Providence, and 15th of *June*, at Newport. (1)

LAWS—LAW BOOKS.

14. What number of volumes does the compiled body of your Statute law consist of, &c.?
*A.* In 1798, a *committee* was appointed by the legislature, to *revise* the laws; and to prepare and report a code of state laws.

The committee reported a code, which was adopted by the legislature, the same year. (2)

The publick laws enacted *since* 1798, and to 1810, have been bound together in boards, in 1 *vol.* entitled, "*A Supplement to the Digest of the Laws*, 9—1798."

The publick laws passed after 1810, have been printed in pamphlet form, once in *two* years.

15. Can the publick Laws in pamphlets, be procured, &c.?
*A.* They can be procured at the office of *Jones & Wheeler*, state printers.

16. Is there any Digest of the state laws, &c?

17. Are there any Reports of cases in your state courts, &c.?

18. Is there any Digest of cases in your state courts, &c.?
*A. None.*

19. Are there any Treatises, on the law in your state &c.?
*A.* The "*Rhode-Island Clerk's Magazine, or Civil Officer's Assistant,*" quoted "*Clerk's Magazine,*" is the only law book (except statute,) which has been composed, compiled or published in the state.

20. —— Foreign law books republished in your state, &c.?
*A. None.*

21. —— Reports of Cases in the District or Circuit courts of the *U. S.* in your state, &c.?
*A.* Cases decided in the *circuit* court of this state, are reported with others determined in the first circuit. They commence in 1812, and are continued to 1818, and now consist of 3 *vols.* the 1st, and 2nd, reported by *John Gallison* late of Boston, and the 3rd, by *Wm. P. Mason*, entitled, "*Reports of cases argued and determined in the Circuit court of the United States for the first Circuit,*" quoted "*Gallison's Reports,*" and "*Mason's Reports.*" No cases decided in the *district* court of the U. States in this district, have been reported.

22. Is there any Digest of cases in those courts, &c.?
*A.* There is no *digest* of adjudged cases in any of the courts in this state. (1)

23. Have any books been composed, in your state, &c.?
*A. None.*

(1) Whenever the day falls on *Sunday*, the *next* following is the court day; this applies to all the courts of the U States.

(2) This compilation contained all the publick statute laws, then in force; was printed in 1 *vol.* entitled, "*The Publick Laws of the State of Rhode-Island and Providence Plantations,*" is quoted, "*Laws of Rhode-Island.*"

A committee for a similar purpose, were appointed by the legislature in 1820, and are now (1821) ready to report.

(1) A copy of all the rules in the circuit court of the U. States, will be given you on separate sheets; the Rules of Practice in the state courts are of a general nature, and contained mostly in the laws of the state.

ATTORNIES— COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

*A.* There is no *distinction* in the profession of attorney and counsellor, in the state courts.

25. By whom are Attornies, or Counsellors, admitted, &c.?

*A.* They are admitted by the *supreme judicial court.* The terms of admission will appear from the following rules, extracted from the *bar* rules: namely, *Rule* 3*d*, "no member of the bar shall propose to the court, any candidate for admission, until he shall have obtained the *approbation and consent* of the *county bar meeting*, or *general bar meeting*: and if any candidate shall offer himself to any court without such approbation, he shall be publickly discountenanced by the bar, and considered unworthy of their confidence." *Rule* 4th, "no person shall be recommended to the court for admission, until he shall have attained the age of *twenty-one* years, and shall have studied, without pursuing any other employment, in the office of a practising attorney or counsellor, being a member of the bar, *two* years if the pupil shall have had a collegiate education, and if not, *three* years. No person shall be recommended unless he sustain a good moral character.

Attornies and counsellors, on admission to one court, are allowed to practice in all the courts in the state; their names are *registered* in a book kept for that purpose by the secretary of the bar meeting, and together with their admission entered at the time, on the records of the court. They are each required to pay 20 dollars into the state treasury, on admission.

26. On what conditions, &c. from other states, &c.?

*A. Rule* 5th. "Gentlemen from *other* states, shall not be recommended for admission, unless they shall give satisfactory evidence to the bar meeting, that they have studied in the office of some respectable practising attorney or counsellor, the length of time mentioned in the 4th *rule*, and that they have pursued their studies, in the office of some practising attorney or counsellor in *this* state, being a member of the bar, *six months more*; and when they shall have studied a part of the prescribed time, in some other state, they shall finish the term in this state, with the addition of six months."

*Counsellors* from *other* states, are allowed to practice as such in this state, by courtesy.

COURTS.

27. What are the names of the several courts in your state, &c.?

28. Their style, &c.?

29. The extent of their several territorial jurisdictions, &c.?

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

33. Which are courts of equity, and which of law, &c.?

34. What methods are used to carry up judgments &c.?

*A.* "*Justices of the Peace,*" have *original* jurisdiction in all *civil* actions, commenced in their respective towns (where the title of lands, tenements or hereditaments, is not in dispute,) when the debt, damage, or demand amounts to no more than 20 dollars; on all complaints for *theft*, committed within their respective

counties, when the money, or article, or articles stolen, does not exceed in value the sum of 20 dollars; and on all complaints for *assault and battery*, committed within their respective counties, where the *fine* to be imposed does not exceed 4 dollars; and the punishment to be inflicted, does not exceed 20 day's imprisonment.

They have also jurisdiction in a great variety of cases, for the violation of *penal* statutes of the state and the ordinances of their respective towns, but except in a very few instances, the penalty does not exceed 20 dollars.

In all *civil* actions, commenced before a justice of the peace, an *appeal* may be had to the court of *common pleas*, by paying costs in open court, and giving bond with surety to prosecute the appeal with effect, or in default to pay costs.

In most *criminal* cases, the person against whom complaint is made before a justice of the peace, may *appeal* to the court of *general sessions of the peace*, by recognizing with sureties, in a reasonable sum, for his appearance there, and in the mean time to be of good behaviour.

"*Courts of Probate*:" the *Town Councils* in the several towns in the state, are the courts of probate for their respective towns, and have *original* jurisdiction of all *probate cases*, arising in their respective towns.

An *appeal* lies from any decree, order, or determination of this court to the *Supreme Judicial Court*, any time within *one year* from the time of the decree, &c. on giving bond with sufficient surety to prosecute the appeal with effect &c.

"*Courts of General Sessions of the Peace*" in each county, whose jurisdiction is limited to *crimes* and offences committed within their respective counties.

These courts have *original* jurisdiction, of all matters and things relating to the *conservation of the peace*, and the punishment of all offenders; and of all pleas of a criminal nature, *capital* crimes excepted.

An *appeal* lies from any sentence of the court of general sessions of the peace, in any case originally commenced there, to the *supreme judical court*, by appealing at the *time* when sentence passed, and recognizing with sufficient sureties, during the sitting of the court, to appear at the court appealed to, and for prosecuting the appeal with effect, &c.

These courts have *appellant* jurisdiction, in most cases of a *criminal* nature, originally commenced and prosecuted before any *justice of the peace*, in their respective counties.

"*Courts of Common Pleas*" in each county in the state, whose territorial jurisdiction is limited to their respective counties.

They have *original* jurisdiction of all *civil actions* and *common pleas*, arising or happening within their respective counties, triable at common law, of whatever kind or nature, where the debt, damage, or demand, amounts to more than 20 dollars, and if *real* estate is attached, these courts have jurisdiction of any amount under 20 dollars, as well as over.

An *appeal* lies from any judgment of this court, when the action was *originally* commenced there, to the *supreme judicial court*, on giving bond in the *Clerk's office* of the court appealed from, within 5 days after the rising of the court, to prosecute the appeal with effect, and in default to pay costs.

This court has *appellate* jurisdiction, of all *civil* cases *originally* com-

menced before any *justice of the peace* in their respective counties.

The courts of common pleas, and general sessions of the peace, in their respective counties, are held at the same time and place, and generally by the same judges; justices of the peace being *ex-officio* justices of the courts of the general sessions of the peace, and justices of the courts of common pleas, are justices of the peace in *criminal* cases: consequently they are *ex-officio* justices of the courts of general sessions of the peace, and sit as such at the same time they are holding the common pleas.

A "*Supreme Judicial Court,*" which has *appellate* jurisdiction of all *civil* actions originally commenced in the courts of *common pleas*, and also of all cases *originally* commenced and prosecuted in the courts of the *general sessions* of the peace.

It is also the supreme court of *probate*; and takes cognizance of writs of *review*, of petitions for *new trials*, and petitions for *divorce*; and awards writs of *habeas corpus*, *fieri facias*, *certiorari* &c.

It has *original* and *concurrent* jurisdiction with the courts of common pleas, in all actions commenced for the recovery of money due to any *incorporated Bank* in the state, and takes *original* cognizance of all *crimes* and offences of a publick nature.

This court is vested with *equity* powers in the case of mortgages only, and the proceedings in such case are by bill and subpœna.

The *style* or title of the members of the preceding courts are "Justices of the Supreme Judicial Court:" "Justices of the General sessions of the Peace;" "Justices of the court of Common Pleas;" and "Justices of the Peace." And there are five justices to each of the courts.

The *town councils*, who are *ex-officio* courts of Probate for their respective towns, are chosen annually by the *freemen* of each of the respective towns; and in their probate capacity, are generally styled collectively, "the Court of Probate."

The justices of all the different courts, and justices of the peace, are chosen *annually* by the "Senate and House of Representatives, assembled in Grand Committee." (1)

(1) The following supplementary information was communicated to me in September, (1821,) by my correspondents, in reply to certain explanations requested relative to courts.

1. *In respect of appeals from Justices of the Peace*, &c.

An appeal in all *criminal* cases is allowed from the sentence of a Justice of the Peace, *except* in a very few instances, and those affecting the municipal regulations of towns. It must be claimed at the time sentence is pronounced, and the appellant enter into recognizance with sureties to appear, &c. and prosecute his appeal with effect, and to abide the order or sentence of the appellate court, (*the general sessions of the peace,*) and in the mean time to be of good behaviour; or for want of such security, to be committed until the sitting of the court appealed to.

Justices of the peace have no *jury* in any criminal or civil case, except for *forcible entry* upon and detainer of lands and tenements. In this case, they have power on complaint to empannel a jury to try the merits of the question.

The appellant from a sentence of a justice's court, must file his *reasons* of appeal in the clerk's office of the court of general sessions of the peace, 10 days before the court sits, and with his reasons, a certified copy of the *whole* case. The case is then tried by *jury*, upon all the evidence produced, either by the government or respondent; and the verdict, if for the respondent, is conclusive: if against him, sentence follows, which is also conclusive.

2 *In respect of appeals from the general sessions of the Peace*, &c.

An appeal from *any* sentence or order of the court of *general sessions of the peace*, whether on verdict of jury or otherwise, is allowed to the *accused*, in all cases *originally* commenced or prosecuted there, to the *next supreme judicial court* for the same county; where the parties are to be heard in the same manner and with the same effect, by jury or other-

wise, as if the prosecution had been originally commenced in the supreme judicial court.

The appeal to be claimed at the time of passing sentence, and recognizanee entered into during the sitting of the court, for appearance, prosecuting the appeal, and abiding the order &c. of the appellate court, and to be of good behaviour; or to remain in custody if the security be not given. *Reasons* of appeal and copy of the case, to be filed as before-mentioned, in cases of appeal from justices.

The government have no power to appeal in any case, from a *verdict* of acquittal by jury, this is allowed only to the accused, and no appeal can be claimed before sentence.

If the case originated in the supreme judicial court, a verdict of jury and sentence thereon is conclusive; except the court grant a new trial, which is seldom done.

3. *In respect of appeals from the court of common pleas, &c.*

In all civil cases *originally* commenced at the *common pleas*, where an *answer* has been filed on the part of the defendant (except special process instituted by an incorporated bank) * an *appeal* lies to the Sup. Jud. court from the *judgment* rendered by the *Courts of Com. Pleas*, whether on verdict, demurrer or otherwise: the cause cannot be removed before trial, or submission of one of the parties: and the case is tried in the Sup. Jud. Court on the law or facts, in the same manner, upon the pleading made up in the common pleas, or upon amended pleas with permission of the court, as though the cause had never been tried: that is, the parties have the right of trial by jury in both courts.

If the verdicts are different, one for the plaintiff and one for the defendant, a *review* in the Sup. Jud. court within *one* year is a matter of right, belonging to the party last failing, in which the whole case is a third time to be tried (on old and new evidence) by jury, on the state of pleadings before made up, and the verdict then rendered is final.

4. *General regulations on appeals, &c.*

A party appealing, must produce at the opening of the appellate court, a *copy of the whole case*, including verdict if any, and judgment. This of course includes all written evidence in the case; that delivered *viva voce* in court, must be again produced in the appellate court.

The plaintiff in *review* must procure a copy of the *whole case* from the clerk of the Sup. Jud. court, to be used on trial; and either party may bring all the evidence in his power, whether produced before or not.

The *copy of the case*, to be produced in the appellate court, both in civil and criminal causes, supersedes the necessity of a bill of exceptions, or statement of the case; and indeed is far preferable, as the whole case is again to be tried.

In all appeals, where the case depends on a question of *law*, the decision of the Sup. Jud. Court is conclusive, whether in accordance with that of the common pleas or not.

* My correspondent, sent me a copy of the 1st section of an act, which gives a summary remedy in the common pleas, and Sup. J Court, for debts due to an incorporated bank: not being of general consequence, nor likely to be imitated any where else, I have not inserted it. Ed.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* It is that of *bargain and sale.*

2. Does the legal possession pass without livery, &c.?

*A.* The legal *possession* where the grantor is seized, passes to the grantee when the deed is *signed, sealed* and delivered, without livery of seizen, or any other act or ceremony whatever; and this is by operation of a statute of the state.

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* In the creation of these estates the *technical* words, *"heirs and assigns"* and *"heirs of the body," &c.* are commonly used, and are considered necessary, as at common law; there being no other but the common law rule applicable here, in this respect.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* The *construction* and *operation* of common assurances, are generally according to the rules of the *common* law.

5. Are attesting witnesses &c. required to conveyances?

*A. Common usage* in this state, (which seems to have grown out of the common law,) requires at least, *two* attesting *witnesses* to conveyances by *deed* of real estate in fee, or for life, whether absolute or by way of mortgage.

6. Must the deed be sealed?

*A.* The deed must be *sealed.*

7. Is a scroll sufficient?

*A.* A *scroll* is not sufficient.

8. Are the common law requisites for the perfection of Deeds &c. altered, in any particulars in your state?

*A.* The *requisites* for the formal perfection of deeds, or common law assurances in this state, are much the same as at common law, excepting in those particulars, which are contained in answers to the previous and following questions.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* By a special *proviso* in a law of this state, it is not necessary to the validity of a deed, as between the *parties* and their *heirs*, that it should be acknowledged by the grantor, or be recorded.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* As against *bona fide* subsequent *purchasers and mortgagees*, a prior deed or mortgage to affect them, must be *recorded*, or lodged for that purpose in the office of the *town clerk*, in the town where the land *lies.*

No period of time is specified after the execution of a deed or mortgage, within which it must be recorded; but as the recording of a deed or mortgage, as against *third persons*, is essential to its *completion*, if a subsequent *bona fide* purchaser or mortgagee, without notice of the prior deed or mortgage, *first* procures his deed or mortgage to be recorded, such subsequent deed or mortgage is good against any prior deed or mortgage, which had not been recorded. But it is considered a well settled principle of law in this state, that *notice* of a prior deed or mortgage, though it be not recorded, will bar the second incumbrancer, having such notice.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

*A.* A *feme covert* may convey or mortgage land or freehold estate held in her own right, and her dower in her husband's estate, so as to bar her and her heirs.

12. Is this done by joining with him in the conveyance, &c.?

*A.* When the fee is in the husband, the wife may bar her right to dower by joining with him in the deed, *or* by signing and sealing a relinquishment to the same, written at the bottom or on the back of her husband's deed, or by a separate deed, but in no *case* is her *acknowledgment* necessary, where the *fee is in the husband.*

But where the fee is in the *wife,* the husband and wife must *join* in the deed, and it must be signed, sealed and delivered by them respectively. In this case also, the *acknowledgment* of the wife is necessary, and she must be examined by the magistrate, privily and apart from her husband.

13. Is a private examination of the feme necessary, &c.?

*A. See preceding answer No.* 12.

14. What officers may take this examination, &c.?

*A.* Any *assistant,* (senator,) *judge, justice of the peace,* or *town clerk,* may take the acknowledgment of any person, to any deed.

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c.?

*A.* The *form* of the *certificate,* to be endorsed on, or annexed to the deed by the officer, where a *feme covert* joins in it for the purpose of conveying *her* estate, and acknowledges the execution before such officer, may be as follows: *(time and place, as may be.)*

"*State of* RHODE-ISLAND —— 1822.

*Providence, to wit:*

*Then personally appeared the within named, A, B, (grantor) and acknowledged the within instrument, to be his free voluntary act and deed, hand and seal; (and at the same time, personally appeared the within named C, D, wife of the said A, B, and being examined privily and apart from her said husband, acknowledged the same to be her free and voluntary act and deed, hand and seal, and that she did not wish to retract the same.)*

*Before me W. S. just. peace.*"

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* To bar the wife of *dower* in her husband's estate, a conveyance or relinquishment of the same *by her* in some of the modes, mentioned in answer *No.* 12, is necessary in all cases without any exception; but as before mentioned, when the fee is in the *husband,* no acknowledgment by her is necessary.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* The subject of *dower* in this state is regulated by statute, but the *rights* of the widow in respect to dower, under the provisions of the statute, are *generally* the same as at common law.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A.* As to *what* officers may take *acknowledgments* and *proofs* of deeds or mortgages, *see* answer to *No.* 14, and the extract under *No.* 20.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* The *form* of the *certificate* to be endorsed on, or annexed to a deed or mortgage by the officer, when the grantor [not being covert] acknowledges the execution, may be as in the form abovementioned in case of a feme covert, omitting the words in ( ). *See No.* 15.

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* Deeds and mortgages which are *proved* in this state by the subscribing witnesses, must be proved in *open court*; but the answer to this question and to others will be rendered more intelligible, by extracting a section from our *statute on conveyances.* (1) And the proper *form* of a *certificate* to be endorsed on or annexed to the deed or mortgage, when the execution is proved in open court as aforesaid by the depositions of the subscribing witnesses, is as follows, namely,

"*State of* RHODE ISLAND. }
*Providence to wit.* }
*Court of Common Pleas* (or Su. Ju. court, as the case may be,)——
*Term A. D.* 18—.

*Then personally came A. B. and C. D. subscribing witnesses to the within Deed, and in open court, made solemn oath, that they saw the within* E. F. (grantor) *duly subscribe the within deed, and thereunto affix his hand and seal, and that the said E. F. has since deceased,* (or removed out of the state, as the case may be.)

*D. R. Clerk.*"

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A.* It is not necessary for the grantor or witness, to *subscribe* the acknowledgment or deposition.

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* The certificate of the *officer* need not be under seal, *except* when the *acknowledgment* is taken by an officer living in *another* state or country, as will appear by the extract under *No.* 20.

23. If a quaker is witness, what is the form of affirmation by your law?

(1) "*Sect:* 4. That if any grantor of any lands, tenements or hereditaments, shall *refuse* to acknowledge his deed or conveyance, by him signed, sealed and delivered, being thereunto required by the grantee, his heirs or assigns, it shall be lawful for any *judge, justice* or *warden* within the town where such grantor dwells, on complaint made by the grantee, his heirs or assigns, and supported by the oath of one or more of the witnesses to such deed, to issue a *warrant* against the party refusing, and to examine him touching such refusal; and if he shall persist in such refusal, to commit him to prison without bail, until he shall acknowledge the same, unless he shall *appeal* to the next court of *general sessions of the peace*, to be holden for the county in which such examination shall be had; and in case of such appeal, the appellant shall give bond with surety for his appearance there, and prosecuting his appeal with effect. And the grantee may file a *copy* of his deed in the *town clerk's office*, pending such appeal, and the same being so filed, shall be equally available to the party, during the pendency of such appeal, as though the said deed was acknowledged and recorded as above directed; and the same shall be accounted sufficient caution to all persons against purchasing the estate in such deed mentioned to be conveyed: *Provided nevertheless*, that when any grantor, after the execution of the deed, shall *die*, or *remove out* of the state before the same shall be acknowledged, the said deed may be proved by the oaths of *two of* the *witnesses* to such deed, before the *Sup. Judicial court*, or any court of common *pleas*, within this state, and such proof shall be equivalent to the party's acknowledgment: *Provided also*, that if the party who shall execute any deed for conveying any lands, tenements or hereditaments within this state, doth not *reside* therein, that then it shall and may be lawful for any *judge, justice, mayor*, or *notary publick*, in the *state* or *country* where such party shall reside, to take the *acknowledgment* of said party to such deed, and to *certify* the same *under his hand and seal*: and the same shall be equivalent to an acknowledgment, as prescribed in the first section of this act."

*A.* If a *quaker*, or one conscientiously scrupulous of taking an oath is the witness, the form of the *affirmation* is the same as that of an oath, except in the forepart of the *affirmation* the magistrate repeats the words "*you solemnly affirm*," instead of the words, "*you solemnly swear*," in the oath; and in the latter part of the same, the words, "*this affirmation you make and give upon the peril of the penalty of perjury*," instead of the words "*so help you God*" in the oath. (1)

24. If a Grantor, Mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* There is in this state no provision made by statute, for taking the *depositions* of *witnesses* before magistrates in another state or country, to prove the execution of the deed; but with regard to taking the *acknowledgment* of the grantor or mortgagor when residing in another state or country, before a magistrate in such other state or country, *see* the 2d. *Proviso* in the extract, under *No.* 20.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A.* The *certificate* of the officer in *another* state or country, before whom the acknowledgment of the grantor or mortgagor is taken, must be signed and sealed by the officer, (see *No.* 22.) and that of itself is sufficient without any further proof, showing that he is such officer as he describes himself to be.

(1) Of course the *certificate* will run thus, 'made solemn affirmation, upon the peril of the penalty of perjury, (being conscientiously scrupulous of taking an oath,) that &c.' *Ed.*

26. If Grantors or Witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

*A.* No *provision* is made by statute, in cases where *both* the grantor and witnesses are dead, or removed from the state, or cannot be found by the grantee or his assigns, by which *secondary* evidence of the execution of the deed or mortgage may be given.

And in cases where the *party* is dead or removed from the state, and the witnesses are alive *within* the state, there is no *statute* provision for taking secondary evidence, except such as is contained in the 1st *proviso* in the extract under *No.* 20.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* The only provision made by statute where the grantor or witness is in a *foreign* country, for taking the acknowledgement of a deed in such country, is contained in the 2nd *proviso* in the extract under *No.* 20, which relates only to the *party himself:* and the term "*country*," used in that *proviso*, is undersood here as extending to *foreign* countries.

28. Are Deeds and Mortgages recorded, evidence; by whom are copies exemplified?

*A.* They are *not* evidence on trials, *except* by permission of the adverse party; their execution, must in all cases when required, be proved: *copies* of deeds or mortgages are exemplified, by the respective *town clerks* in whose office they are recorded.

29. In what order, do mortgages take preference of each other?

*A. Mortgages* take preference of each other by priority of *recording*, and not by priority of execution, unless

the second mortgagee has notice of the prior mortgage. (1)

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* No term of days or months is *allowed.* *(See preceding answer.)*

31. May deeds of mortgage be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* In like manner in all things.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* There is perhaps nothing of importance to be observed, except what is contained in the foregoing answers. It may be proper however for us, to add the following.

1. By statute it is provided, that when a *bond of defeasance or other instrument* is executed, causing any deed or other conveyance of lands, tenements, or hereditaments to operate as a mortgage, or to pass an estate redeemable, the bond or instrument must be recorded or lodged for that purpose, in the *town clerks office*, in the town where the lands are, within 5 days after the execution of the defeasance, or the deed to which it relates will operate as an absolute deed in favour of a *bona fide* purchaser (without notice of the defeasance) from the person to whom it was made.

2. Any mortgagor, his heirs, executors, administrators or assigns entitled to the equity of redemption, may prefer a Bill in equity, in the *supreme judicial court* to redeem, and the court, *according to the usages in chancery, and on the principles of equity*, proceeds to render judgment, which is final. But such bill must be preferred within 6 *years* next after the mortgagee or person claiming under him, may by process of law, or by peaceable and open entry, made in the presence of two witnesses, have taken actual possession of the mortgaged estate, and continued the same during said term; (but if such possession is taken in the presence of witnesses, they must give the mortgagee, or person claiming under him, a *certificate* of such possession being taken; and the person delivering possession must *acknowledge* it to have been done voluntarily, before some *justice* of the peace in the town where the mortgaged estate lies, and the certificate and acknowledgment must be recorded in the office of the town clerk of such town,) and any *subsequent* mortgagee may also prefer a bill in equity, against any *prior* mortgagee, in the same manner as the mortgagor against the mortgagee as aforesaid.

3. If a mortgagee dies before the recovery of seizen and possession of the real estate mortgaged, in such case, the debt due on the mortgage, and the estate mortgaged, are *assets* in the hands of the exrs. or admrs. as personal estate; they have also the same control and power to dispose of the estate mortgaged, which the deceased had, in the same manner as if it had been a pledge of personal estate.

They may also bring actions of ejectment to recover possession of the estate so mortgaged; but when recovered, they stand seized, to the sole use of the heirs or devisees of the deceased, unless the same is necessary for the payment of debts, legacies, or charges of administra-

(1) And the same rule appears to be applicable to purchasers. See No. 10. *Ed.*

tion, in which case, (and it being so certified by the court of Probate,) they may sell the whole or a part of the same, subject however, to the equity of redemption, as in other cases.

No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A. Judgments* do not bind real property, until *attached* on the *execution*, unless it was *attached* upon the *original writ* on which the judgment is rendered; and when so attached on the original writ, or on the execution, it may be *sold* on the execution.

But *real* estate (except on process in favour of an incorporated bank,) cannot be attached, either on the original writ or on the execution, if the *body* of the debtor is at large within the state, so that he may be arrested; but when once legally attached on the original writ, it may be sold on the execution, although the debtor may have returned, or be at large in the state.

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* A judgment is not a *lien* on real property, until the execution issued on such judgment is *levied* upon it, unless it was attached on the original writ; and in all cases the *lien* commences at the time of the *attachment*, whether on the original writ, or on the execution, and not before.

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* It is evident from the answers Nos. 33 & 34, that *priority* among judgment creditors in respect to lands, is not determined by priority of judgment or by delivery of execution to the officer, but by *priority of attachment* on the original writ, or execution.

And there is no distinction, in this particular, between *judgment* creditors and any other, for if one creditor first attach the real estate of the debtor on an original *writ*, his debt must first be satisfied, although the estate may be subsequently attached by a judgment creditor, on an *execution* issued on a judgment obtained, previous to the attachment on the original writ.

36. Does a judgment bind, after acquired land?

*A.* The previous answers show, that judgments cannot bind *after* acquired lands, until they are attached on the execution.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* In respect to *chattels*, as between creditors, the first judgment, or the first execution delivered, has no preference, but the priority in this case is regulated in the same manner as in the case of real estate, by priority of *attachment*. This may be more intelligible, by stating, that the original writ, first commands the officer to arrest the *body*, and for want of the body to be found within his precinct, to attach the *goods and chattels* of the debtor; consequently, personal property cannot be attached on the *original writ* when the body of the debtor is at large in his *county*: but on the *execution*, personal property if found, may be attached in the first instance.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* It will also appear from the previous answers, that the debtor may, *bona fide*, alienate both his real and

personal estate, at any time before they are *attached*, notwithstanding judgment may have been *rendered*, and execution *delivered*. (1)

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* A prior judgment of an *inferiour* or any other court, is no lien on the land of the debtor, unless it was attached on the original writ on which the judgment was rendered, and the land could not be attached unless within the jurisdiction of the court: consequently, a judgment in an *inferiour* or any other court, can be no lien on the land without (or within) its jurisdiction, as against the alienation of the debtor, nor has it any effect against a subsequent judgment creditor, in a different court, and land within a different jurisdiction.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* There is no court in which a judgment entered, will bind lands of the defendant as against other creditors, unless they were attached as before specified.

41. Can Execution be taken out at once, in every county, &c.?

*A.* The answer to this question, is contained in the preceding, *No.* 40.

42. Can Execution issue immediately after Judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A. Execution* may issue in 5 days after the rising of the court at which the judgment was rendered, and the real estate of the debtor may be sold in the manner, and on the conditions specified in the 5th Sect. of the statute subjoined, (1)

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* A deed made by the officer, as prescribed in the "extract" under *No.* 42, is to be *acknowledged* by the officer and be *recorded*, in the same manner as if the owner of the land had made the deed; for any *fraud* or irregularity in the proceedings, there is no *summary* redress, but the party injured must seek his remedy by the common modes, at common law.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* There are no conditions on the sale of real estate on execution, except such as are contained in the extract under *No.* 42.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* There are no such writs, or similar modes of execution in this state.

46. Are there any laws to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A. None.*

(1) It appears that the term *attachment* is indiscriminately applied to a *seizure* on the original writ, and on the execution, and in neither case is the bare delivery of the writ an attachment; the property must be *actually* seized by the officer in both cases, before a lien commences. Ed.

(1) *Sect. 5.* And whereas it often happens, that persons who are indebted live out of the state, or conceal themselves therein, so that neither their bodies nor personal estate, can be come at to satisfy their debts: *Be it enacted*, That when a writ is taken out against any person, whose body or personal estate cannot be found within the state, the words,

47. What security is required, that the property shall not be wasted, and be forth coming?
*A.* There being no such *suspension*, of course no such security can be required.

48. May the debtor redeem land sold on execution, &c.?
*A.* Not after it is *sold* on execution.

49. May Judgments on warrant of attorney be entered in vacation?
*A.* Judgment on *warrant of attorney* for that purpose cannot be entered, either in *vacation, or in term time.*

50. Can Judgments be entered on warrant of atty. before the debt is payable?
*A.* Judgment cannot be entered up in any case on *warrant* of *attorney*, before the debt is due or after, and when an action is brought in the regular course of law, no judgment can be rendered, unless the debt was due and payable at the time the action was commenced.

51. In such case, is the Judgment an incumbrance against a subsequent Judgment for debts due, and followed by immediate execution?
*A. Such* judgment not being allowed, of course there can exist no such *incumbrance* as is supposed in this question.

52. If after sale and conveyance of land on execution the judgment is reversed; does the estate revert, &c.?
*A.* The estate will not revert; the debtor must look to the creditor for the price the land brought. But this case can happen, only upon a review, or a new trial being granted.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?
*A.* By statute, a writ of *fieri facias* (including a) *capias ad satisfaciendum* is the common writ of execution for the judgment creditor. Bail to the action, are discharged by surrender of the principal any time before re-

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*or real estate*, may be added in the writ, next to the words, goods and chattels; and the officer to whom the writ is directed may attach the real estate of the person indebted as aforesaid, in the same manner as is directed by law for attaching personal estate; and the officer, upon attaching any real estate as aforesaid, shall leave a copy of the writ, by which the same shall be attached, and of his doings thereon with the person in possession, and also with the town clerk of the town in which such land lies; but if no person be in possession, then the officer shall set up notifications thereof in three publick places in the town where such real estate lies; and if the person whose real estate shall be attached as aforesaid, shall be absent out of the state, at the time of attaching his estate, and shall not return within the same before the time at which such writ is returnable, and shall not answer the suit in which his real estate shall be attached as aforesaid, the court shall continue the same for one term, and the defendant in such case shall have a right to answer the same, six days previous to the term to which such case shall be continued; and in all cases where real estate shall be attached, and the plaintiff shall recover judgment therein, he shall have execution granted against the real estate attached as aforesaid, and the officer charged with the service of such execution, after having levied the same on such real estate, shall set up notifications in three or more publick places in the town where such real estate lies, for the space of three months after such execution is levied, before the same shall be exposed to sale, notifying all persons concerned, of the attachment and intended sale of said estate, that the owner of such estate may have an opportunity to redeem the same.

But if no person appear to redeem the said estate, then the officer shall sell the same, or so much thereof, as shall be sufficient to satisfy the judgment obtained and the costs, at publick auction: and a deed thereof by him given shall vest in the purchaser all the estate, right and interest, which the debtor had therein at the time such estate was attached as aforesaid; and the surplusage of the money that shall arise from the sale of said estate, after satisfying the execution and the costs therein, shall be lodged in the general treasury for the owner thereof, and be liable to be attached for his other debts. And in all cases when execution shall be issued upon any judgment, where real estate was not attached by the officer on the original writ, if no personal estate can be found nor the debtor's body, the party obtaining such judgment may cause execution to be levied on real estate in manner as aforesaid."

turn of the execution against the principal, and any time before judgment on the *scire facias* against the bail, paying the cost accrued to the time of the surrender. The *scire facias* (on non est inventus returned,) may be sued out at any time within 2 years next after final judgment entered against the principal.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?
*A.* For any sum, and to this rule of law, there are no personal exceptions.

55. Is the Ca. Sa. regulated by the common law, &c.?
*A.* The writ of execution allowed the creditor, is composed of the *fi. fa.* and the *ca. sa.* united. *The subjoined is a summary of our execution law, relative to this question, to which also we have annexed a view of the "poor debtors" act.* (1)

(1) The writ commands the officer, that of the goods and chattels of the debtor within his precinct, he cause to be levied and paid to the creditor the debt &c. and for want of goods and chattels to be found in his precinct to satisfy &c, he is further commanded to take the body of the debtor and him commit to gaol, and there keep him until he pay the debt &c, or he be discharged by the creditor, or otherwise by order of law.

When execution is levied on goods and chattels, they must be *kept in the officer's hands*, and be advertised 10 days before sale, and if not redeemed within that time, by his payment of debt and costs, the officer may sell at publick auction to the highest bidder, and apply the proceeds to the discharge of the execution, returning the surplus money, if any, to the debtor.

When the body of the debtor is committed to jail, he must continue there (unless relieved by the creditor) until he discharges the execution, or takes *the poor prisoner's oath*, as it is here termed; this is done by complaining to a *judge or justice of the peace*, who is to notify the creditor, his agent or attorney, of the time such oath is to be administered, at least 7 days previous to the same; and it is in the power of any Judge of the court of common pleas, any one justice of the peace of the county, after fully examining and hearing the parties, if they think proper, to admit the prisoner to the oath, which is as follows, to wit: "I do solemnly swear (or affirm) that I have not any estate, real or personal, in possession

56. Are any kinds of personal estate exempt from execution?
*A.* We have answered this question by an extract from our statute below to which is added, our law relative to attachment of the effects of absent or concealed debtors. (2)

## No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any per-

remainder or reversion, *over ten* dollars; "(or if a house-keeper, not being a freeholder, over fifty dollars,") and that I have not, since the commencement of this suit against me, or at any other time directly or indirectly, sold, leased, or otherwise conveyed or disposed of, to, or entrusted any person or persons whomsoever, with all or any part of the estate, real or personal, whereof I have been the lawful owner or possessor, with any intent or design to secure the same, or to receive or to expect any profit or advantage therefrom, for myself or any of my children or family, or have caused or suffered to be done, any thing else whatever, whereby any of my creditors may be defrauded. So help me God, (or this affirmation, I make and give upon the peril of the penalty of perjury)" And then the debtor, by giving the creditor his *note* for the amount of the debt and costs, payable in 2 years with interest, may depart from the jail, *unless* the creditor, at the *time* such oath is administered, shall advance to the jailer, money for the future support of the debtor at the rate of *one dollar per week*, and by continuing such advances of money, the debtor may be imprisoned at the will of the creditor, *except* in some few instances of *temporary* release, such as the case of *insolvent petitioners* who have made an *assignment* of their property, and whose petitions for the benefit of the *Insolvent Act*, (*see post* No. 57.) are pending for trial, and also in cases of commitment on an execution, where a petition for a *new trial* is pending, the *General Assembly* will pass a *special resolve*, releasing the prisoner, on his giving bond with surety to return to jail if his petition is not granted.

Execution may be sued out, any time after 5 days from the rising of the court at which judgment is rendered, and within a year and a day from the rendition of judgment; and all executions are made returnable to the next term of the same court from which they issued; and *alias* and *pluries* executions may issue as at common law.

(2) "The following articles are not liable to distress or attachment, on any warrant of

sons on account of the nature of the debt, &c. excepted out of it?

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

60. Is there any thing peculiar in your insolvent law?

*A.* The *answer* to these several questions will be found, in the summary of our *general* insolvent act subjoined.

The *insolvent* law of this state provides, that any inhabitant or other person, who shall have resided therein for the space of 2 years, and who is insolvent, may prefer his petition to the *General Assembly*, for the benefit of the insolvent act; the petition to be filed in the secretary's office, and therewith, under oath, a just statement of his *debts* and *losses* sustained within 3 years next preceding that time, and an *inventory* of all his *estate* (except wearing apparel not exceeding in value 100 dollars;) the secretary is then to notify his creditors, in 1 of the newspapers 3 successive weeks before the sitting of the general assembly; but before such notice is given, the petitioner is required to apply to the *clerk* of the Sup. judicial court, or of the common pleas in the county where he resides, to issue notice to his creditors to appear before the court (whose clerk gives the notice) on the 2d. day of the next succeeding term, (which notice must be published at least 3 weeks before the sitting of the court) to *nominate* an assignee or assignees, to whom the petitioner is then to make, execute, acknowledge and deliver in open court, a deed of assignment of all his estate, in trust for the benefit of his creditors; on this being done, proceedings shall be *stayed* against the *body* of the debtor, until the merits of the petition be heard before the general assembly. The court on the 2d. day of the term, are to appoint one or more (not exceeding three) discreet persons assignees, and administer an oath for the faithful discharge of the duties of their appointment. The assignees are forthwith to notify creditors in one of the newspapers at least 4 *successive weeks*, to exhibit and prove their claims against the insolvent's estate within 6 months, and the creditors

distress, or any writ, original or judicial, issued against any *housekeeper*, (not being a freeholder,) *viz.* 1 bed and bedding; and for *each* person in the family, 1 chair, 1 knife and fork, 1 plate, and 1 cup and saucer, together with other necessary furniture, (provided the whole, including the bed and bedding, do not exceed the value of 50 dollars;) also their necessary wearing apparel, with 1 cow or hog, and the working tools of the debtor, necessary for his or her usual occupation; (provided the tools do not exceed the value of 15 dollars.) The wearing apparel also of any person *deceased*, (except jewellery and watches) is not assets in the hands of ex'rs or adm'rs for payment of debts, and may be bequeathed, or if not, go to the heirs of the deceased; provided it does not exceed 50 dollars in value.

When any person resides, or is absent, out of the state, or conceals himself therein, the *personal* estate of such person lodged or lying in the hands of his or her attorney, agent, factor, trustee or debtor, is liable to be *attached* to answer any demand against such person.

The writ in such case is served, by leaving a copy with the person in whose hands the property is, who is obliged to render an account under oath, what estate of the debtor is in his hands at the service of the writ, if any, or otherwise to make oath, that he had not directly or indirectly any such estate in his hands. If it appears he had at the service of the writ any personal estate of the defendant in his hands, the plaintiff, after obtaining judgment against the defendant, may have his action against the person in whose hands such personal estate is, to recover so much as will satisfy his judgment, if so much is in his hands, and if not, for so much as is in his hands. But no attachment can be made of money in the hands of a person, who became indebted by bill of exchange, or had given his negotiable promissory note for the debt.

who do not exhibit their claims *(to the assignees)* are barred from all dividend out of the estate; at the expiration of 6 months, the assignees are to divide the estate of the insolvent rateably among his creditors who have proved their debts; (first deducting all reasonable expenses;) and having completed the trust, are to make report to the court from which they received their appointment.

If the *general assembly* grant the prayer of the insolvent's petition, the court before whom the assignment is made render judgment, exempting and discharging his *body* from all debts and contracts subsisting before granting the petition; but the property of the petitioner remains liable.

Future process against such discharged debtor for debts incurred before the benefit of the act, must be a *summons* or a *writ* against his *goods, chattels or real estate.*

If the creditor intends to dispute the *validity* of the discharge, he is to give notice thereof on the back of the *writ* or summons; and the defendant may plead specially the proceedings and discharge, or on the trial of the action, give the same in evidence under the general issue; if on trial it appears the defendant has conformed to the provisions of the act, the court is to render judgment that his *body* be *forever* discharged from the debt, and that the pltf. recover judgment for his debt, against the goods &c. and real estate of the defendant, and the *defendant* recovers his costs.

The petitioner, upon the trial of his petition before the general assembly, on the motion of a member or an opposing creditor, may be examined on oath touching his property, debts and lossss, or any other matter in relation to the merits of his petition.

If the petitioner be in gaol at the *time* he makes an *assignment*, he is to be discharged on giving bond with sufficient surety, to the satisfaction of the sheriff of the county in which he is confined, to *return* to gaol within 10 days after the rising of the general assembly at which his petition is finally disposed of, if not granted: in which case the creditor's rights remain as at first.

If the petitioner commits perjury in any of the oaths required, he loses all benefit of the act, and is liable to prosecution as in other cases.

The assignees of the insolvent's estate are authorized to allow him out of the assigned property, such *furniture* and *bedding*, and *implements of trade* and husbandry, as they may deem necessary for his *family*, not exceeding in value 150 dollars. (1)

## No. v. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?

*A.* Lands and freehold interests are devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.

But no person seized in fee-simple can devise an estate in fee-tail, for a longer term than to the children of the first devisee; and a devise for life to a person, and to his children or issue generally in fee-simple, does not vest a fee-tail estate in the first devisee, but for life only; and the remainder on his decease, vests in his

(1) It would appear from this act, that an insolvent may apply for the benefit of it, whether in or out of prison, and if in prison, or committed while his petition is pending, will be discharged on giving bond to return to the gaol, if his application fails. *Ed.*

children or issue generally, agreeably to the direction in the will.

62. What formalities of execution, are essential to a will of lands &c?

*A.* All bequests and devises of lands, tenements or hereditaments, must be in *writing*, and *signed* by the party devising the same, or by some person in his presence and by his express direction, and must be *attested* and *subscribed* in the *presence* of the devisor, by *three* or more *credible* witnesses.

63. What formalities are required, in the revocation of wills of land?

*A.* No devise or bequest in writing of lands &c. or any clause thereof, is *revocable* otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same by the testator himself, or in his presence and by his direction and consent: and such other will, codicil or other writing of the devisor, must be executed with the same formalities as required in the former will.

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?

*A.* The provisions of the *statute of frauds* 29. C. ii. c. 3. in regard to the *execution* of wills of lands, are not, *as such*, in force in this state; but the provisions of our statute in relation to the *execution* of wills &c. (the substance of which is recited in the preceding answers) will be perceived in this particular, almost precisely like those in the *stat.* of Car. the 2d.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir, to question its execution at law?

*A.* Wills of lands and personalties are exhibited for proof, before the *Town Councils* for the respective towns, who are courts of probate for that purpose. Whether the proof of the will before this court, affects the right of the *heir* to question its execution at law, may be considered as an unsettled question in this state.

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

*A. The execution* of the will is proved by the *witnesses*, in all instances.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* The will and inventory are registered in the *office* of the clerk of probate, which is the same as the office of town clerk; the town clerks being also clerks of probate in their respective towns: and *in general*, office copies of wills are admitted as evidence, and office copies of inventories are admitted in all cases.

68. What formalities are required, to wills of chattels?

*A.* The same *formalities* are required to the execution of testaments or wills of *chattels*, as in the devise of lands and freehold interests; *except* in the case of soldiers in actual military service, and mariners or seamen being at sea.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A. Answered above.—No.* 68.

70. May executors, or administrators having letters in another state, sue in your state?

71. If not, what is to be done to enable them to sue?

*A.* It is not considered safe proceed-

ing, for exrs. having letters testamentary, or admrs. letters of administration, granted in *another* state, to sue in their respective capacities in this state. This has sometimes been done; the question however, of its legality is not settled by the Sup. Jud. court: The most advisable course in such cases is, for admrs. to take out letters of administration in this state, and exrs. letters of administration with the will annexed.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A. Exemplifications* of wills and testaments, by the proper officer, in *other* states, are *generally* admitted as evidence in our courts.

73. How are foreign wills and testaments proved in your state, &c?

*A.* There is no statute on this subject, but a foreign will and testament is *generally* proved here, by the exr.'s producing it before the court of probate, together with an exemplified copy of the proceedings which have been had thereon, in the state or country where such will or testament was made and proved; a copy of the will or testament is then recorded in the office of the clerk of probate, and letters testamentary with the will annexed, are granted to the ex'r. he giving bond as is required in other cases.

There are no *statute* provisions respecting wills, testaments, and administrations &c. in *other* states and foreign countries; this being the case, foreign wills, deeds, judgments &c. are commonly exemplified by the proper certifying officers, according to the usages in such foreign countries, and the common customs in the other states in the union.

The acts of congress also in regard to authenticating records &c. may be referred to as applicable to parts of this question, 2 vol. 102. 8 vol. 621.

By our statute, a person to be capable of devising lands must be upwards of 21 years of age.

A *feme covert* can in no case, dispose of her real or personal estate by last will and testament.

But any person being upwards of 18 years of age, and of sane mind (not being *feme covert*) may dispose of his or her *personal* estate of every kind, by last will and testament.

A subscribing witness who is also *devisee* in the same will, is competent to prove its execution, but can take no benefit under it, *other* than, and except such as may arise from charges on lands, tenements or hereditaments, for the payment of any debt or debts.

And in case a legatee having attested the will, dies in the life-time of the testator, or before probate, he is still deemed to have been a good witness to the execution, notwithstanding he was made a legatee by the same will.

Any creditor of the testator, whose debts are an existing charge on the lands &c. of the testator, may nevertheless by our statute, be a competent witness to prove the will.

A *posthumous* child, not provided for by the will of the father, is entitled to such share of the estate as he or she would have been entitled to, had the father died intestate.

All property, not devised by the will, must be distributed in the same manner, as if it were an intestate estate.

### No. VI. DESCENTS.

74. How do inheritances in fee sim-

ple descend upon intestacy, among lineal heirs?

75. How among collaterals?

*A.* These questions cannot be better answered, than by the first section of our statute, regulating among other things, the *descent* of real estate; to *wit*:

"That when any person shall die intestate, leaving any *real* estate, in which such intestate had any right, title or interest, (other than an estate in fee-tail,) all such right, title, and interest in said estate, shall descend to *all* the *children* of such intestate, and *such* as shall legally represent them, (if any of them be dead,) and be divided *equally* among them: and every posthumous child shall inherit as though born before the death of the intestate.

"And in every case where children shall inherit by *representation*, they shall take the same proportion of the estate as would have descended to the *person* whom they represent, and shall inherit the same in *equal* shares.

And where there are no children of the intestate, all such right, title, and interest, as aforesaid, shall vest in and be divided *equally* among the *next of kin in equal degree*, and *those* who shall represent them, if any of them be dead, computing according to the degrees of the *civil* law; no person to be considered as a legal representative of *collaterals*, beyond the degrees of children of the brothers and sisters of the intestate.

And when any of the children of the *intestate* die without issue in the lifetime of the mother, every brother and sister and their representatives shall inherit equally with the mother: *Provided nevertheless*, that if such right, title and interest, to such real estate came by *descent*, *gift*, or *devise*, from the parent or other kindred of the intestate, and such intestate die without issue, the same shall vest in, and be divided equally amongst the *next of kin* to the intestate, and those who legally represent them, if any of them be dead, of the *blood* of the person *from whom* such right, title or interest *came* or descended, *provided also*, that nothing in this act contained, shall bar any widow of any intestate of her right of dower, in the real estate of her deceased husband."

76. How, in respect of the half blood: does the common law govern?

*A.* In our statute of descents, there is no distinction in respect of the whole and the half blood, the civil, and not the common law, governing in this particular.(1)

77. Does the common law prevail on descents, in any cases, and what?

*A.* The law of descents in this state being altogether a matter of statute, it cannot properly be said, that the *common* law prevails in any case, neither do the provisions of the statute bear any resemblance to the rules of the *common* law, as will appear from the extract given under *No.* 74, which contains all the governing principles of our law on the subject.

78. Is there any thing peculiar in your law of descents?

*A. Nothing* important but what has been stated, and particularly in the extract under *No.* 74.

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

*A.* When a person dies *intestate*, possessed of personal estate, the same stands charged with the payment of

(1) Except in the case mentioned in the *proviso*. *Ed.*

all the just debts and funeral expenses of the deceased, and after the payment of these, the *surplusage*, (if any) is to be distributed by *order* of the *court of probate* as follows: one third part to the widow forever, unless the intestate died without issue, and then one half to her forever; the residue descends and is distributed amongst the *heirs* of the intestate, in the same manner as real estates are divided on intestacy, see extract under *No.* 74.

If the personal estate is insufficient to pay the debts and funeral expenses, the *widow* is nevertheless entitled to her apparel, and such household goods and other personal property, as the court of probate may determine *necessary*, according to her situation and the circumstances of the estate: and the real estate in all cases, stands charged with all the debts of the deceased, over and above what the personal estate is sufficient to pay.

80. How among collaterals?

*A.* For *answer* to this, see *Nos.* 74, and 79.

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* The provisions of these statutes *as such*, are not in force here, though very similar to ours, differing only in some few and rather unimportant particulars, as will be perceived by what has been stated under the preceding heads of descent.

## No. VIII. ENTAILS, DOWER, CURTESY, &C.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

*A. Entails* of real estate may be created, as under the statute *de donis*, (with the exception, that no entail *by devise* can be, for any longer time than to the children of the first devisee, *see answer No.* 61.) and, with the same *incidents* in respect of dower, curtesy, waste, &c.

But in respect of being *barred or destroyed*, this is not effected by a *fine* or *common recovery*, but by force of a statute which provides; "That if any person being of full age and of sane mind, shall be seized of any estate in fee tail, he shall have a right to convey the same in fee simple by his last *will* and testament, or by *deed* duly executed under his hand and seal, and *acknowledged* before the *Sup. Jud. court*, or any *court of common pleas* in this state; and such conveyance shall vest an estate in fee simple in the grantee, his heirs and assigns, and shall bar the tenant in tail, his heirs and assigns, and all others who may claim the same in remainder, or reversion expectant, upon the determination of such estate tail."

83. Are entails abolished; converted into fees; or otherwise modified &c?

84. How barred by the tenant?

*A.* The *answers* to these questions are contained in the previous answer, *No.* 82.

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* The right of tenant in *dower*, and tenant by the *curtesy*, are regulated by statutes, the provisions of which on these subjects, are very similar to those of the common law; where any variance happens, it is generally rather with regard to the remedy to be pursued to obtain the right, than in respect of the right itself.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

87. What savings &c?

88. Is there a saving in favour of foreigners or citizens of other states?

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

90. Is there any thing peculiar in your state on this head?

*A.* It is *provided by statute*, "That where any person or persons, or others from whom he or they derive their titles, either by themselves, tenants or lessees, shall have been, for the space of 20 *years*, in the uninterrupted, quiet, peaceable and actual seizen and possession of any lands, tenements or hereditaments in the state, during the said time, claiming the same as his, her or their proper, sole and rightful estate in *fee-simple*, such actual seizen and possession, shall be allowed to *give* and *make* a good and rightful *title* to such person or persons, their heirs and assigns forever; *saving and excepting* however, the rights and claims of persons, *under age*, *non compos mentis*, *feme covert*, and persons *imprisoned* or *beyond seas*, they bringing their suits for the recovery of such lands &c. within the space of 10 years next after the removal of such impediment; *saving also*, the rights and claims of any person or persons, having any estate in *reversion* or *remainder*, expectant or dependant on any lands &c. after the determination of the estate for years, life &c; *such* person or persons pursuing his or their title by due course of law, *within* 10 years after his or their right of action shall *accrue*.

This statute in its provisions and savings, it will be perceived, is very similar to the English *statute* 21 *Jac.* 1. c. 16. (1)

91. What length of time bars recovery &c. in personal actions?

*A.* Our statute, limiting *personal* actions, is almost an exact transcript of the English statute, 21 Jac. 1. c. 16. (*see* 4 *Bac. ab.* 469.)

It *provides*, that all actions upon the *case* (except actions for slander,) all actions of *account* (except such as concern trade and merchandize between merchant and merchant, their factors or servants,) all actions of *detinue replevin* and *trover*, all actions of *debt* founded upon any contract *without specialty*, and all actions of debt for arrearage of *rents*, must be commenced within 6 years next after the accruing of the cause of said actions, and not after.

That all actions of *trespass* for *breaking enclosures*, and all other actions of trespass for any *assault*, *battery*, *wounding* and *imprisonment*, must be commenced within 4 years next after the accruing of such cause of action, and not after.

And that actions upon the *case* for *words spoken*, must be commenced within 2 years next after the words spoken, and not after.

92. What savings?

93. Are there any in favour of citizens of other states, or foreigners?

*A.* If the person against whom there is any such cause of action, (*as above No.* 91) at the time the same *accrued*, was without the limits of the *state*, and did not leave property or estate therein, that could, by common and ordinary process of law be attached, in that case, the person who is en-

(1) *See* 4 *Bac. ab.* 462 *et. seq.* which makes 20 years adverse possession an absolute *bar* to actions of *formedon*; but as to titles in other cases, merely bars *entry* after 20 years, thereby only putting the owner to his *action*. Ed.

titled to such action, may commence the same, within the respective periods limited in the preceding answer, (No. 91,) after such person's return into the state.

If a person, entitled to any of the before described actions, is at the time any such cause of action *accrues, within the age of* 21, *feme covert, non compos mentis, imprisoned* or *beyond sea;* such person may commence the same within the times respectively, limited as above (No. 91,) after being of full age, discovert, of sane memory, at large, or returned from beyond sea.

These is no statute, limiting the time within which actions of debt, *due by specialty* must be commenced, consequently, in such cases the common law governs.

### No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

*A.* Lands may be sold in this state for the payment of taxes, and *absentees* have no *important* privileges not enjoyed by citizens; such merely as relate to the manner of giving notice, being all the difference.

The following summary conveys an answer to the five succeeding questions.

95. Before a sale, is notice to be given &c?

96. What officer is to give this notice?

97. In what manner &c.

98. If a sale takes place, is the deed absolute?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

*A.* When the owner or occupant of the land taxed does not live in the state, publick notice of the sale of the land taxed must be given 20 days, in 1 of the newspapers printed in the state nearest to the land, by the *collector* of taxes for the town in which the land lies; if the owner or occupant of land taxed lives in the state, the collector must give notice of sale, by setting up notifications thereof, in 2 or more publick places in the *town* where the land lies, at least 20 days previous to the sale, and if the owner neglects to pay the tax with the costs of notifications, within the times limited in the notice, the collector may proceed to *sell* so much of the land at publick auction, as is sufficient to pay the tax and costs of notification.

A deed by the collector, vests *completely and absolutely* in the purchaser, all the interest the owner had at the time the land was first notified for sale.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

*A.* In no case, for non-payment of tax.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* This question was obviously intended for the new and Western states; but if a case (which is very unlikely) should happen, of a person living at a distance and wishing to pay taxes on lands in this state, the most advisable course for him would be to appoint an *agent* for that purpose; it is not known that any person in particular, transacts such business in this state.

### No. XI. MISCELLANEOUS. BAIL, &c.

102. May debtors *pendente lite,* be

restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* Debtors *pendente lite* cannot be restrained by attachment of property, or otherwise, from *alienating* it.

The debtor is liable to be holden to bail, on the principles, and in cases allowed by the common law generally.

The subject of bail is regulated in this state by statute, and by this, the bail which the debtor is required to give in the first instance on the original writ, amounts to the same thing as bail *above* and bail *below* in the English courts; the right of bail to surrender the *principal* after *non est inventus* returned on the execution, any time before final judgment on the *scire facias*, which by the custom of the English courts is *ex gratia*, is by our statute made a matter of right.

LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states, or foreign parts, for the conveyance of lands &c. in your state?

*A.* There is no provision in our laws for the proof and recording of *letters of attorney*, made in *other* states and in *foreign* parts, for the conveyance of lands or chattels in this state; the uniform practice in such cases has been, to require the letters of attorney to be *acknowledged* by a *publick notary*, or some other proper *magistrate* in the state or country where the same are made and executed, and then for the power or letters of attorney to be registered, at the same time and place with the deed or instrument, given for the purpose of conveying the lands &c.

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A.* *Aliens* stand on the footing of the common law, in respect of taking by descent or purchase, we having no local laws on that subject.

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* The *right* of administration, is regulated here by a local act, the provisions of which in this particular, very much resemble those of the statutes mentioned in the question.

It provides, that administration upon an intestate's estate both *real* and *personal*, shall be granted to the widow *or* next of kin to the intestate (upwards of 21 years of age) or *both*, as the court of probate may think fit; if the widow or next of kin refuse, or neglect to take out letters, the court of probate may commit administration to some one or more of the principal *creditors*, if accepted by them, or upon their refusal, to such other persons as the court may think proper.

106. May guardians be appointed by will: does the common law regulate &c?

*A.* The law in relation to *guardians*, is regulated by statute.

It provides, that a person authorized by law to make a will, may appoint by his will, a guardian or guardians for his children during their minority: and if none be appointed by will, or the person appointed does not accept the trust, the court of pro-

bate, are to allow guardians *chosen* by minors of 14 years of age, and to *appoint* guardians of minors under that age; and also, to appoint guardians of all persons *delirious, non-compos mentis*, or *incapable of managing* their estates; and to appoint guardians of children whose *parents* may have been adjudged *delirious, non-compos mentis*, or incapable as aforesaid, in the same manner as though such parents had been dead.

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?
*A.* The law of England, in regard to the order and priority of paying debts by ex'rs and adm'rs, is not in force in this state.

By our law, debts due the *U. States*; to *this state*; and for all state and town *taxes*; for attendance and medicines in the *last sickness*, and necessary *funeral* charges of the deceased; must *first* be paid: and then all other debts stand on an *equal* footing, whether due by specialty, bond, judment of court or otherwise.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?
*A.* Ex'rs and adm'rs, cannot give a preference by confessing judgment, and in fact they cannot confess judgment in any case: and lands are never sold in this state on judgment against *ex'rs* or *adm'rs*, and cannot be.

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?
*A. Joint-tenancy* in land is not created in this state as at common law; for by statute, all gifts, grants, feoffments, devises and other conveyances of any lands, tenements and hereditaments, made to two or more persons, whether for years, for life, in tail or in fee, are to be taken &c. to be estates *in common, unless* it is otherwise expressly said, that the grantees, &c. shall have or hold the same as joint-tenants, or in joint-tenancy, or to them and the survivor of them, or unless other words be therein used, clearly and manifestly showing the *intent* of the parties to such gifts, &c. that the lands &c. should vest and be holden as joint estates, and not as estates in common; but when joint-tenancy of lands is once *created* in this state, its *incidents* are the same as at common law.

### SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?
*A.* The common law, in regard to the *effect* and operation of instruments sealed, and not under seal, is generally in force in this state.

111. Is a scroll &c. equivalent to wax &c?
*A.* A *scroll*, ink, or printed seal, is *not* equivalent to wax or wafer, in any instrument.

### BASTARDS.

112. Are bastards subject to common law disabilities?
*A. Bastards*, are subject to the common law disabilities in this state.

113. Are antinuptial children, legitimated by marriage of the parents?
*A. Antinuptial* children are not legitimated by marriage of the parents.

ALLUVION.

114. Does the common law in respect of alluvion prevail?
*A.* We have no statute law on the subject of *alluvion*, consequently, the common law must prevail in this particular.

FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

116. Is this so by statute, or usage?
*A.* The *owner* of lands bordering on a navigable river where the tide flows and reflows, and on arms of the sea, is *not* entitled to the right of *several fishery* in the waters in front of his land; the right of fishery in such rivers and arms of the sea, belongs to the *publick*, and is subject to be regulated and controled by the legislature of the state.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?
*A.* Our *statute* on this subject provides as follows, *viz.*

"That every gift, grant or conveyance of lands, tenements, hereditments, goods or chattels; or of any rent, interest or profit out of the same, by writing or otherwise; and every note, bill, bond, contract, suit, judgment or execution, had or made and contrived of fraud, covin, collusion or guile, to the intent or purpose to delay, hinder or defraud *creditors* of their just and lawful actions, suits, debts, accounts, damages or just demands, of what nature soever; *or* to deceive or defraud those who shall *purchase bona fide* the same lands, tenements, hereditaments, goods or chattels; or any rent, interest or profit out of them; shall be henceforth deemed and taken, as against the *person*, or persons, his, her or their heirs, successors, ex'rs, adm'rs, or assigns and every of them, *whose* debts, suits, demands, estates, rights, or interests, by such guileful and covinous devices and practices as aforesaid, shall or might be in anywise injured, disturbed, hindred, delayed, or defrauded, to be clearly and utterly void; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding."

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* Our statute on this subject, is almost an exact transcript of the 29. Car. ii. c 3. (called the statute of frauds.)

USES.

119. Is 27. H. viii. called the *Stat. of uses*, (or similar provisions) in force?

120. Is the English law of uses and trusts, in force?
*A.* The statute of 27. H. viii. called the *statute of uses*, has been adopted by the legislature of this state, and the English law of uses and trusts is considered generally, to be in force in this state.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?

*A.* The *common law* on the subject of this question is adopted in this state: and by *statute*, if the chattels of the wife are not reduced to possession during the coverture, if the husband survive, he is entitled to the same on taking out letters of administration.

USURY. INTEREST.

122. What is the rate of interest?

*A.* The rate of interest in this state, is 6 per centum per annum.

123. What provisions against usury?

*A.* Forfeiture of the *interest.*

And where to an action usury is pleaded, both *parties* are admitted as witnesses in the case, and if the contract is found to have been usurious, judgment is rendered for the plaintiff, for his *principal sum only*, and for the defendant for his costs.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* There is no statute on this subject, but by long and continued practice, it has now become a kind of common law in this state, to admit *account books* as *evidence*; but the party offering the books, must be first put upon his *voire dire* to swear, that they are his regular account books, that the entries therein are the original entries, and were made on or about the time purported by the dates.

All articles sold and delivered in the regular course of trade, and all kinds of services and work and labour done, are considered proper charges in book account.

125. Is interest recoverable on book debt?

*A. Interest* is not allowed on book debt, *except* by express agreement of the parties, or when by the course of trade at the place of contract, it is usually allowed; and then, the *time* from which interest accrues must be ascertained by the agreement or the custom, as the case may be.

In this state, *for book debts contracted here*, we have no uniform established custom, in respect to the allowance of interest.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

*A.* Generally they are, in all respects.

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?

*A.* The holder must conform to the law referred to in this question.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

*A.* A *protest* is not necessary in these cases.

129. Is there any peculiar practice in your state, on this subject?

*A. None.*

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A.* The drawer or endorser of any *foreign* bill of exchange, payable *without* the U. States, upon the non-payment, protest and return of the same, is subject to the payment of *ten* per centum damages thereon, together with the charges of protest,

and *six* per cent interest on the bill from the time of the protest; and inland bills of exchange payable *within* the U. States, are subject to the charges of protest, *six* per cent interest from the time of protest, and *five* per cent damages.

DIVORCE.

131. Are Divorces, a vinculis granted in your state &c ?
*A.* Divorces *a vinculis* are granted in this state.

They are decreed, when the marriage either by statute or common law, is adjudged void *ab initio*; as for *affinity*, *consanguinity*, a *former* husband or wife living, *idiocy and lunacy*, also, for *impotency*, *adultery*, *extreme cruelty*, *wilful desertion for* 5 *years* of *either* of the parties, for *neglect or refusal* on the part of the *husband*, (being of sufficient ability) to *provide necessaries* for the subsistence of his *wife*, and also, for any other *gross misbehaviour* and wickedness in *either* of the parties, repugnant to, and in *violation of the marriage covenant*.

Decrees of divorce are granted only by the Sup. jud. court. It is not necessary that the *cause* of divorce should have arisen *within* the state; but the petitioner must prove, that he or she has been *resident* in the state for the space of 3 *years*, *next before* prefering his or her petition.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors ?
*A.* The *answer* to this question has been anticipated in the *note* under *No.* 56. and under *No. III. (Judgment &c.)*

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law ?
*A.* There is no statute in this state on the subject: this being the case, the landlord is obliged to pursue the same common-law course in the recovery of claims against his tenant for rent, that he must in any other case against him, or other person.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states ?
*A.* In actions on *book accounts*, on *accounts stated* by the parties, *quantum meruit*, *quantum valebat* for goods sold and delivered, or *services* done and performed at an *agreed* price, the defendant may plead the general issue, and file therewith any account he has against the plaintiff, and the court or jury (as the case may be) determine the *balance* due to either party.

And whenever the Sup. jud. court or *court of common pleas*, at the *same term* render final judgment in two or more causes, in which the parties are reversed, and sue, and are sued in the same right and capacity; the *court* must off-set the same judgments, and issue execution for the *balance*, in favour of the party to whom it is due.

And when any *officer* at the *same* time, may have two or more *executions* in personal actions to serve, in which the parties are reversed, and sue and are sued in the same right and capacity, such officer must off-set the same, and levy and collect the *balance only* from the party from whom it is due.

The above, embraces all the law of set-off in this state.

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?

*A. Choses in action* are assignable; but on these, the assignee cannot (as on bills of exchange and promissory notes) sue in his own name: and there is no liability of the assignor over, unless expressly stipulated.

136. Is the common law in respect of choses in action, adopted?

*A.* The common law in respect of choses in action, is adopted in practice in this state, there being no statute on that subject.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* Tenants for life, years &c. are generally entitled to the same rights, and subject to the same liabilities, as by the common and statute laws of England.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

*A.* The courts in this state, have equity jurisdiction in cases of *mortgages* only.

When the mortgagor, or person having the equity of redemption in any real estate, prefers his bill in equity to the *Sup. Jud. court*, for the purpose of disincumbering or redeeming the same, the court appoint masters in chancery to ascertain the sum due to the mortgagee, and on report of the masters, render a conditional judgment, that if the mortgagor or person having the equity of redemption, shall within a limited time to be determined by the court, pay the sum decreed to be due, in that case, the mortgagee shall discharge and quitclaim all his interest in the premises, by virtue of the mortgage deed, otherwise the mortgagor, or person having the equity of redemption, to take, or retain possession of the estate.

There is a kind of chancery proceeding in the court of *common pleas*, and the *sup. jud. court*, authorised by statute, "That in actions of *ejectment*, for possession of mortgaged estate subject to an equity of redemption; if this is shown by the plea, the *court*, on motion of the defendant is authorised, (or may appoint three judicious and indifferent men,) to ascertain according to the rules of *equity*, the just sum due on the mortgage, and thereupon render a conditional judgment, that if the mortgagor, his heirs, executors, administrators or assigns, shall pay to the plaintiff, or deposit in the clerk's office for him, the sum adjudged to be due, within 2 *months* from the entry of the judgment, with interest, then the mortgage, or deed operating as such, to be void and discharged, otherwise, the plaintiff to have his writ of possession.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?

*A.* If the testator or intestate's estate is *insolvent*, creditors are paid *pro rata*, according to the statute, in the

manner described in substance below.

When the estate is insolvent, or insufficient to pay all the just debts which the deceased owed, it is to be distributed among all the creditors in proportion to the sums respectively owing to them, *except* debts due to the *U. States;* to *this state;* for state and town *taxes;* for attendance and medicine in the *last sickness*, and necessary *funeral* charges of the deceased; which are to be first paid.

The ex'rs or adm'rs, before any payment (except as before,) are to represent the condition and circumstances of the estate, to the *court of probate* of the town where the deceased last dwelt, which court is to appoint two or more fit and indifferent persons to be *commissioners*, who have power to receive and examine the claims of all creditors.

The commissioners give publick notice of the time and place, at which they will attend the duties of their appointment.

*Six, twelve,* or *eighteen* months, (as the circumstances of the case may be) is to be allowed by the court for creditors to exhibit, and prove their debts; at the end of which limited time, the commissioners must make report to the court of probate, who (after deducting the excepted debts with other incidental charges) orders the residue of the estate, both *real* and *personal*, (the real estate being sold according to law) to be distributed among the creditors, who have made out their claims before the commissioners, in proportion to the sums due to them. Notwithstanding the report of the commissioners, any *creditor* whose claim is wholly or in part rejected, may have it determined at common law; and if the ex'r or adm'r, is dissatisfied with any creditor's claim allowed by the commissioners, he also may have it determined at common law.

The ex'r or adm'r, and the creditor, may also agree that the claim shall be determined by *referees*: If the creditor does not make out his claim with the commissioners, within the time of their commission, or at common law, or before referees in the manner provided in the act, he is forever barred of his action therefor against the ex'r or adm'r, *unless* there be personal estate remaining upon the settlement of the account with the court of probate, to be applied to the payment of the debts of the testator or intestate, after deducting the claims allowed by the commissioners, from the amount in their hands

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?

*A.* There are no such lands, for sale or location.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitations?

*A. English law books* are allowed to be read in our state courts, and without any limitations.

## CORRECTIONS.

P. 91. no. 14. after laws, *strike out* "9."

P. 94 line 28, for fieri facias read "scire facias."

P. 104, in note 1. after pleas in line 30, insert "and."

# NEW-YORK

# STATE LAW

AND

# REGULATIONS.

1821, 2.

# NEW YORK.



### STATE OFFICERS.

1. Who is Governor of your state &c.?

*A.* DE WITT CLINTON, Albany, "Governor of the state of New York, and general and commander in chief of all the militia, and admiral of the navy of the same;" elected by freeholders of *L.* 100, or 250 dollars estate, for 3 years: salary, depending on the will of the legislature: at present $4000. (1)

2. ——Secretary of state &c.?

*A.* JOHN V. N. YATES, Albany: app. by the council of appointment; holds during pleasure. 2)

3. —— Chief justice of the supreme court of law, &c.?

*A.* AMBROSE SPENCER, Albany; during good behaviour until 60 years of age; app. by the council of appointment; 3) salary not fixed; at present $3000.

4. —— Clerk of the superiour or supreme court, &c.?

*A.* Of the "supreme court," *James Fairlie*, N. York; *Francis Bloodgood*, Albany; *Arthur Breese*, Utica: of the court of "appeals and errors in the last resort," *John F. Bacon*, Albany. (1)

5. —— Attorney General: &c.?

*A. Samuel A. Talcott*, Albany; app. by, and holds at pleasure of the council of appointment. (2)

6. When, and where, is the annual meeting of the legislature?

*A. Albany*, 1st *tuesday in Jany.*(3)

### UNITED STATES OFFICERS.

7. Who is District judge, &c.?

*A.* WM. P. VAN NESS, N. York; southern district.

(1) Clerks of *counties*, (including the clerk and register of the city of N. Y.) hereafter to be chosen by the *electors* of the *county* for 3 years; all other clerks, by the respective *courts* for 3 years, unless removed sooner by the court.

(2) In future, appointed by *joint ballot* of Senate and Assembly for 3 years. Mr. Talcott's *christian* name may possibly be mistaken.

(3) Meeting to be at the same time under the amended constitution, unless a different day appointed by law. The first general election under the new constitution, 1st monday *November* 1822. afterwards, in *Oct.* or *Nov.* as by law appointed. The new constitution goes into force 1st of *Jan.* 1823, and the first meeting of the Legislature is the 1st *Tuesday* in that month.

(1) By the amendments, the Governor and Lt Governor, elected for 2 years by the voters at large

(2) This council abolished: appointed in future, by *joint ballot* of the senate and members of assembly, for 3 years.

(3) In future by the *Govr.* by and with the advice of the *Senate*.

ROGER SKINNER, Albany; northern district.

8. —— Clerk of the District court &c.?

*A.* JAMES DILL, N. York; southern district.

RICHARD R. LANSING, Albany; northern district.

9. —— District Attorney, &c.?

*A.* ROBERT TILLOTSON, N. York.

JACOB SOUTHERLAND, Schoharie.

10. —— Marshal, &c.?

*A.* THOMAS MORRIS, N. York.

J. W. LIVINGSTON, Skeneateles, Onondaga.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?

*A.* BROCKHOLST LIVINGSTON; New York, Connecticut and Vermont, compose the *2d circuit.*

12. At what times and places, are District courts of the U. S. held, &c.?

*A.* At *New York*, *1st tuesday of february, may, august, november*, southern district.

At *Albany* last tuesday *january*,
*Utica*, do. do. *august*, northern district.

13. —— Circuit courts &c.?

*A.* On the 1st day of *april*, and *september*, N. York.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?

*A.* The *statute* (colonial) laws, were first published in 1710 by *Bradford*, in 1 *vol. fol.*

This comprised the laws from 1691 to 1709 inclusive. *Bradford* was printer to the colony, and published a 2d edition from 1691 to 1725 inclusive.

*Wm. Smith, Junr. and Wm. Livingston, Esqs.* by direction of the general assembly in 1762, *revised* the laws, which were published in 2 *vols fol.* containing all in force, from 1691 to 1762.

*Peter Van Schaack esq.* by direction of the gen. assembly, *revised* and published in 1774, the laws of the colony, in 2 *vols. fol.* containing the laws from 1761, to 1773, inclusive.

*Samuel Jones* and *Richard Varick esqrs.* by direction of the legislature, *revised*, collected and published in 1789, the laws of the *state*, from the adoption of the constitution in 1777 to 1789 inclusive, in 2 *vols. fol.* with an *appendix* to certain colonial laws.

*Thomas Greenleaf* in 1798, published the laws from 1777 to 1797, (8 years later than Jones and Varick's edit.) in 3 *vols. oct.* not under direction of the legislature.

Mr. *Loring Andrews* state printer, published the laws from 1798 to 1801, inclusive, in 1 *vol.*

Judges *Kent* and *Radcliff*, in 1802, under the direction of the legislature, *revised* and published the laws then in force, in 2 *vols. oct.*

*Messrs. C. & G. Webster*, published 3rd, 4th, 5th, & 6th, *vols.* of the laws, in *continuation* of Kent & Radcliff's edit. the last or 6th *vol.* in 1812. These contain all the laws from 1802 to 1812, inclusive.

*John Barber* state printer, published the laws of 1802.

*Wm. P. Van Ness and John Woodworth esqrs.* by direction of the legislature, *revised* and published in 1813, all the laws of the state of New York, in 2 *vols. oct.*

Laws passed *since* that period, have been published at the end of each session, and now make 3 *vols. oct.*

15. Can the publick laws in pamphlets, be procured, &c.

*A.* The *body* of the publick laws, from the earliest period to the present time, can be had at the law book store of *Gould & Banks*, opposite the

city hall, N. York, and probably at other places.

16. Is there any Digest of the state laws &c?

*A.* There never has been a *digest*, of the laws of the state. (1)

17. Are there any Reports of cases in your state courts, &c.?

*A* Coleman and Caines cases; being "*Reports of cases in practice, determined in the supreme court of the state of New York, from April term* 1794, *to November term* 1805, *both inclusive.*" 1 *vol. by Wm. Coleman, and George Caines esqrs. counsellors at law.* (2)

Johnson's cases; being "*Reports of cases adjudged in the supreme court of judicature of the state of New York, from Jan. term* 1799, *to Jan. term* 1803, *both inclusive; together with cases determined in the court for the correction of errors, during that period;* 3 *vols. by Wm. Johnson esq. counsellor at law.* (3)

Caines' cases in error; being "*Reports of cases argued and determined in the court of errors, held in Albany, commencing with February term* 1801, *and continued to February term* 1805," 2 *vols. by George Caines esq. counsellor at law.* (4)

Caines' Reports; being "*Reports of cases argued and determined in the supreme court of the state of New York, commencing with May term* 1803, *continued to November term* 1805." 3 *vols. 2d edit. by George Caines esq. counsellor at law.*

Johnson's Reports; being "*Reports of cases determined in the supreme court of judicature, and in the court for the trial of Impeachments and the correction of Errors, in the state of New York, from February* 1806, *to February term* 1822." 19 *vols. by Wm. Johnson esq. counsellor at law.* (5)

Johnson's Chancery Reports; being "*Reports of cases determined in the court of chancery of the state of New York, from March* 1814, *to December* 1818, *inclusive,*" 3 *vols. by Wm. Johnson esq. counsellor at law.* (6)

Anthon's Nisi Prius, being "*Reports at Nisi Prius, in the supreme court, for the state of New York, by John Anthon esq. with copious notes and references to other reports, to which is prefixed an Introductory Essay on the studies preparatory to the active duties of the bar.*"

City Hall Recorder; being "*Reports of trials in the court of sessions*

(1) *Should there not be one; and in every state where the statutes at large have become very voluminous? if well done in condensed forms, these digests would not only be universally purchased in the state, but in other states, at least those adjoining, by the bar.*

(2) "Coleman's cases", were the first reports published in the state. The work called "Coleman & Caine's cases" consists of *Coleman's cases*, which terminate with *Oct. Term*, 1800, and *cases of practice*, commencing with *Apr. Term*, 1803, selected from Caine's reports.

(3) At the end of vol. 3d, is an *appendix*, containing the case, of the *People v. Croswell*, on an indictment for libel, argued on mot. for n. trial, Feb term 1804.

(4) The 2d *vol.* concludes with a number of decisions in the *Sup. court*, most of which are also reported in '*Johnson's cases.*"

(5) The first 8 *vols.* of these reports, have passed to a 2d edit. to which is *added* a number of additional notes and references. I have stated Mr. Johnson's 19th *vol.* as published, and ending with Feb. term, 1822. There may be some incorrectness in this; it is so, *ut audivi.* Mr. *Caines'* 3 vols of reports in the S. court, beginning in May term 1803, were called "N. Y. term reports," and published by him as state reporter; Mr. Johnson's, is a continuation of the term reports from Nov. term 1805, when he succeeded Mr. Caines as state reporter.

(6) A 4th *vol.* bringing the decisions down to is since published.

*for the city of New York,"* 6 *vols. by Daniel Rogers esq.* (1)

*Wm. Johnson esq.* counsellor at law, is *State Reporter,* resides in New York.

18. Is there any Digest of cases in your state courts, &c.?

*A.* Johnson's Digest, "*of cases decided and reported in the supreme court and court of errors, of the state of New York, from January term* 1799, *to October term* 1813, *inclusive, with the names of cases, and table of the titles and references;*" 1 *vol. by Wm. Johnson esq. counsellor at law.*

Church's Digest; being a "*Digested index to the reports of the supreme court, and the court for the correction of errors in the state of New York.*" 2 *vols. by Rodney Smith Church esq. counsellor at law,* 1821.

19. Are there any Treatises on the law, in your state &c.?

*A.* Wyche's Practice, *of the Sup. court of the state of New York,* 1 vol. 1794.

Caines' Practice, *of the supreme court of the state of N. York,* 1 *vol. by George Caines esq. counsellor at law.* 1808.

Dunlap's Practice; being, "*a treatise on the practice of the supreme court of the state of New York in civil actions, together with the proceedings in error.*" 2 *vols. by John A. Dunlap esq.* 1821.

Blakes' chancery; being "*a historical treatise on the practice of the court of chancery,*" 1 *vol. by D. T. Blake esq. counsellor at law.* 1818.

Attorney's Companion, "*containing the rules of the supreme court, court of chancery, and court of errors, of the state of New York; notes of cases of practice at law, and practical forms,*" *by a Gentleman of the bar.* 1818.

CLERK'S ASSISTANT, 1 vol. last edit. 1819.

RULES *of the Court of Errors, Supreme, Chancery, and Mayor's Courts. Published by Gould and Banks.* New York. (2)

Conductor Generalis; "or the *office, duties, and authority of justices of the peace, high sheriff, under sheriff, coroners, constables, gaolers, jurymen, and overseers of the poor;*" "as also, *the office of clerks of assise, and of the peace &c.*" *by a Gentleman of the bar.* 1821.

THE COMPLETE MANUEL, for *Justices, Constables, and Coroners.* 1 vol. by C. Cowan esq. published by *Gould and Banks.* 1821.

New York Justice; being "a *Digest of the laws, relating to the justices of the peace in the state of New York;*" by *John A. Dunlap esq.*

County and town officer; "or, *a concise view of the duties and offices, of county and town officers, in the state of New York, with appropriate precedents.*" *by John Tappen esq.*

Mc. COMB'S *Court Martial.* 1 vol.

20. —— Foreign law books republished in your state, &c.?

*A.* A *number,* indeed the greater part, of the principal treatises on legal subjects, which have been published in England for the last twenty years, have been republished in this state.

21. —— Reports of Cases in the

(1) This work commenced in Jan. 1816, and is continued to the present time, published monthly, in numbers; 12 *nos.* making a *vol.*

(1) The Supreme Court rules is the *fourth Revised Edition,* with the additional rules and decisions down to the present time; to which are added, decisions of the Supreme court, relating to affidavits, notices and services, together with copies of bills of costs to serve as precedents, notes relative to their Taxation, and the rules and forms of surrendering bail, *pub.* 1818.

district or circuit courts of the *U. S.* in your state, &c.?

*A.* "*Reports of cases in the District court of U. S.* for N. Y." 1 vol. by *Wm. P. Van Ness esq.* (Judge of that court,) 1820, or 1821.

22. Is there any Digest of cases in those courts, &c.?

*A. None.*

23. Have any books been composed, in your State, &c.?

*A,* ANTHON'S DIGEST of Blackstone commentaries. ANTHON on the study of the Law.

TIDD'S APPENDIX, by do. 1 vol. 1808.

——— FORMS, by *G. Caines* 1. vol, 1808.

LEX MERCATORIA AMERICANA, by do. 1 vol. 1802. (1)

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

*A.* An attorney as such, is not an advocate; nor a counsellor an attorney: both offices however, may be united in the same person.

25. By whom are attornies, or counsellors admitted, &c.?

*A.* By the *courts* respectively, and can only practice where they are admitted. In the *Supreme* court they are admitted on examination, after three years clerkship: and in the *county* courts on examination, or of course. If admitted in the sup. court, their names are registered, in the office of the clerks of the respective courts where admitted. (*See Rules of Sup. Court, Appx. Nos.* 18, 19, 20, 39, 40, 44.)

26. On what conditions, &c. from other states, &c.?

*A.* No general rule, in the discretion of the court. (*See rules sup. court. Appx.* 39; 47.)

(1) The *Titles* to the foregoing works, will probably not be found exactly to correspond, with those given in the title pages of the several books; and there may not either, be entire accuracy in other particulars; but no other certainty was derivable from the communications received.

In respect to *foreign* law books republished &c. in N. Y. or elsewhere; no attempt has been made to give their titles here; and even some local treatises and tracts may be omitted.

The great object proposed under the head of "law books," in this part of the Register, was to obtain a catalogue of all those falling under questions 14, 15, 16, 17, 18, 19, 21, 22, 23, relative to the Statutes, Reports, Digests, Treatises, and Law works in the several states, *not* foreign.

This will be obtained, and the profession thereby become possessed of a complete catalogue of *American Law Books*; of which at present, a very imperfect knowledge exists; and as my purpose is, either in this vol. or in another, to publish a *catalogue* of law books *in general*, those which are foreign will be given, and any which are American and omitted here, supplied.

Regular notices after this will be published, of all original or re-printed works, foreign and domestick, with proper explanations.

As to "*Rules*" of the Supreme, Circuit, and District courts, of the U. States; I have made a collection, but shall defer publishing until it is complete. In a few circuits and districts, they have assumed a regular form: Rules of practice in the *S. court*, are established, and it is understood, that the judges at their last session (Feb. 1822) at Washington, enacted rules of practice in causes of "Equity" in the U. S. courts.

A *uniform* system of rules as far as practicable, in the circuits, and districts, in *admiralty* causes, and in *common law* civil causes, and *criminal* proceedings, it is hoped will follow: The discordancy arising from state practice, from partial and ill understood adherence to the forms of the civil code &c., can only be corrected by a thorough revision of the existing rules, and the adoption of a uniform system assimilating process &c. and proceedings in admiralty cases, as much as may be, to the forms of common law and equity.

COURTS.

27. What are the names of the several courts in your state, &c.?

*A.* "Justice of the peace." "Court of common pleas," (in each county) "Supreme court;" "Court of chancery." "Court of probates." "Court for the trial of impeachments and, the correction of errors." "Court of exchequer." "Marine court," in the city of New York.

28. Their style, &c.?

*A.* 1. *Chancellor* of the state of New York,

2. *Justices* of the Supreme court of judicature, of the people of the state of New York.

3. *Judges* of the court of common pleas, for the county of——

4. *Judge* of the exchequer. The junior judge of the supreme court, is judge of the exchequer *ex officio.*

5. *Judge* of the court of probates.

6. *Justices* of the marine court, in the city of New York.

7. *Justices* of the peace, for the county of——

29. The extent of their several territorial jurisdictions, &c.?

30. Which have original jurisdiction, &c.?

*A.* "*Chancery,*" has jurisdiction in all cases of equity, where there is not remedy at law. The care of infants, lunaticks &c. as the English chan.

*The "supreme court,"* has jurisdiction of all legal claims, or demands, over 25 dolls. value. Issues in fact, are tried at *circuit* courts, holden at least once a year in every county, before *one* of the judges; who with the justices of the peace, form a court of *oyer and terminer.*

*The "county courts,"* or courts of com. pleas, have jurisdiction of all controversies relating to lands in the county, and in personal actions, to an unlimited amount.

*The "court of probates,"* has jurisdiction in cases of wills, &c. of persons dying *out* of the state.

In cases of wills, &c. of persons dying *in* the state, the jurisdiction belongs to the *surrogates* of counties. The court of probates has power, to *revise* the decrees of surrogates.

*The "court of exchequer,"* has cognizance, of cases of *fines* and *forfeitures* only.

*The "marine court,"* in the city of New York, has jurisdiction to 100 dolls., and in cases arising between seamen, and captains and owners of vessels, unlimited.

"*Justices of the peace,*" have jurisdiction to 50 dolls. except in the city of New York, where they are called *special* justices, and have jurisdiction to 100 dolls.

31. —— partly original, and partly appellant &c.?

*A. The Supreme court,* can *remove* by habeas corpus, all causes from the courts of common pleas, where *title* to lands or tenements, come in question, replevin, assault and battery, false imprisonment, and slander; and all other personal actions, where the matter or thing in demand exceeds 250 dolls. in value, before judgment; and may revise all judgments on writ of error, and the judgments of justices of the peace, on certiorari.

32. —— appellant jurisdiction only, &c.?

*A.* The *Court* for the trial of *impeachments &c.* have appellate jurisdiction only, and may revise decrees of the chancellor, judge of probates, and judgments of the Sup. court.

33. Which are courts of equity, and which of law, &c.?

*A.* The courts of equity, and of law, are distinct, as before stated. *Pro-*

*ceedings* in equity, are as in the English chancery.

34. What methods are used to carry up judgments &c.?
*A.* From decrees in *chancery*, and court of *probates*, by *appeal*; from judgments of *Sup. court*, by *writ of error*.

MISCELLANEOUS.

35. Who is State Printer, &c.?
*A. Moses I Cantine*, and *Isaac Q. Leake*, Albany.

36. Who is the principal *Book-seller* at the seat of Government?
*A. E.F. Backus*, and *Gould and Banks*.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* The kind of conveyance principally, and almost exclusively used in the state of New York for conveying estates in fee, and freehold interests, is that of "*bargain and sale.*"

2. Does the legal possession pass without livery, &c.?

*A.* The legal *possession* where the grantor is seised, passes without any further act of either party, by delivery of the deed. This is by operation of the statute of uses solely, which is re-enacted in this state.

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* The word "*heirs*" is necessary in a deed, to create an estate in fee. The common law rules upon this point, are unchanged.

*Estates tail*, are abolished by statute, in this manner, "that the *person* who, if the statute had not been made, would by force of any conveyance, have become seised in fee tail, shall be deemed to be seised in *fee simple.*" The statute does not render the conveyance *void* and the estate a nullity, but converts it into a fee simple; and the words "heirs of the body" or other technical words, which would in England create an estate tail, will create one in this state, for the statute to operate upon.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* The *construction* and operation of common assurances, are governed by the rules of the common law, and the *intent* is disregarded. The distinction between deeds and *wills* in this particular, is the same as in England.

5. Are attesting witnesses &c. required to conveyances?

*A. One* attesting *witness* is sufficient to a deed of real estate, either in fee, or for life; and whether absolute or by way of mortgage. It is presumed, that where a deed is *acknowledged* as hereafter mentioned, no witness is requisite.

6. Must the deed be sealed?

*A.* The deed must be *sealed.*

7. Is a scroll sufficient?

*A.* A scroll is *not* sufficient.

8. Are the common law requisites for the perfection of Deeds &c. altered, in any particulars in your state?

*A.* The common law requisites of a deed and other common assurances, are necessary in this state.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* No deed or other instrument affecting lands, need be acknowledged, or recorded, to render it valid between the *parties*, and their heirs.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* 1st. As to *deeds*, there are *certain* counties of the state in which, by particular statutes passed at various times, a deed, conveyance or writing affecting a right to land lying therein, (other than a mortgage for which there is a separate statute) must be acknowledged or proved, and *recorded* in the *form* hereafter mentioned, or it will be void, against a *subsequent* bona fide purchaser or mortgagee for valuable consideration,

procuring his conveyance to be first *recorded.*

It may be recorded at *any* time before the recording, of the subsequent conveyance or mortgage. (1)

*Notice* to the second incumbrancer will bar his title, though he should put his instrument on record first.

*These* conveyances must be recorded, in the office of the *clerk* of the county in which the lands *lie.*

All *other* conveyances of land, of every character, and in whatever county the lands lie, may be recorded (upon being duly acknowledged, or proved,) *either* in the secretary of state's office, or in the office of the clerk of the county where the lands *lie,* and become *evidence* as mentioned in answer 28 *post.*

In the *counties* of the state, to which the several statutes before referred to, do *not* extend, conveyances take priority, according to the *date* of their execution, if no notice, or fraud.

2d. As to *mortgages.* A mortgage upon any lands in the state, must be registered in the *Clerk's* office of the county in which they *lie*; or a subsequent mortgage first registered, and without notice, will be preferred; and a bona fide *purchaser* without notice before registry, will defeat it.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

*A.* A *feme covert* may convey or mortgage lands held in her *own* right, and her *dower* in her husbands estate, so as to bar herself and her heirs.

(1) I understand by this, that the deed first recorded, takes preference in those counties, without regard to the time of execution, if bona fide and without notice of the prior deed. Ed.

12. Is this done by joining with him in the conveyance, &c.?

*A.* She may join in the conveyance with her husband, *or* execute a separate instrument.

13. Is a private examination of the feme necessary, &c.?

*A.* She must be privately *examined* apart from her husband, as to her executing such deed freely, without fear, or compulsion of her husband. But if she resides *out* of the state, she will be barred of her dower, by merely *joining* with her husband in the deed, in like manner as if she were sole; and the acknowledgment, or proof in such case, to entitle it to be recorded, may be made as if she were sole.

14. What officers may take this examination, &c.?

*A.* The *officers* to take her examination, are enumerated in *answer* 18 *post.*

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c.?

*A.* "STATE *of New York, ss: on this —— day of —— personally appeared before me (*here insert the name and office of the person taking the acknowledgment*) A, B, of—— and C, D, his wife known to me (*or proven by the oath &c. See answer 20.*) to be the persons described in and who executed the within conveyance* (or mortgage,) *who duly and severally acknowledged, that they executed the same as their respective act and deed, and the said C, D, on a private examination by me, apart from her husband, acknowledged that she executed such deed freely without any fear or compulsion of her husband, there being no alterations therein* (except those noted,) *I allow the same to be recorded.*

OFFICERS name."

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* There are no *exceptions* of the nature referred to in this question, to the necessity of a wife executing a conveyance and being privately examined, in order to bar her dower, *unless*, where the grantors are *non-residents*; as to which, see *answer* 13 *supra*.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* The *rights* of the widow to dower, are the same in our state, as at common law in general.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A.* The *officers*, authorized to take acknowledgments, and proofs of deeds and mortgages affecting lands in our state are———

A *judge*, of the *sup. court* of the U. States.

A *justice*, of the *sup. court* of this state.

A *judge*, or justice of the *superiour* or *sup. court* of any state, or territory.

The *first* judge, of the district of *Columbia*.

The first, or other *judge* of any court of *common pleas*, in this state.

The *mayor*, or *recorders* of the cities of New York, Albany, or Hudson, and the *mayor* of Schenectady.

Certain *commissioners*, appointed to do certain duties of a judge of the supreme court; and commissioners, appointed in each county by virtue of a statute passed in 1818, for this, and some other special purposes.

But when an acknowledgment is before a commissioner, or judge of common pleas, *not residing* in the county where the deed is to be recorded, a *certificate* must be attached to it from the county *clerk* where it is acknowledged, of such judge, or commissioner, being authorized to take the acknowledgment; and of his acquaintance with the hand-writing of the judge, &c. and belief of the signature, being in his hand-writing.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* "STATE *of New York, ss.; on this —— day of —— personally appeared before me* (here insert the name and office of the person taking the acknowledgment) *A. B. of——known to me to be the person described in and who executed the within deed, who acknowledged that he executed the same as his own act and deed; there being no alterations therein* (except as noted) *I allow it to be recorded.*

Signature of the Officer."

*Certificate*, where the *identity* of the *party* is proved to the officer. (1)

"STATE *of New York, ss: on this —— day of —— personally came before me* (insert here the name and office of the person taking the acknowledgment) *the said A, B, and C, D,* (which said C, D, is known to me,) *and he being by me sworn,* (or affirmed as the case is,) *did depose and say, that he knew the said A, B, then present, and that he was the person described in and who executed the within conveyance, and the said A, B, acknowledged that he executed the said conveyance as his own act and deed: there being no alterations therein* (except as noted,) *I allow it to be recorded.*

Officer's signature."

20. What is the form when the ex-

(1) Where the grantor or mortgagor, is not *known* to the officer, a witness must be present and be sworn (or affirmed,) to the identity of the grantor, as in the form is certified.

ecution is proved before him, by the deposition of the subscribing witnesses?

*A.* "STATE *of New York, ss: on this &c. personally appeared before me,* (insert here the name and office of the person taking the deposition,) *C, D, of ——— known to me, who being by me duly sworn, did depose and say, that he saw A, B, known to him to be the person described in, and who executed the within conveyance, execute the same and acknowledge it to be his act and deed, and that he subscribed the same as a subscribing witness thereto, there being no alterations therein (*except as noted,*) I allow it to be recorded.*

Officer's signature."

Where the identity of the *witness* is proved to the officer. (1)

"STATE *of New York, ss: on this ——day of——personally came before me (*here insert the name and office of the person taking the proof,*) C, D, and E, F,* (which said E, F, is known to me,) *and he being sworn saith, that he knew the said C, D, then present, and that he was the person described in the within conveyance as subscribing witness thereto; and the said C, D, being sworn said, that he saw A, B, known to him as the person &c.* (as in form next above.")

It is not essential that the officer should know the *witness*, to the *identity* of the grantor or subscribing witness; the oath of a person unknown is sufficient, although in the foregoing forms it is stated, that the indentifying witness is known, but may be omitted.

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A.* The *subscription* of the grantor or witness is not necessary, to the acknowledgment or deposition.

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* The certificate of the officer, need not be under *seal.*

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* "*Who being (conscientiously scrupulous of taking an oath,) did solemnly, sincerely and truly affirm and declare that &c.* (1)

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* A *judge*, of the *supreme* or *superiour court* of another state or territory; or a judge of the sup. court of the *U. States.*

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A.* Nothing more is requisite, where the officer taking the acknowledgment or proof is of *another* state, than the *certificate* under his hand; this will entitle it to be recorded, and make it evidence on trial.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases, for secondary proofs, &c.?

*A.* There is *no provision* for such *se-*

(1) Where a deed &c. is proved by a witness and he is unknown to the officer, there must be a witness present who knows him, and must be sworn to the identity of the witness as in the form is certified.

(1) These will be the words used in the *certificate*; the *mode* of affirming the witness, is thus "You do solemnly, sincerely and truly affirm and declare, that you will true answers make to such questions as shall be put to you, touching the execution of this deed."

*condary* proofs, as are referred to in this question. (1)

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* Where the grantor or witnesses are in a *foreign* country, the court of *chancery* may issue a writ of "*dedimus potestatem*" to any discreet person or persons *residing* therein, to take the acknowledgment or proof, which is to be taken in the forms before given, and which acknowledgment or proof, will entitle it to be recorded.

By a *late* statute, acknowledgments or proofs of deeds, or other writing concerning lands in the state, made by British subjects, actually *residing* within the united kingdom of Great Britain and Ireland or the dominions thereunto belonging, to a *citizen* of the United States, may be made and taken before the *mayor*, or *chief magistrate* of the *city of Edinburgh*, duly to be certified under their hand and seal of office.

And by a *former* statute, such acknowledgments or proof, made by British subjects, actually residing within the kingdom of Great Britain *to a citizen of this state*, of lands *therein*, may be taken before the *mayor* of the *city of London*, or before any *minister* of the *United States* resident in Great Britain, and to be duly certified under the seal of office, of the mayoralty of the said city.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

*A.* The *record* of deeds and mortgages, or a transcript of the record, certified by the *secretary* of state, or the *clerk* of the county in whose office the same is recorded, or registered, under the *seal* of the court of *common pleas* of the county, whereof he is clerk, may be read in *evidence* in any court of the state, without further proof.

And the deed *itself* with the certificate of acknowledgment upon it, is evidence whether recorded or not.

29. In what order, do mortgages take preference of each other?

*A. Mortgages* take preference, according to the priority of their being *registered.* But *notice* of an unregistered mortgage, at any time before the *registry* of a second, will prevent the preference of the second.

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* There is no time after the execution *allowed*, within which registering a mortgage, will prevent the preference of a second mortgage first registered; between two equally fair mortgagees and no notice, *diligence* in registering, will decide the preference.

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* Deeds of *mortgage*, may be acknowledged and proved before the same officers, in *like* manner, and have the same competency in evidence, as absolute deeds. They differ as to the *place* of record in this, that mortgages, must be registered in the office of the *clerk* of the county where the lands *lie*; and so must deeds of lands in the *recording counties*, before referred to; but deeds of lands in other counties, may be recorded *either*, in the office of the se-

(1) This would seem a necessary, and often required provision. Ed.

cretary of state, or in the county clerk's office.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A. Nothing.*

No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A. Yes.*

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* At law, from the time of *filing* the judgment roll; and from the time of *issuing* execution, upon a *decree* in chancery.

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* Priority of *judgment.*

36. Does a judgment bind, after acquired land?

*A. Yes.*

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* The first *execution.*

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A. Yes.*

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A. No lien,* and has no effect whatever, beyond the jurisdiction of the court, against the alienation of the debtor, or a subsequent judgment in respect of lands, elsewhere.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A. Yes,* in the *sup. court* of the state.

41. Can execution be taken out at once, in every county, &c.?

*A.* Execution may be taken out at *once* in every county, but the lien &c. would not be lost by omitting to do it.

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* Execution may issue *immediately*; conditions of payment cash.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* The deed is made by the officer *viz.* the sheriff or coroner, and delivered without acknowledgment in court; it need be acknowledged only for the sake of recording, and then, before a judge or officer authorised, as in other cases; previous confirmation by the court is not necessary: there is always *summary* redress for irregularity, and generally for fraud, by application to the court, founded upon affidavit. But if it be a complicated case of fraud, and many persons interested, the parties must have recourse to the court of chancery.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A. No appraisal or delay.*

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A. Not in use.*

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment,

and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A. No such laws.*

47. What security is required, that the property shall not be wasted, and be forth coming?

*A. No security of course.*

48. May the debtor redeem land sold on execution, &c.?

*A. Yes,* within *one year* after the sale, by paying to the purchaser the purchase money, and interest at the rate of *ten* per cent. from the time of sale. (1)

49. May judgments on warrant of attorney, be entered in vacation?

*A. Yes.*

50. Can judgments be entered on warrant of atty. before the debt is payable?

*A.* A judgment may be given as a *security* for a debt due, and for *future* advances.

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* Such a judgment, would take preference, against subsequent judgments for debts due, and followed by immediate execution, and though the advance for which the first judgment was given, might have been made, *after* the subsequent judgment obtained.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A. Quere de hoc!* The statute makes no provision for the case; nor has it ever arisen so far as I know. I am inclined to think, that the *purchaser* would be protected in his title. *See* 2. *Bac. ab. per Wils.* 505. 739.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* A *ca. sa.* is allowed in the first instance, *except* when special bail is filed, then a *fi. fa.* must first issue.

Bail are exonerated by surrender of the principal, at any time before the return of process against themselves, and within *eight days in term,* after the *return* of process against the bail; but if the principal is not surrendered within that time, or die between the return of process against the bail, and the expiration of the *eight* days, they are *fixed* and must pay the debt.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A. Males* for any sum over 10 dollars: Females exempt for all sums under 50 dollars.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* By the rules of the common law, *generally.*

56. Are any kinds of personal estate exempt from execution?

*A.* Sheep, to the number of 10, with their fleeces and the cloth manufactured from the same; 1 cow, 2 swine, and the pork of the same; all necessary wearing apparel and bedding; necessary working utensils; 1 table,

(1) By the act authorising redemption, it is also provided, that any *creditor* of a defendant within *fifteen* months after sale, in default of defendant, may redeem the land sold, as the defendant or debtor might; but the defendant in all cases, to have preference to any creditor.

A *creditor* redeeming, to be entitled to all the rights of the purchaser; and in like manner, any *other* creditor having a decree in chancery, or judgment against the defendant, may in *fifteen* months after the sale, redeem from the first redeeming creditor, *paying* the sum he has paid with interest thereon at 7 per cent. and *satisfying* any prior *judgment* or decree of such creditor, against the defendant. And in *like* manner, other creditors *ad infinitum.* But no redemption allowed, *after* 15 months from the original sale.

6 chairs, 6 knives and forks, 6 plates, and 6 teacups and saucers, owned by any person being a *householder*, also, spinning wheels, weaving looms, or stoves placed or put up for use, and kept for use in any dwelling house, are *exempt* from sale on execution, or distress for rent.

### No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?
*A. Yes*, one upon which they may be released from *imprisonment*, on surrender of their property, and are discharged from future personal liability or *arrest*, but future property is always liable; and *another*, upon which the *debt* is discharged, with consent of two thirds of the creditors.
*None* are excepted from the benefit of these laws.

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?
*A' Six* weeks, if the creditors reside within 100 miles from the place, where the application for a discharge is made; if beyond 100 miles, then *ten* weeks.
The claim of the debtor, is determined by a *judge* or *commissioners*, if the application is made to them; but if made to an inferiour judge of the *common pleas*, then by the court. In the act first referred to (*No.* 57.) the *creditor* may demand a jury.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?
*A.* He may apply at any time, before or after suit, execution, and imprisonment.

60. Is there any thing peculiar in your insolvent law?
*A.* We have a provision, by which the creditor can *compel* an assignment of the debtor's property, after he has been imprisoned 60 days; upon the assignment, the debtor is discharged.

### No. V. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A. Yes.*

62. What formalities of execution, are essential to a will of lands &c?
*A.* It must be *signed* by the testator, or by some other person in his presence, and by his express direction, and attested, and subscribed in the *presence* of such party, by *three* or more *credible* witnesses.

63. What formalities are required, in the revocation of wills of land?
*A. Only*, by some other will, or codicil in writing, or other writing of the party to such last will and testament, and signed, attested and subscribed in the *same* manner as in the last answer; *or* by burning, cancelling, tearing, or obliterating the same, by the testator, or by another in his presence, and by his direction and consent.

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?
*A.* They are, to the whole extent.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir, to question its execution at law?
*A.* A will of *lands* may be proved, before a court of *com. pleas*, but it will only be admitted as evidence in the county.
It may be proved before the *sup.*

*court*, and then is evidence in all the courts of the state.

A will of *personalty* may be proved before the *surrogate* of the county. The proof in any case, is only *as* effectual as the original will would be, if produced and proved; and it is thought, that in all cases it may be questioned by the *heir*.

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

*A.* By the *witnesses* if living, and in the state. If dead or out of the state, proof of the *hand writing* of the testator and witnesses, or of such other circumstances as would be proper to prove the will, upon a trial at law.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* In the office of the *surrogate*; office copies are evidence.

68. What formalities are required, to wills of chattels?

*A.* There is no statute provision; they are such as required by the common law.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A. Answered* (*see Nos.* 62 and 68.)

70. May executors, or administrators having letters in another state, sue in your state?

*A. No.*

71. If not, what is to be done to enable them to sue?

*A.* Take out letters of administration here upon the intestate's estate, or in case of a will, *cum testamento annexo*.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A. No*, the originals must be produced and proved, in the same manner as heretofore mentioned.

73. How are foreign wills and testaments proved in your state, &c?

*A.* There is no statute provision relating to *foreign* wills, or wills or administration in *other* states; or deeds, or judgments; except the acts of congress, and what has before been answered respecting deeds from British subjects, &c. (*See No.* 27, *and acts Cong. vol.* ii, 102. iii, 621.)

## No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

*A. Descents* are regulated by *statute*, of which the following is the substance.

Where a person dies seized of any lands, tenements, &c. without devising the same in due form of law, and leaving more than one person lawful issue, or without lawful issue; the inheritance in the *five* several following cases, descends and goes as in each case is particularly specified; *that is to say*—

FIRST. If the intestate (1) leaves several persons lawful *issue*, in the direct line of lineal descent, and *all* of *equal* degree of consanguinity to the deceased, the inheritance will then descend to the said several persons as tenants in common, in *equal* parts, however remote from the intestate the common degree of consanguinity may be, in the same manner as if they were all daughters of the intestate.

(1) *The person dying seised* The term "intestate" is used for brevity here.

SECOND. If the intestate leaves *issue* of *different* degrees of consanguinity to him or her, the inheritance descends to the child or *children* of the deceased if any living, *and* to the *issue* of any dead children, as *tenants in common*; such issue to inherit, if one person solely, and if several persons as tenants in common in equal parts, the share which would have descended to his, her or their *parent*, if then living; and each of the *children* of an intestate, always to inherit such share as would have descended to him or her, if all the children who are dead leaving issue, had been living at the death of the intestate.

If there be no child of the intestate living at his or her death, and only a grand child or grand children, *and* the issue of a grand child or grand children then dead, the inheritance descends to such grand child or *grand children*, and to the *issue* of such of them as are dead, as tenants in common; such issue always to inherit, if one person solely, and if several persons as tenants in common in equal parts, such share as would have descended to his her or their *parent* if then living; and each of the *grand children* of an intestate, living at his or her death, always to inherit such share as would have descended to him or her, if all the grand children who are dead leaving issue, had been living at the death of the intestate.

And the same law of inheritance and descent is to be observed, in case of the death of the *grand children*, and other descendants, to the remotest degree.

THIRD. If the intestate dies without issue, leaving a *father*, the inheritance goes to the father in fee simple; unlesss it came to the intestate from the part of his or her mother, in which case it descends as if the intestate had survived the father.

FOURTH. If the intestate after the death of the father, dies without lawful issue, leaving a *brother* or *sister*, or a *brother* or *brothers* and a *sister* or *sisters*, the inheritance descends to the brothers or sisters, or to the brother or brothers and sister or sisters (as the case may be,) as tenants in common, in *equal* parts; and in such case, every brother and sister of the *half* blood of the intestate, inherits equally with those of the whole blood; *unless* the inheritance came to the intestate by *descent*, *devise* or *gift* of some of his or her *ancestors*, in which case those not of the blood of *such ancestor*, are excluded.—And,

FIFTH. If a brother or sister who would inherit if living, die before the intestate, leaving a *child* or *children*, such child or children inherit, if one solely, and if several, as tenants in common in *equal* parts, the share which would have descended to his, her, or their father or mother.

And in all cases of descent not particularly provided for by the act, the *common law* is to govern; but nothing contained in the act, is to be construed to bar or injure the right or estate of a husband, as tenant by *curtesy*, or a widow's right of *dower*.

*Posthumous* children are to inherit in like manner, as if born in the life time of the father.

No estate in *joint-tenancy* in *lands*, can be held or claimed under any grant, devise, or conveyance whatsoever after the act made, (*other* than to executors or trustees,) unless the premises are *expressly* thereby declared to pass not in tenancy in common, but in joint tenancy; and every such estate, other than to executors or trustees, unless otherwise expressly declared, is deemed to be a tenancy in common.

78. Is there any thing peculiar in your law of descents?

*A. Nothing*, but what is specified in the preceding answers.

No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

*A.* The *widow* takes one *third* of the surplusage, and the *children* (and such persons as legally represent them, in case any of them be dead) the residue in *equal* portions, unless previously provided for by settlement; and if there be no children, nor any legal representatives of them, then one *moiety* is allotted to the *widow*, and the residue is distributed equally to every of the *next of kin* of the intestate, who are in *equal* degree, and those who represent them, (but no representation is admitted among *collaterals*, after brothers and sisters *children*;) and if there be no wife, then all the estate is distributed *equally* to and amongst the children; and if no child, then to the *next of kin* of *equal* degree of or unto the intestate, and their legal representatives; *provided*, if after the death of a father, any of his children die intestate without wife or children in the life time of the *mother*, every brother and sister and the representatives of them, shall have an equal share with her.

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* Such of the provisions of these statutes, as are not incorporated in the preceding answer, do not apply here.

No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

*A.* No such estates are allowed.

83. Are entails abolished; converted into fees; or otherwise modified &c?

*A.* They are converted into *fees* simple absolute, by *stat.* (*See answer, No. 3.*)

84. How barred by the tenant?

*A. Answered* as above.

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* A widow is entitled to dower; and the husband to curtesy, as by the common law. There is an *exception* of the widows of persons, who were convicted and *attainted* of adhering to the enemies of this state, and who died subsequent to the *20th February*, 1806.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

*A. Twenty-five years.*

87. What savings &c?

*A.* No part of the time, within which the party claiming was *under* 21 *years* of age, *insane*, *feme covert*, or *imprisoned*, to be reckoned.

88. Is there a saving in favour of foreigners or citizens of other states?

*A. None*, other than as above.

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

*A.* They *are.*

90. Is there any thing peculiar in your state on this head?

*A. Nothing.*

91. What length of time bars recovery &c. in personal actions?
*A.* Actions on specialties, are not included in the *stat.* Actions of *assumpsit, trover, detinue,* on the *case,* within *six* years; *assault and battery, wounding and imprisonment,* 4 years; *words* spoken, 2 years; *provided,* if plaintiff shall have obtained a *judgment,* which has been arrested; or reversed on error; a new suit may be commenced in *one* year; and if *defendant* is *absent* from the state, when the cause of action accrues, the statute only begins to run from his return.

92. What savings?
*A.* The *same* as in answer to *No.* 87.

93. Are there any in favour of citizens of other states, or foreigners?
*A. None,* other than as above.

## No. x. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?
*A. They may.*

95. Before a sale, is notice to be given &c?
*A. Yes.*

96. What officer is to give this notice?
*A.* The *comptroller.*

97. In what manner &c.
*A.* It is the duty of the comptroller, to make out a *statement* of lands charged with any tax or taxes, and before the *first* day of *September,* to transmit by mail, to each *county treasurer,* 5 printed copies for himself, and 2 copies for each *supervisor* of the county; and before the 2d *tuesday* in *October,* the comptroller is to have published once a week for 17 weeks successively, in at least 4 newspapers published in each of the four *districts* of the state, a general *notice,* that a list of lands liable to be sold for taxes, has been forwarded to each of the county treasurers, and town clerks in the state.

And that so much of them, (on a day to be mentioned in the notice, and succeeding days,) will be *sold* at publick auction at the *capitol* in the city of Albany, as may be necessary to pay the taxes, interest and charges due, at the time of sale.

98. If a sale takes place, is the deed absolute?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?
*A.* The comptroller gives to the purchaser a *certificate,* describing the lands and the sum paid, and *unless* the person claiming title to the lands described in the certificate, pay to the *comptroller* (for the use of the purchaser,) within 2 years from the date of it, the sum paid, with interest at the rate of 20 per cent per ann. then the comptroller at the end of the 2 years, executes to the purchaser in the name of the people of the state a conveyance, which vests in him an absolute estate in fee simple.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?
*A. No,* never.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?
*A. County treasurer.*

## No. xi. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite,* be restrained from alienating &c. Is

the debtor liable to be holden to bail, &c?
*A. Only* by a court of chancery, and under very special and peculiar circumstances. As to bail, *yes*.

LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?
*A. No*, they must be proved in manner pointed out heretofore in respect of conveyances. (*See* answers under No. II. particularly 24 to 27, *inclusive.*)

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?
*A. They do*; and can only hold real estate, when authorized by a special act of the legislature.

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?
*A. As in England.*
106. May guardians be appointed by will: does the common law regulate &c?
*A.* Guardians may be appointed by *will*; and generally, the com. law regulates guardianship.

PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?
*A.* The law of *England*, is in force.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?
*A. They may*; land is never *sold* on a judgment against executors or administrators.

JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?
*A.* No estate can be holden in joint tenancy in lands &c. *unless* declared to pass by the grant, devise, or conveyance as such, and not as a tenancy in common; except in case of executors or trustees. (*See ante, descents*, No. 77.)

SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?
*A. It is*, and not changed.
111. Is a scroll &c. equivalent to wax &c?
*A. No*, never.

BASTARDS.

112. Are bastards subject to common law disabilities?
*A. They are.*
113. Are antinuptial children, legitimated by marriage of the parents?
*A. They are not.*

ALLUVION.

114. Does the common law in respect of alluvion prevail?
*A. It does.*

FISHERIES.

115. Is the owner of lands bor-

dering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

116. Is this so by statute, or usage?

*A. They are entitled* by *usage.*

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

*A.* The provisions of the two statutes are incorporated into one, and in force.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?

*A.* A similar statute exists in this state.

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?

*A. Yes,* similar provisions.

120. Is the English law of uses and trusts, in force?

*A. Yes.*

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?

*A.* The provisions of the common law prevail.

USURY. INTEREST.

122. What is the rate of interest?

*A. Seven* per cent. per annum.

123. What provisions against usury?

*A.* The securities are void, and the *excess* paid, may be recovered back.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* ————.

125. Is interest recoverable on book debt?

*A.* Interest is not recoverable on *open* accounts; on sales, at a *specified* credit, interest is allowed after the expiration of the time.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

*A.* They *are.*

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?

*A.* Demand and notice are required according to the English law merchant.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

*A. It is not.*

129. Is there any peculiar practice in your state, on this subject?

*A. None.*

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A.* 20 *Per cent.*

DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?

*A.* Yes, for *adultery* only. The parties must be *inhabitants.* The crime may have been committed out of the state. The court of chancery only, has cognizance of divorce.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?
*A. Yes.*

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A. Yes,* with some modification, in the exception of certain articles deemed indispensable.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A. It is.*

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?
*A.* They *are*; but assignees cannot sue in their own names; liability over, stands on the principles of the com. law.

136. Is the common law in respect of choses in action, adopted?
*A.* The *common law prevails.*

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?
*A.* They *are.*

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?
*A.* The court has power to issue *execution* to sheriffs of counties, against goods &c. or person: on *mortgages,* either strict foreclosure, or sale; and after sale, the writ of assistance.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata,* &c?
*A. See* answers, to *Nos.* 107, 8.

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?
*A.* There are; they are obtained by application to the commissioners of the land office; no proprietary lands.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitations?
*A.* Without any restriction or limitation.

# APPENDIX.

## RULES *and* ORDERS, in *Chancery*.

1806, *June 7.*

1. ORDERED, [*repealed, see rule 77.*]

2. *That* all process of subpœna to appear and answer shall be in the following form:

"The people of the state of New York, by the grace of God free and independent, to * * * * * * greeting. We command you, that you personally appear before our chancellor, in our court of chancery, on the———day of ———wheresoever the said court shall then be, to answer to a bill of complaint exhibited against you in our said court, by * * * * * and to do further and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty of two hundred and fifty dollars. Witness, * * * * * * chancellor of our said state, at the city of ——— ——— the ——— day of ——— in the ——— year of our independence.

Solr. Clerk."

3. That *the names of four defendants and no more, (husband and wife being considered as one person,) in the same cause may be inserted in each subpœna, and that* the service thereof may either be by the delivery of the subpœna or a copy thereof, showing the original at the time of such delivery to the defendant, or to his wife or servant, at his dwelling-house or usual place of abode; that such copy shall be inscribed "copy," and subscribed by the complainant, or his solicitor, with his name. [*Amended, see rule 78.*]

4. *That* such subpœna shall be served on or before the appearance day; and if the defendant resides in the city of New York, or in the city of Albany, and the subpœna is served four days before the appearance day, the appearance shall be entered four days exclusive of the day of service; but if the defendant does not reside in either of those cities, and the subpœna is served fourteen days before the appearance day, then the appearance to be entered within fourteen days exclusive of such service; and if an appearance is not entered as required, an attachment may be issued at any time after the expiration of the period allowed for such appearance.

5. *That* if the subpœna shall have been served personally on the defendant,

and he shall not cause his appearance to be entered within the time limited for that purpose, then the complainant may after such time shall have elapsed, upon filing an affidavit of such service, obtain an order that the defendant enter his appearance and file his answer in six weeks thereafter, or that the bill be taken pro confesso against him, which order shall, without notice thereof to the defendant, become absolute, and may be entered as of course at the expiration of the said six weeks.

6. *That* all attachments for contempt for not appearing, shall have at least fifteen days exclusive between the test and return (unless upon motion or petition the court shall order otherwise) and may be returnable as well in vacation as in term time. That in any case, in which the service of a subpœna shall have been otherwise than personal, after an attachment for not appearing shall have been issued to the county in which the defendant is an inhabitant, and returned non est, the complainant may, at his election, issue alias and pluries attachments, or proceed as in case of a defendant absent from the state, or concealing himself therein.

7. *That* whenever it shall appear by affidavit, that a defendant is absent from this state, or cannot upon diligent search and inquiry, (intermediate the test and return of a subpœna to appear and answer) be found therein, an order may be entered, requiring him to appear and answer the complainant's bill, if concealed within this state, in three months; if in any other of the United States, within four months; and if in foreign parts, within nine months after the date of such order: and a copy of such order having been published in the mode required by law, the complainant may, after the expiration of six weeks, subsequent to the term limited by such order, enter an order to take his bill pro confesso.

8. *That* if the affidavit proving the absence or concealment of the defendant, does not state some probable cause for inferring that he is within this state, or some part of the United States, he shall always within the intent of this rule, be deemed to be in foreign parts.

9. *That* if a defendant shall have been taken on attachment for not appearing, shall be brought into court in consequence thereof, and shall neglect or refuse to cause his appearance to be entered instanter, or his answer to be filed within such time as the court shall then appoint, he shall stand committed until the costs accrued in consequence of his contempt be paid; and the complainant's bill shall thereupon be taken pro confesso against him, as by default.

10. *That* when an attachment for not appearing shall be served, the defendant shall be retained in custody thereon, to answer the exigency of the writ, until the return day thereof, unless he shall, with one or more sufficient surety, give bond in the penal sum of three hundred dollars to the complainant, conditioned for his appearance on the return day of such attachment, according to the command of such attachment, on the return day thereof. That

if such attachment shall not be returned, the complainant may enter an order requiring the returning officer to bring in the body of the defendant, in fourteen days after the service of a copy thereof, or that he be amerced fifty dollars. That all the defendants in the same cause liable to attachment for contempt in the same county, shall be named in such attachment.

11. *That* the complainant may amend his bill at any time before answer, plea or demurrer filed, *of course*, and without payment of costs; but if the defendant's appearance is entered, and the defendant hath procured a copy of the bill, the complainant shall furnish the defendant with a certified copy of the amended bill gratis. [*Amended, see rule* 90.]

12. *That* the complainant shall have three weeks time after notice of the defendant's answer being filed, to except to the same, file a replication, or set down the cause for hearing on bill and answer, at the expiration of which time, if no proceedings have been had by the complainant, a decree for the dismissal of the bill may be entered at the next or any subsequent term, unless there be good cause shown to the contrary.

13. [*Repealed, see rule* 90.]

14. *That* the defendant shall have six weeks, exclusive from the day on which his appearance is required to be entered by the terms of the subpœna, and the time allowed from the service thereof by the 4th rule, to answer the complainant's bill.

15. *That* if the defendant puts in an insufficient answer, which is excepted to as insufficient, and the defendant submits to answer further, or the answer shall on reference be found insufficient, in either case the complainant may amend his bill of course, and without costs, and the defendant shall answer the amended bill and exceptions together; and when the defendant shall plead or demur, and the plea or demurrer shall be over-ruled, the complainant may, before the time for answering expires, amend his bill of course, and without costs; and the defendant shall answer the amended bill, with the exceptions to the plea, if it shall stand for an answer; with liberty to except and be excepted to, and the defendant shall submit to answer the exceptions, or the exceptions shall on a reference be allowed.

16. *That* all answers, whether taken with or without oath, or by consent of parties, shall be taken before any one of the masters of this court, or before commissioners, and that no answer be filed unless so taken, without special order for that purpose first had.

17. *That* in all cases, in which the defendant shall answer the complainant before the time expires for replying, the complainant may amend of course, until it expires; but if such amendment requires a new or farther answer, then it shall be on payment of costs to be taxed: but if a new or farther answer is not thereby rendered necessary, then the complainant shall only be bound to furnish the defendant with a copy of the bill as amended, gratis.

18. *That* if the defendant demurs to the bill for want of parties, or other defect which does not go to the equity of the whole bill, the complainant may amend at any time before the demurrer is set down for argument, or within fourteen days after receiving notice of the demurrer, *of course*, upon the payment of costs to be taxed, and in all cases where a defendant shall demur, which from the causes of demurrer at the time of amendment, shall not come within the former part of this rule, the complainant's right to amend and the terms on which it may be done, shall be in the discretion of the court, and may be ordered at any time before a decree allowing the demurrer.

19. *That* when a plea or demurrer shall be filed, it shall be the duty of the party pleading or demurring, within three weeks after filing the plea or demurrer, to set the same down for argument at the next term, or in default thereof, that an order may be entered that the same be over-ruled; and the complainant shall then be at liberty to proceed as though such plea or demurrer had not been filed; but that if a defendant shall plead a former decree, another suit depending for the same cause, or other matter of record in this court, the defendant shall, instead of setting the same down for argument, enter an order for a reference to a master to examine and report whether the plea be true; and shall procure the master's report thereupon by the next term, or the plea shall be considered as over-ruled, and the complainant be at liberty to proceed as though no such plea had been filed, unless cause be shown to the contrary.

20. *That* one rule to produce witnesses, and one rule to pass publication, shall be sufficient, each of which shall be a rule of three weeks; and neither of which shall be entered, unless on the application of the party to his clerk, who shall enter the rules.

21. *That* for the purpose of compelling the attendance of witnesses who reside in this state, a subpœna may issue under the seal of the court, with a blank for the names of the witnesses to be filled up by the party procuring the same, as occasion may require, requiring the witnesses to attend before the commissioners in the commission named, at such time and place as the commissioners shall appoint, for the purpose of giving evidence in the cause therein described; and a memorandum in writing subscribed by one or more of the commissioners, designating the time and place when the commissioners shall meet for that purpose, being left with the witness at the time the subpœna shall be served on him, shall be sufficient to compel the attendance of such witness at the time and place designated, in like manner as if the time and place of the meeting of such commissioners had been specially designated in such subpœna, or to incur a contempt if he does not attend accordingly; and when the subpœna is to compel the attendance of witnesses before the examiner, the day and place shall be described in the writ.

22. *That* a witness once examined, either before an examiner or commissioners, shall not be again examined, either to the same or different facts,

unless by the consent of the opposite party, or by order of the court on sufficient cause shown by affidavit or otherwise, according to circumstances.

23. *That* witnesses examined on direct and cross interrogatories, or either, shall be sworn generally to give their evidence on the interrogatories, to be from time to time exhibited to them by the examiner, so as to avoid the unnecessary repetition of oaths.

24. *That* a commission for the examination of witnesses within this state shall issue of course, and be made out by the clerk of the party procuring the same, upon his application for the purpose; that the party applying for such commission, shall give notice to the adverse party eight days exclusive before the issuing thereof, and shall at the same time nominate three commissioners at the least, and the party to whom notice is so given shall, if he intends to join in the commission, give notice to the adverse party four days exclusive, before the time when the commission may issue, of his intent to join in the commission; and if he shall agree to the commissioners nominated by the other party; he shall at the same time give notice thereof, and a commission shall issue to them accordingly; but if he shall not agree to the commissioners so nominated, he shall at the same time nominate three commissioners, and the names and addition of the commissioners so nominated by each party, shall be furnished to the clerk, who is to issue the commission, who shall in his discretion select one commissioner from each of the nominations of the parties, and shall in the presence of the parties, or their solicitors, (if they shall elect to attend for the purpose) put the names of all the other commissioners in separate slips of paper as near as may be alike, close them, so as to conceal the writing, and draw one therefrom, and the person named in the paper so drawn, shall be the third commissioner, and such clerk shall issue a commission to the persons so selected, and drawn as commissioners accordingly. That the three commissioners named in any such commission, or any two of them, shall be authorised to execute the same. That the said commissioners be allowed in the taxation of costs, five dollars for each day's attendance in executing such commission, including going and returning from the place where the commission is to be executed, computing a day for every twenty-five miles, and that no expenses beyond the said five dollars a day, be allowed them.

25. *That* the interrogatories as well direct as cross, which either party shall exhibit, together with such instructions as either party may choose to give the commissioners, relative to the execution of the commission, shall accompany the commission when sent to the commissioners, and the party who shall sue out the commission, shall have the carriage thereof, but if he shall neglect to proceed to the execution thereof, or unnecessarily delay the same, the other party may proceed thereon, and cause the same to be executed and returned.

26. [*Repealed, see rule* 68.]

27. *That* after publication has passed, and the depositions delivered, if either party wishes to examine to the competency or credit of any of the witnesses examined in the cause, he shall be at liberty to file articles with his clerk in court as of course; and shall furnish the adverse party with a copy thereof, and with notice of his intent to examine to the competency or credit of any witness before examined in the cause, specifying which; and shall thereupon be at liberty to sue out the commission to take the testimony, or examine before an examiner, as in other cases provided. That unless such notice and copy of the articles shall be given to the adverse party, within fourteen days after obtaining a copy of the depositions, the cause shall not be delayed on account of such examination.

28. *That* instead of showing witnesses prior to an examination, it shall be sufficient to give the adverse party two days notice, exclusive of the day of service, of the examination of such witness, describing his name, place of abode, and addition.

29. *That* the examiners, after taking the depositions to all the interrogatories to which the witnesses examined can depose, shall add one general clause indicating, that to the remainder of the interrogatories, the witness cannot depose, (where there are any so circumstanced) without specially enumerating all the interrogatories so as to swell the proceedings unnecessarily.

30. *That* when a matter is referred to a master to examine and report upon, he shall assign a day and place to hear the parties, not less than four days exclusive, and the party obtaining the reference shall serve the adverse party at least three days exclusive before the day assigned, with a summons requiring his attendance at such time and place, and make the proof thereof to the master, and thereupon if the party summoned shall not appear to show cause to the contrary, the master may proceed exparte, and if the party serving such summons, shall not appear at the time and place, or show cause why he does not, the master may either proceed exparte, or the party obtaining the summons, and not appearing, shall lose the benefit of the reference at the election of the other party.

31. *That* every cause shall be deemed at issue on filing a replication. That notice of bringing causes to a hearing, including the bringing on the argument of a plea or demurrer, and the argument on exceptions to a master's report, shall be served by the solicitor of the party who sets down the cause or brings on the argument, on the solicitor of the adverse party; if the adverse solicitor resides in the county where the court is to be held at the time of the argument, the notice shall be served eight days exclusive, and if in any other county, fourteen days exclusive, before the day of hearing or argument. That all causes including pleas and demurrers, shall be set down for hearing for the first day of the term, if there be time for that purpose, or for as early a day in term as circumstances will permit.

32. *That* the solicitor for the party setting down the cause for hearing, shall furnish the register, or assistant register, at the time of setting down, such cause, with a note of the time the issue is joined, which shall be entered on the calendar; in default whereof, the cause set down without such note, shall always be deemed the junior cause, and lose its priority.

33. *That* if the complainant neglect to set down a cause, and bring the same to a hearing at the first term after the same is in readiness to be set down, and an affidavit of such default shall be made and filed in the register's or assistant register's office; an order may be entered that the defendant be at liberty to bring on the same at any time thereafter, and if the defendant shall set down the cause as aforesaid, and the complainant shall not appear to argue the same, the bill shall be dismissed as of course; but if the complainant shall appear, unless the complainant has also set down the cause, the defendant shall have a right to open and close the argument. [*Amended, see rule* 98.]

34. [*Repealed, see rule* 83.]

35. *That* every final decree of this court shall be made up, and engrossed by the register or assistant register, to be signed by the chancellor, at any time after thirty days of the pronouncing the same, if required by either of the parties, unless the same shall be appealed from, or a re-hearing be petitioned for before it shall be made up, and that no process be issued, or other proceedings had on any final decree, until the same shall have been enrolled.

36. *That* an appeal regularly entered before a decree is perfected, shall prevent the issuing of process thereon, until the appeal be heard and determined.

37. *That* a party appealing from any decree or order of this court, or any part thereof, shall state the same in writing to the court, and deliver the same to the register or assistant register of the court, within the time prescribed by law; distinguishing whether the appeal is from the whole or part thereof, and if from a part, briefly describing the part appealed from. That such writing be signed at least by one counsel, if a solicitor or counsel has been employed for the party appealing, and that a copy thereof be served on the solicitor of the adverse party, if he has prosecuted or defended by a solicitor; or if he has not, then on his clerk in court, within eight days after exhibiting the same in court; and that the party appealing *deposit one hundred dollars* with the register or assistant register, at the time of making such appeal, to answer the *costs of the opposite party*, if the appellant shall not prosecute the same to effect: in default of serving a copy of such writing and making such deposit, such appeal shall be deemed to have been waived, and proceedings shall thereupon be had, as if such appeal had not been made. [*See rule* 79, *also* 87.]

38. *That* whenever an appeal shall have been filed, the register or assist-

ant register shall, with all convenient speed, cause the necessary transcripts to be made, at the expense of the appellant, (who shall be liable to pay for the same in the first instance) and shall transmit the same to the clerk of the court for the trial of impeachments and correction of errors.

39. *That* every petition for a re-hearing, shall contain the special matter or cause on which such re-hearing is applied for; be signed by two counsel, and the facts therein stated; if not appearing from the proceedings in this court, shall be verified by an oath of the party, or some other person; and a petition for a re-hearing shall never be deemed too late, until the decree is actually engrossed and signed by the chancellor, and filed. [*See rule* 70.]

40. *That* a copy of every petition for a re-hearing, and every other petition, and of every certificate or affidavit relating to any matter pending in court, or on which a final order is sought, shall be served on the adverse party, with a notice of presenting the same; and the motion to be founded thereon at least four days before the day of presenting the petition, or making the motion thereon; otherwise the party presenting the petition, affidavit or certificate, shall only be entitled to an order nisi.

41. *That* no injunction other than to stay proceedings at law shall hereafter issue, but on motion or petition to the chancellor for that purpose. That no injunction to stay proceedings at law, or writ of ne exeat shall hereafter issue, but on like motion or petition; but that in the absence of the chancellor, such master permanently residing in the city of New York, and such master permanently residing in the city of Albany, and such master permanently residing in or near the village of Utica, in the county of Oneida, as the chancellor shall for that purpose by order designate; or if such designation shall not have been made, or the master at any of the said places so designated shall die, be incapable by reason of sickness or other contingency of acting, or absent from the city or place in which he resides; then the senior master permanently residing in such city, and the master residing in or nearest to the village of Utica, in the county of Oneida, shall respectively exercise the power of certifying that writs of injunction to stay proceedings at law, or writs of ne exeat ought to issue; and ascertaining the sum in which the party on such ne exeat ought to be held to bail; *and that unless the party obtaining any such writ, shall within six weeks after the date of the master's certificate in consequence of which such writ issued, obtain an order for continuing the same from the chancellor; such writ shall be dissolved or discharged of course, without further order.* [*Amended, see rule* 75.]

42. *That* an injunction shall not issue to stay proceedings at law, in any personal action in which a verdict shall have been given, unless a sum of money equal to the amount for which the verdict was given with costs of suit, shall be first deposited by the party praying such injunction; and that no injunction shall issue to stay proceedings at law, in any mixed action after verdict, unless the party praying the same shall deposit such sum of money as

shall be at least equal to the costs of the plaintiff accrued in such suit. [*See rule* 87.]

43. *That* whenever a cause shall be at issue in any court of common law, no injunction shall issue to stay a trial at law, unless such injunction shall have been actually taken out thirty days previous to the sitting of the court, in the county in which the trial is to be had; unless special cause shall be shown to the chancellor, or unless it shall appear to the master certifying that an injunction is proper, that the cause for issuing such injunction has arisen within thirty days; and that the bill was filed, and the injunction applied for, within a reasonable time after the complainant was apprised of the circumstances on which his application is founded. And in such case an injunction shall not issue, unless the person applying for it shall deposit one hundred dollars, to be taken out of the court in the whole or in part by the defendant in equity, as the court shall order on motion, as a compensation for the charge and expense of preparing for the trial at law, if it shall appear that such party has been improperly delayed.

44. *That* for the purpose of having guardians appointed for infants, a petition may be presented by such infants, if above the age of fourteen years; or by some person on their behalf if under that age, praying such appointment. That previous to the presenting the same to the chancellor, the persons petitioning may apply to any of the masters of this court, residing in any county of this state, who shall by inspection or otherwise ascertain the age of such infant, and if such infant is of the age of fourteen years or above, shall examine such infant as to his nomination of a proper person for guardian—shall ascertain the competency of the persons proposed as guardians, the amount of the property to which the infant is entitled, distinguishing between the real and personal estate—the annual value of such real estate, the amount of the surety to be given for the faithful performance of his trust as guardian, and the names, descriptions, and competency of the sureties offered. That the master making such inquiries, shall annex a report containing all those particulars to the petition, without any previous reference for that purpose; to the end, that thereupon an order may be made upon producing such petition and report to the chancellor, for the appointment of such guardian.

45. *That* all guardians, receivers, and committees of lunaticks or idiots, who have been or may be appointed by this court, if the clear annual value of the estate committed to their management exceeds the sum of three hundred dollars, shall once in every two years, and if of a less value, once in every three years, in the terms of *March* or September, exhibit to the court, and file with the register or assistant register, an account of their guardianships, or other trusts; and of the balance of money that may then be in their hands respectively; that this court may take proper order for the disposition and improvement thereof. That any such guardians, receivers, or committee may, if disposed so to do, render such account once in every year, during either of the said terms; and that the register or assistant register, who shall

enter their appointment, shall upon the appointment of any guardians, receivers, or committees, furnish them with a certified copy of this rule. [*Amended, see rule* 80.]

46. *That* every solicitor residing in the city of New York, shall have an agent residing in the city of Albany, and every solicitor residing in the city of Albany, shall have an agent residing in the city of New York; and all solicitors residing elsewhere, shall have two agents; the one residing in the city of New York, and the other residing in the city of Albany. That no person shall be an agent, unless he shall be a clerk or solicitor of this court. That if a clerk is appointed agent, he shall be entitled to receive fees for all duties performed by him, for which an allowance is provided for him by law as clerk; and every appointment of an agent shall be in writing signed by the solicitor, and filed in the office of the register or assistant register, wherever the agent shall reside; and the register and assistant register shall have the names of the respective agents, and of the respective solicitors appointing them; and the latter in alphabetical order, entered in a book to be kept in their offices for the purpose. That except services during vacation, in suits where the solicitors for the respective opposite parties live in the same county, services on the agent shall be as valid in all cases, as if made on the solicitor himself; and if there be no agent, the service of the notice may then be on the clerk in court, of the party to whom such notice is intended to be given. That where the service is on the agent or clerk, it shall be double the time of service which would be requisite, if the service was on the solicitor himself; and that all services on agents or clerks shall, during a term, be in the city where the term shall be held. [*Amended, see rule* 69.]

47. *That* all orders requiring a master to execute particular duties, or of reference, if without specification of a particular master, shall be deemed to apply only to the masters permanently residing in the cities of New York and Albany; and that an order or reference to a master elsewhere, shall always be on suggestion, or on showing special cause for that purpose to the chancellor. *That the masters shall not be allowed any fee, in taxation or otherwise, for copies of their reports furnished the parties;* nor shall any such copy furnished by a master, be read as a certified copy in any proceedings to be had in the cause. [*Amended, see rule* 94.]

48. *That* whenever sales shall be made by a master by order of the court, if the amount of such sale shall not exceed five thousand dollars, the master shall be entitled to one per cent. as a commission on such sale; if it exceeds five thousand dollars, and does not exceed fifteen thousand dollars, then he shall be entitled to one half per cent. for such excess, and for a larger sum, his commission shall be one quarter per cent.

49. [*Repealed, see rule* 81.]

50. [*Repealed, see rule* 82.]

51, [*Repealed, see rule* 84.]

52. *That* the Monday in every week during the vacations be assigned for the hearing of motions and petitions, if the chancellor is either in the city of New York or the city of Albany. That no motions or petitions be made or presented on any other day, excepting for orders for the issuing writs of injunction, or ne exeat, or unless there should be no time to finish the business offered on Monday; in which case it will be continued from day to day till the business is finished.

53. *That* all notices for special motions be served at least *four* days exclusive of the day of service, before making the same. [*Amended, see rule* 76.]

54. *That* no bill shall be filed for a complainant not residing in this state, before security for costs by a sufficient freeholder of the state, by a bond to the defendant in the usual form, shall be given and filed in the office of the register or assistant register, unless a solicitor prosecutes the same; in which case the solicitor shall be deemed to have become security for costs if such bond shall not have been filed; and where at any time pending the suit the complainant shall remove out of the state, and the solicitor shall thereafter proceed in the cause before such security shall be given, he shall in such cases also be deemed to have become security for costs; but he shall not in any case be liable for an amount exceeding one hundred dollars, or where, if there shall be a plurality of complainants, one of them shall be resident in this state.

55. *That* no person other than an officer of this court shall be permitted to prosecute or defend in proper person, unless they shall first obtain an order for the purpose. That when a suit is so prosecuted, all notices and other papers may be served or delivered by the opposite party, at the office of the clerk of the party who prosecutes or defends in person, or on the party so prosecuting or defending, at the election of the party serving or delivering the same.

56. *That* all deposits and payments of money in this court shall be made either with the register or assistant register, or in the bank in which such deposits are required by law to be made; and by procuring a credit to be entered in the register's or assistant register's bank book for the amount thereof; and until such money shall have been so paid and such credit entered, such payment or deposit shall not be considered as valid, so as to stay or affect any proceedings in this court.

57. *That* when exceptions are filed to the defendant's answer, they shall be filed with the complainant's clerk; and when filed to a master's report, they shall be filed with the register or assistant register; and in every case the exceptions shall briefly and clearly specify the matter excepted to, and the cause thereof; and the exceptions shall be invalid as to any matter not so specified, and in every case, the party filing exceptions shall forthwith give notice thereof to the adverse solicitor, and when the exceptions are to the defendant's answer, the party excepting shall enter an order to refer the same

to a master, unless he receives notice from the adverse party, within eight days of the time of his submitting to answer the exceptions: and if an injunction or ne exeat has issued on the prayer of the complainant, and he excepts to the defendant's answer for insufficiency, the complainant shall procure the master's report in fourteen days, or show cause why he has not done so, or the exceptions filed shall not prevent the dissolution of the injunction or ne exeat.

58. *That* all summonses to attend a master, orders to confirm reports, or to show cause, or orders nisi, if made in any cause pending and undetermined, shall be served on the solicitor of the party, if a solicitor be concerned for him; but if no solicitor is concerned, the service may be on his clerk in court: but orders to confirm reports, where the parties have been notified to attend a master respecting the report, or where the defendants have not appeared, need not be served, but shall become absolute of course unless cause be shown to the contrary.

59. *That* every order for an attachment for not appearing—every order requiring a defendant to appear to a complainant's bill on proof of his absence from the state, or concealment therein—every order for a reference to a master of exceptions to a bill or answer—every order that the defendant enter his appearance and file his answer in six weeks—and every order to which a party would, according to the practice of the court, be entitled of course, without showing special cause, shall be denominated a common order; and every other order shall be denominated a special order. That all common orders, and all orders by consent of parties, such consent being signed by the parties if prosecuting or defending in person, or by the solicitor or counsel of the parties, and filed at the time of entering the same, (except in cases of adultery, in which no orders shall be entered as of course) may be entered in term or vacation with the register or assistant register, at his office, in a book to be by him provided for the purpose, at the instance of the party, if he prosecutes in person, or of his solicitor at the peril of the party taking such order, and the day on which it shall be so entered shall be noted in such book, and that all other motions shall be made in open court, as heretofore has been usual. [*See rule* 84.]

60. *That* in every bill of costs offered for taxation, the several items of the fees of the officers of this court, composing part of such bill, shall be particularly detailed and not charged in gross: in default whereof, such fees shall not be admitted as part of the costs to be taxed.

61. [*Repealed, see rule* 85.]

62. *That* in case of the death, removal from office, or resignation of any examiner, in future the papers relating to his office be delivered to the register or assistant register, by the persons in whose custody they shall remain at the time the event terminating the office occurs, those excepted on which a lien may exist for the fees of such examiner.

63. [*Repealed, see rule* 86.]

64. *That* all bills, answers, and other proceedings, and copies thereof, shall be fairly and legibly written; in default whereof, the register, assistant register and clerks, shall not file such as shall be offered to them for that purpose.

65. *That* all attachments, writs, and other process, (commissions for the examination of witnesses excepted) and all proceedings under the same, be returned to and filed in the office of the register or assistant register of this court.

66. *That* these rules shall operate from and after the first day of September term next, and not before.

67. *That* all former rules entered for the government of the practice of this court, (those regulating the form of process excepted) be vacated.

1808, *July* 15.

68. *Whereas* the 26th of the printed rules of this court is found inconvenient; wherefore the same is hereby nullified, and instead thereof it is ordered: That copies of all interrogatories to be administered to witnesses by either party, shall be furnished to the opposite party before examinations thereon; that is to say, copies of all direct interrogatories, shall be furnished six days before forwarding the commission to commissioners, or before the day assigned for the examination of the witnesses by an examiner; and copies of all cross interrogatories shall be furnished two days before forwarding the commission, or the day assigned for the examination by an examiner, as the case may be.

1809, *April* 12.

69. *Ordered*, That the service of all notices in the cities of New York or Albany, on agents of solicitors residing more than sixty miles westward or northward of the city of Albany, shall be made twenty days instead of eight days, prescribed by the 46th of the general rules of this court. (1)

1809, *December* 18.

70. *Ordered*, That in all cases submitted by the consent of parties without argument, a re-hearing shall be granted of course, if either party is dissatisfied with the decree or order made in such case, and shall apply therefor before the end of the term succeeding that in which such decree or order shall be made.

1811, *October* 26.

71. *Ordered*, That in future whenever any money is ordered to be paid by

(1) *Eight* days notice, does not appear in terms, to be prescribed in Rule 46.

the register or assistant register of this court for costs, the duplicate receipt of the solicitor receiving the same, endorsed on a copy of the taxed bill of costs, shall, with the receipt entered in the ordinary receipt book of such register or assistant register, be the exclusive evidence of such payment in passing the account of such register or assistant register.

1812, *January* 28.

72. *Ordered*, That whenever a master in chancery shall sell mortgaged premises in pursuance of a decree of this court, by virtue of a mortgage; it shall be the duty of the complainant, or of such master, before he executes a deed to the purchaser, to file such mortgage in the office of the register or assistant register of this court, unless the mortgagee or holder of such mortgage, shall prefer to have it recorded at length in the county or counties where the land so sold shall be situated, in which case it shall be the duty of the mortgagee, or holder of such mortgage, to cause the same to be so recorded, before the master selling the mortgaged premises shall give a deed to the purchaser of such mortgaged premises, the expense of which filing or recording and entry thereof, shall be allowed in the taxation of costs; and the register or assistant register, shall make an entry in the minutes of the filing of every such mortgage, and the time thereof: this order however not to extend to proceedings on a mortgage, appearing by the pleadings or proofs in the suit thereon commenced, to have been lost or destroyed.

1813, *February* 22.

73. *Ordered*, That all orders on or relating to petitions, refer to such petitions by the names or descriptions of the petitioners, and the dates of such petitions (if the same be dated) only, without reciting or setting forth the substance of the subject matters of such petitions.

1814, *May* 18.

74. *Ordered*, That whenever hereafter a master shall advertise mortgaged premises for sale under an order of this court, and the defendant shall pay the amount due before sale, the master shall be allowed half commissions on the amount reported due. (1)

1814, *June* 24.

75. *Ordered*, That so much of the 41st rule of this court, as requires the party obtaining a master's certificate for an injunction to apply within six weeks thereafter for the chancellor's order to continue it, be repealed; but that the defendant may, as well before as after answer, on due notice, and upon the matter of the bill only, move the chancellor for a dissolution of the injunction.

(1) The preceding *rules* and *orders*, were in the time of Mr. *Chan. Lansing*; those which follow, in the time of Mr. *Chan. Kent*.

1815, *January* 24.

76. *Ordered*, That after the first day of March next, all notices for special motions, served on solicitors residing above sixty miles from the place where the motion is to be made; shall be served at least eight days before making the same, exclusive of the day of service, instead of four days as heretofore prescribed by the 53d rule of the 7th of June, 1806.

1815, *June* 13.

77. *Whereas* the chancellor is authorised to devise an additional seal for the court of chancery, to be deposited in some convenient place in the *Middle District*; It is therefore ordered, that *Alexander Forbus* of *Poughkeepsie*, in *Dutchess* county, attorney at law, be and he is hereby appointed a clerk of this court; and that he forthwith devise and submit to the chancellor an additional seal for the said court, containing some inscription or initials designating it as a seal for the *Middle District*, and resembling in other respects the seals now in use; and that the said seal, when approved of by the chancellor, be deposited at *Poughkeepsie* aforesaid, with the said *Alexander Forbus*. And it is further *ordered*, that the seal heretofore deposited at *Utica* be kept by *Richard R. Lansing*, one of the clerks of this court. And whereas the deposit of papers with different clerks residing in the same place is found to be of no publick utility, and tends to inconvenience in the unnecessary separation of papers; It is therefore *ordered*, that all process be issued, and all pleadings and proceedings whatsoever, which are to be filed or entered with a clerk, be filed or entered with a clerk having the custody of a seal; and that all records, books, and papers which relate to business in this court, and which are or may be in the custody or care of the clerks in the cities of *New York* and *Albany*, who have not the custody of the seal, shall, on or before the first day of July next, be delivered over to the clerks in those cities respectively with whom a seal is deposited; and that *Francis A. Bloodgood*, one of the clerks at *Utica*, within the same time deliver over the seal, together with the records, books, and papers in his office relative to the business in this court, to the said *Richard R. Lansing*; and that the functions of the clerks not having seals shall thereafter cease. And it is hereby especially enjoined on the clerks of this court, to keep their offices open for business in the usual business hours, and to see that no process pass a seal without being duly warranted; and to furnish with promptitude to the party applying, copies of pleadings and other papers, written in a fair and legible hand; and the 1st rule of the 7th of June, 1806, and so much of any other rule as is repugnant hereto, is repealed.

78. *That* so much of the 3d rule of 7th of June, 1806, as limits the number of names of the defendants in the same cause to be inserted in each subpœna, be repealed.

79. *That* the deposit of one hundred dollars under the 37th rule, is hereby declared to be subject, prior to any other lien, to the charges of the register or assistant register, for making out the necessary transcripts on appeal.

80. *That* the term of January be substituted for the term of March, mentioned in the 45th rule.

81. *That* each of the clerks of this court shall provide or continue to keep a folio register, well bound and lettered, and therein shall enter the title of all causes in court, and the proceedings and entries therein so far as the same relate to their office, which book shall be considered as part of the property of their respective offices, and go with the other papers and documents relating thereto; and the 49th rule of 7th June, 1806, is repealed.

82. *That* the clerks and examiners, after the final hearing of a cause, shall deposit with the register or assistant register, with whom the decree may be entered, all the original pleadings, interrogatories, depositions, exhibits, and other proceedings filed or lodged with, or taken before them in the same cause, making a minute in their register of the delivery of such papers; and that it shall be the duty of the register or assistant register, with whom the decree may be entered, to require the same to be delivered to him as soon as may be, after the decree shall have been pronounced. That the register or assistant register with whom a decree final shall be entered, shall cause the same to be made up in proper form and engrossed, together with all decretal orders, reports, and other proceedings in the cause, (and copies whereof the register and assistant register shall mutually transmit to each other when necessary for that purpose) and shall make out a brief and connected history of such proceedings, which having been signed by the chancellor, and countersigned by the register or assistant register, and annexed to the bill, answer, and other proceedings in the cause, shall constitute the enrolment of such decree; and the 50th rule of 7th June, 1806, is repealed.

83. *Whereas* the practice of having a case furnished by each party, with his own abbreviation and view of the testimony, leads to great expense and some perplexity, without any adequate assistance therefrom; It is therefore *ordered*, that unless the parties agree upon a case to be signed by them respectively, and containing with all requisite brevity, a statement of the pleadings and proofs; a case containing an abbreviation of the pleadings and no more, shall be furnished by the party who sets down the cause for hearing, and shall be delivered to the chancellor when the cause is brought to a hearing, each party at the same time furnishing the points on which he may think proper to rely. And if a cause be submitted without argument, upon the points merely, or upon written arguments and no case be agreed on, it shall be the duty of the party who would have been entitled to set down the cause for hearing to furnish the case, and in the taxation of costs no allowance shall be made for any case, except for such as shall be agreed on or furnished as aforesaid; and the 34th rule of 7th June, 1806, is repealed.

84. *That* in cases of adultery, common orders, which in other cases would be orders of course, may be entered of course in this action; provided, however, that no order as by consent, or for a reference, or feigned issue, or on the coming in of a report or verdict, shall be deemed an order of course. And

on the coming in of the master's report or the verdict in cases of adultery, the cause shall be regularly set down for hearing at term, preparatory to a final decree. And if an issue shall have been awarded to satisfy this court whether such adultery has been committed, and the verdict on such issue affirms the adultery, the complainant shall not be entitled to an order on the return of the postea, unless the judge before whom such issue shall have been tried, shall certify that the verdict was supported by proof without, or in addition to the confessions of the party charged; and the 51st rule of 7th June, 1806, and so much of the 59th rule as is repugnant hereto, are repealed.

85. *That* no person be admitted to practice as a solicitor in this court, until three years after he shall have been admitted to practice as an attorney of the supreme court of this state; or unless he shall have served a clerkship of at least three years with a practising solicitor of this court, and shall at the time of commencing such clerkship have filed with the register or assistant register, a certificate thereof subscribed by the solicitor. And that no person be admitted to practice as a counsellor in this court, until two years after he shall have been admitted to practice as a solicitor, or unless he shall be a counsellor of the supreme court of at least two years standing; and that every person to be admitted solicitor or counsellor shall, (unless it be otherwise specially ordered) be previously examined before the chancellor, and if found competent, he shall be admitted, and not otherwise; and all former rules on this subject are repealed.

86. *That* the stated terms of this court shall hereafter be held on the second monday of June, and last monday of September, at the city of New York; and on the third monday in January, and second monday in November, at the city of Albany.

87. *That* the register and assistant register be allowed, for moneys paid out of court in cases not provided for by the fee bill of April 9th, 1813; for every sum not exceeding two hundred dollars, one per cent. and for all beyond that sum one-quarter per cent. provided always, that this rule shall not be deemed to apply to money deposited under the 37th and 42d rules of 7th June, 1806. *And it is further* ordered, *that the rules of 12th June and 17th December, 1812, be repealed.*

88. *That* for the purpose of facilitating the appointment of guardians, and other proceedings in behalf of infants, in the special case of an application to the chancellor for the sale of their lands, under the statute of the 24th March, 1815; the party acting in behalf of such infants may, previous to presenting a petition to the chancellor, apply to a master of this court residing in any county of this state, who shall examine into the truth of the facts on which the application is grounded, by ascertaining upon affidavit or other proof the age of the infants, the amount or value of their personal estate, the situation, quantity, and value of their real estate, and the extent of the infants' interest therein; the facts and reasons rendering it necessary or adviseable to sell the real estate or part thereof; the competency of the person or persons proposed as

guardians; the names, descriptions, and competency of the sureties to be given by such guardians for the faithful performance of their trust; that the master making such inquiries shall, without any previous reference for that purpose, annex a report to the petition containing all those particulars, with his opinion thereon. That if upon the coming in of the petition and report, a sale of the infants' estate, in whole or in part, shall by the chancellor be deemed proper, the order to be entered thereupon shall, unless otherwise specially directed, be to the following effect.

"*Ordered*, That the said A. B. be, and he is hereby appointed guardian to the said infants, for the purposes in the petition mentioned, upon his executing a bond together with * * * * * as surety to the said infants, in the penal sum of ———— conditioned, *for the faithful and just performance by the said A. B. of his trust, as guardian to the said infants under the act, entitled, 'An act in addition to the act concerning infants,' passed March 24th, 1815, and for the observance of such orders as the chancellor shall make in the premises in relation to such trust*; and upon his filing such bond with the register or assistant register of this court, after the same shall have been approved of as to its form and execution, by one of the masters of this court, to be signified by his approbation endorsed thereon. *And it is further ordered*, that upon the bond being executed and filed as aforesaid, the guardian hereby appointed may sell all and singular the right and title of the said infants to the lands, &c. (here describe them, or refer to the petition or report describing them) and such sale may be publick or private as the guardian shall deem most advantageous for the infant, and not below what shall be deemed a fair and reasonable price, and upon such terms as to credit and security, as he shall deem safe and best for the interest of the infant; and that before any deeds are executed, the terms of sale shall be reported to the chancellor by the guardian in writing and upon his oath, to be taken before a master or commissioner, to the end that the same may be passed upon by the chancellor before the sale be confirmed, and that he may make such order as he shall deem fit, touching the investment and disposition of the proceeds; and the party shall, at the same time, produce to the chancellor a certificate of the register or assistant register, of having filed the said bond. (If there be a widow living, then add) and if the widow entitled to dower shall be willing to join in the sale, and release her right of dower, she will be entitled, at her election, either to the payment of such sum in gross, arising from the sale, as the chancellor shall judge reasonable, in lieu of dower, or to the annual interest during her life, of one-third part of the sum for which the lands in which she had a right of dower were sold."

89. *That* orders and decrees made in term time be entered with the register or assistant register, where the court is sitting; but orders and decrees made in vacation may, unless otherwise specially directed, be entered with either the register or assistant register, as the convenience of the party shall dictate; but the caption that may precede the entry or copy of any order or decree, shall always state truly the place where the court was held when the same was made.

90. *That* no amendment be allowed, as of course, under the 11th rule of 7th June, 1806, to a bill which has been sworn to by the party; and the 13th rule of 7th June, 1806, is hereby repealed.

91. *That* on bills to procure a foreclosure, or satisfaction of any mortgage, if the same shall have been taken *pro confesso*, according to the rules and practice of the court, the complainant may thereupon, at any time enter as of course, a rule for a reference to a master residing in any county of this state, to compute the amount due on the same; but every such cause shall be regularly set down for hearing at term upon the report, before a final decree, and shall have preference to other causes on the calendar. And in order to guard against collusion and oppression, it shall be incumbent on the complainant, on every such hearing, to show by affidavit or otherwise to the satisfaction of the court, the regularity of the proceeding to take the bill *pro confesso*.

92 *That* in every order or decree for the sale of mortgaged premises, the description and particular boundaries of the property to be sold, so far at least as the same can be ascertained from the mortgage, shall be inserted in such order or decree.

1816, *June* 20.

93. *Ordered*, That whenever a defendant shall cause his appearance to be entered, but shall not cause his answer to be filed in due time, an application may thereupon be made to the chancellor (without previous notice) by petition, stating the circumstances, for an order that the defendant answer the complainant's bill in such time, after service of a copy of the order for that purpose, as the chancellor shall direct, or in default thereof, that the bill be taken *pro confesso*; and if the defendant shall not answer within the time limited by such order, a rule for taking the bill *pro confesso* may be entered as of course, on filing an affidavit of the service of a copy of the said rule.

1816, *November* 1.

94. *Ordered*, That so much of the 47th rule as refers to costs for copies of the masters' reports be repealed, and in lieu thereof, that the masters shall be allowed fees for copies of the draft of their reports furnished to the parties in those cases in which, by the practice of this court, the master ought to deliver a draft of his report before he signs it, that the parties may take objections; *and that where a master shall take an account of an estate, or an administration thereof, or an account between parties in trade, or other account under a decree or order, and not coming within any specifick provision in the fee bill, or when extra services shall be rendered in the foregoing cases of taking and stating accounts; the taxing masters may make such farther allowance as under the circumstances may be just and reasonable, but subject to the chancellor's revisal at the instance of either party in the cause.* [*Amended, see rule* 97.]

1817, *October* 15.

95. *In* order to obviate the inconveniences arising from the irregular manner in which copies of pleadings, depositions, reports, and other papers, are at present made out, *It is Ordered*, That in future the register, assistant register, clerks, masters and examiners of this court shall, in the copies of all pleadings, depositions, reports, decrees, and other papers or pleadings filed or remaining of record in this court, which they shall make out and deliver to the parties, or their solicitors, to be used in this court, and in all transcripts of the same to be transmitted to or used in the court for the trial of impeachments and correction of errors, distinctly mark and set down in the margin thereof, the number of the page in the *original* pleading, deposition, report, or other paper, so that all the office copies made out by the several officers of this court may, in this respect, agree with each other.

1817, *October* 16.

96. *Ordered*, That the allowance settled by the chancellor as a compensation for guardians, executors and administrators, in the settlement of their accounts under the act of the legislature for receiving and paying money, shall be five per cent. on all sums not exceeding one thousand dollars, for receiving and paying out the same; two and a half per cent. on any excess between one and five thousand dollars, and one per cent. for all above five thousand dollars.

1818, *June* 17.

97. *Ordered*, That so much of the 94th rule, of the 1st November, 1816, as authorises the taxing master to make allowances beyond the specified provisions of the fee bill to masters, for extra services, without any previous directions in the case by the chancellor, be repealed.

1818, *July* 2.

98. *In* addition to the 33d printed rule, *It is Ordered*, That when the complainant shall set down the cause for hearing at the first, or any term after the same is in readiness to be set down, but shall not bring the same to a hearing at such term, nor show any good cause to the court at the time for not doing so, it shall be considered a default in the complainant, so as to authorise the defendant, on making and filing an affidavit thereof, to enter an order for leave to set down the cause in the same manner, or to the like effect, as though the complainant had omitted to set down the cause at the first term after it was in readiness.

1818, *July* 2.

99. *Ordered*, That whenever a party shall set down a cause for hearing, and give notice thereof, and shall neglect to bring the same to a hearing at the

term in which it shall so be set down, or show good cause to the contrary to the satisfaction of the court, the opposite party shall be entitled to costs for attendance on the court upon such notice, to be taxed.

100. *The following note of a case of practice, though not formally reduced to the shape of a Rule, is furnished by the Chancellor, by way of Addenda to the Rules.*

*July* 29th, 1818.—The master or commissioner taking the oath of a complainant to a bill, or of a defendant to an answer or plea, is required to state in the *Jurat* not merely that the party was sworn, but the substance of the oath which was administered: and which *Jurat*, in case of an injunction bill, will be to the following effect:

"The complainant was, on the ——— day of ———, sworn before me, that the matters of fact contained in the bill, as far as concerned his own act and deed, were true to his knowledge, and that those which related to the act and deed of any other person or persons, he believed to be true."

A. B. master in chancery.

Or commissioner appointed to take affidavits to be read in chancery.

Or commissioner appointed under the act of 24th March, 1818, to take affidavits, &c.

And which *Jurat*, in the case of a plea or answer, will be to the following effect:

"The defendant was, on the ——— day of ——— sworn before me, that what was contained in this his answer, as far as concerned his own act and deed, was true of his own knowledge, and that what related to the act and deed of any other person or persons, he believed to be true."

And to be subscribed by the officer, with his title as aforesaid.

Every bill, plea and answer which is sworn to, must be subscribed by the party who swears to it; and the officer, before he administers the oath, ought to ask the party whether he has read, or heard read, and understood the bill, plea or answer, as the case may be; and until he can answer in the affirmative, the oath ought not to be administered.

## PRECEDENTS OF EXECUTIONS IN CHANCERY, approved by the CHANCELLOR.

### [A]

1. *Writ of assistance.*

The people of the state of New York to the sheriff of the city and county of New York, greeting. Whereas by a certain decree or decretal order in our court of chancery, in a certain cause there depending between * * * * * * * * * * complainants, and * * * * * * * * * * * * * * * * * * * * defendants, made and entered at a court of chancery held for the state of New York, at the city hall of the city of New York, on the third day of October, in the year of our Lord one thousand eight hundred and fourteen, it was amongst other things therein contained, ordered, adjudged, and decreed by the said court, that the said complainants, ——— should be forthwith let into the possession of the premises mentioned and described in the deed of conveyance from the said defendant, ——— to the said defendants ——— bearing date the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and five, mentioned and set forth in the pleadings and proofs in the said cause, and into the perception of the rents and profits thereof in arrear and unpaid, and thereafter to accrue and become payable; or that the said (certain trustees named) should be immediately let into the possession thereof, as trustees upon the trusts and to the uses in the said deed expressed and declared of and concerning the same. And that in case the said trustees, or the survivor of them, should take possession of the said premises, they or the survivor of them should receive and take the rents and profits thereof in arrear and unpaid, and which should thereafter accrue and become payable in trust for, and pay over the same from time to time, to the said complainants, or they the said trustees and the survivor of them, should permit the said complainants to take the said rents and profits. And whereas the said trustees have not been let into nor taken possession of the said premises, or of any part thereof, according to the tenour of the said decree. And whereas the said premises are situated in the first ward of the city of New York; and there are upon the same premises a messuage or dwelling house, fronting to Greenwich street as aforesaid, in the tenure and occupation of * * * * * * and a ware house, or building, in the rear of the said dwelling house, and fronting on Washington street aforesaid, in the possession of the said defendant. And whereas by an order of the said court of chancery, in the same before mentioned cause, bearing date the twenty third day of January, in the year of our Lord one thousand eight hundred and fifteen, it was ordered by the said court, that our writ of assistance should issue to you the said sheriff, out of our said court, to put the said complainants in the possession of the said messuage or dwelling house and ware house, or building and premises; and them the said complainants in such said possession thereof, from time to time, to maintain and defend: Therefore we command you, that immediately after re-

ceiving this writ, you go to and enter upon the said messuage or dwelling-house, and the said ware-house or building, and all and singular the premises in the said deed from the said defendant to the said trustees, bearing date the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and five, mentioned and described, and in this writ also mentioned and described, with the appurtenances; and that you eject and amove therefrom all and every person or persons, holding and detaining the same, or any part thereof against the said complainants; and that you put, place, and establish the said complainants or their assigns, in the full, peaceable, and quiet possession of all and singular the said messuage, or dwelling house and ware-house, or building and premises, with the appurtenances, without delay, and them the said complainants in such possession thereof, from time to time maintain, keep, and defend, or cause to be maintained, kept, and defended, according to the tenour and true intent of the said decree and order of the said court, and this you are not to omit. Witness, JAMES KENT esq. chancellor of our said state, at the city of New York, the ——— day of ——— in the thirty ninth year of our independence.

[B]

2. *A writ of execution, in nature of a* Ca. Sa. *to compel the performance of a specifick duty.*

The people of the state of New-York, by the grace of God free and independent, to the sheriff of the county of ——— greeting. Whereas on the——— day of ——— in the year of our Lord one thousand eight hundred and ——— by a certain decree, made in our court of chancery, before our chancellor of our said state, at the city of ——— in a certain cause therein depending, wherein A. B. is complainant, and C. D. is defendant, it was ordered, adjudged, and decreed, that (pro ut the decree) as by the said decree remaining as of record in our said court of chancery, at the city of ——— doth, and may more fully appear. [If the decree also directs costs, this clause to be inserted: "And whereas the costs so decreed, as aforesaid, to be paid by the said C. D. amount to the sum of ——— as taxed by one of the masters of our said court of chancery."] And whereas the said C. D. hath neglected to comply with all and singular the matters and things required of him in and by the said decree, as we have been informed and understand: Now therefore, in order that full and speedy justice may be done in the premises, we command you that you take the body of the said C. D. if he shall be found within your bailiwick, and him safely keep in your custody, until he shall perform and fulfil all and singular the matters and things required of him in and by the said decree, or our said court of chancery shall make other order to the contrary. And you are to make and return to our said chancellor, in our said court of chancery, on the ——— day of ——— wheresoever it shall then be, a certificate under your hand of your doings in the premises, together with this writ. Witness, JAMES KENT, Esq. chancellor of our said state, at the city of New York, the ———

day of ——— in the ——— year of our independence, and in the year of our Lord, 18

Sol'r. Cl'k.

Endorsed, "by the court."

Cl'k.

[C]

3. *A writ of execution, in nature of a* Fi. Fa. *where a sum is decreed to be paid* without costs, *and* with costs.

The people, &c. (the like as the last until) Now therefore, in order that full and speedy justice may be done in the premises, we command you, that of the goods and chattels of the said C. D. in your bailiwick, you cause to be made the sum of ——— which before our said chancellor, in our said court of chancery, was decreed to the said A. B. as aforesaid; (if costs are decreed, the following words are to be inserted, "and also the sum of ——— for his costs and charges so decreed as aforesaid.") And if sufficient goods and chattels of the said C. D. cannot be found within your bailiwick, that then you cause the said sum of (if with costs, the said sums of ——— the amount of the decree and costs aforesaid) to be made of the lands and tenements of the said C. D. and that you have that money before our said chancellor, in our said court of chancery, on the ——— day of ——— wheresoever it shall then be, to render to the said A. B. according to the decree aforesaid. And you are to make and return to our said chancellor, in our said court of chancery, on the said ——— day of ——— wheresoever it shall then be, a certificate under your hand of the manner in which you shall have executed this our writ, together with this writ, Witness, &c.

Sol'r. Cl'k.

Endorsed, "by the court"

Cl'k.

[D]

4. Ca. Sa. *for costs on dismissal of bill.*

The people, &c. (as in a former case, down to the words "may more fully appear.") And whereas the costs and charges of the said unjust vexation do, as appears to us, amount to the sum of ——— Now therefore, we command you, that you take the said A. B. if he may be found in your bailiwick, and him safely keep in your custody, until he shall pay to the said C. D. the costs and charges aforesaid; and you are to make and return to our chancellor, in our said court of chancery, on the ——— day of ——— next, wheresoever it shall then be, a certificate under your hand of your doings in the premises, together with this writ: and hereof you are not to fail at your peril. Witness, &c.

Sol'r. Cl'k.

Endorsed, "by the court."

Cl'k.

[E]

5. Fi. Fa. *for costs on dismissal of bill.*

The people, &c. (as the last.) Now therefore, we command you, that of the goods and chattels of the said A. B. in your bailiwick, you cause to be made the said sum of ——— the costs and charges aforesaid. And if sufficient goods and chattels (the same as the *fi. fa.* aforesaid) to render to the said C. D. according to the decree aforesaid: and hereof fail not at your peril; and have then there this writ. Witness, &c.

Sol'r. Cl'k.

Endorsed, "by the court."

Cl'k.

[F]

6. *A Testatum Fi. Fa.*

The people, &c. to the sheriff of the county of Kings, greeting. Whereas by our writ, we lately commanded our sheriff of our city and county of New York, that of the goods and chattels, lands and tenements, of * * * * * * * * * * named in the said writ in his bailiwick, he should cause to be made, the sum of $1402, 50. and that he should have that money before our chancellor in our court of chancery, at a certain day now past, to render unto, * * * * * * * * * &c. &c. according to the decree of our said court, and our said sheriff of our city and county of New York on that day returned to our chancellor in our said count of chancery, that by virtue of our said writ to him directed and delivered, he had caused to be made of the goods and chattels of the said * * * * * * * * named in the said writ, the sum of 41 dollars 62 cents, and that the said * * * * * * * named in the said writ, had not any other goods and chattels, lands or tenements, in his bailiwick whereof or whereby he could cause to be levied and made the residue of the said sum of 1402 dollars 50 cents, mentioned in the said writ, or any part thereof. And because it is sufficiently certified to our chancellor in our court of chancery, that the said ——————————— have sufficient goods and chattels, or lands and tenements in your bailiwick, whereof you could cause to be made the residue of the said sum of $1402, 50. Now therefore, in order that full and speedy justice may be done in the premises, we command you, that of the goods and chattels of the said ——————————— in your bailiwick, you cause to be made the sum of $1360, 88, the residue of the said sum of $1402, 50, mentioned in the said writ And if sufficient goods and chattels of the said ——————————— cannot be found in your bailiwick, that then you cause the said sum of 1360, 88 to be made of the lands and tenements of the said ——————————— and that you have that money before our chancellor in our court of chancery, on the 31st day of August next, wheresoever it shall then be, to render to the said ——————————— ——————————— according to the decree of our said court. And you are to make and return to our chancellor in our said court of chancery on the said thirty-first day of August next, wheresoever it shall then be, a cer-

tificate under your hand of the manner in which you shall have executed this our writ, together with this writ. Witness, &c.

Sol'r.

Cl'k.

[G]

7. Fi. Fa. *for sum decreed with costs, after an appeal to the court of errors.*

The people, &c. to the sheriff, &c. greeting. Whereas, on the ——— day of ——— in the year 18 by a certain decree, made before our chancellor of our said state, in our court of chancery, at the city of ——— in a certain cause therein depending, wherein A. B. is complainant, and C.D. is defendant, it was ordered, adjudged, and decreed, that (*pro ut* the decree) as by the the said decree remaining as of record in our said court of chancery, at the city of ——— doth and may more fully and at large appear: and whereas, on an appeal by the defendant from the said decree to the court for the trial of impeachments and the correction of errors, it was, on the ——— day of ——— in the year 18 ordered, adjudged, and decreed, by the said court, that the said decree of our said court of chancery be affirmed, and that the appellant pay to the respondent the further sum of ——— for interest due on the sum so decreed by our said court of chancery, to be paid by the said defendant, and also the further sum of ——— for the costs of the respondent in defending the said appeal. Now therefore, in order that full and speedy justice may be done in the premises, WE command you, that of the goods and chattels of the said A. B. in your bailiwick, you cause to be made ——— which before our said chancellor, in our said court of chancery, was decreed to the said C. D. as well for the ——— as for his costs and charges so decreed as aforesaid. And if sufficient goods and chattels of the said * * * * cannot be found within your bailiwick, that then you cause the said sum of ——— to be made of the lands and tenements of the said A. B. And that you have that money before our said chancellor, in our said court of chancery, on the ——— day of ——— wheresoever it shall then be, to render to the said C. D. according to the decrees aforesaid: and you are to make and return to our said chancellor, in our said court of chancery on the said ——— day of ——— wheresoever it shall then be, a certificate under your hand of the manner in which you shall have executed this our writ, together with this writ.

Witness, &c.

Sol'r.

Cl'k.

## Rules of the Supreme Court.

1791, *October Term.*

1. It is ordered by the court, as a standing rule, that upon the return of writs of *scire facias*, if the defendant be returned warned, or the second writ be returned *nihil*, the defendant shall appear in four days, or judgment shall be entered by default; and if there be not four days in term after the return of the writ, he shall appear by the first day of the next term; and upon entering such appearance, he shall have twenty days to plead. And it is further ordered, that where the first *scire facias* against bail is returned *nihil*, an *alias* or *testatum*, as the case may require, shall issue to the sheriff of the county where the bail shall appear, by their additions in the recognizance, to reside. *Col. Cas.* 31.

1793,——— *Term.*

2. It is *ordered* that in future, attachments against sheriffs out of office, shall be grantable till the return of the process which is the object of the rule, instead of the old practice of granting a *distringas* agreeably to the English practice. *Col. Cas.* 31.

1796, *April Term.*

3. *Ordered*, That every rule to which a party would, according to the practice of the court, be entitled *of course*, without showing *special* cause, shall be denominated a *common rule*, and every other rule shall be denominated a *special rule*. That all *common rules*, and all rules by *consent of parties*, shall be entered with the clerk *at his office*, in a book to be provided by him for the purpose, and may be entered at any time, as well in vacation as during a term, and the day when the rule shall be entered shall be noted therein. This rule, however, to be confined to actions in ejectment and personal actions only, so that rules in real actions shall be taken on motion in open court, as heretofore hath been usual. (1)

4. *That* every common rule shall be deemed to be taken at the *peril* of the party taking the same, and therefore the clerk shall always enter such rule as the party shall move for; but if the opposite party, not having done an act to be considered as an affirmance of the rule, or suffered a *lache*, shall, on special motion for the purpose, show that by reason of any irregularity or insufficiency in the proceedings, or by reason of any other matter, the party taking the rule was not entitled thereto, the court may order the rule, and any judgment or execution consequent thereon, to be vacated, and make such other and further order thereon, as right between the parties may (in the respective cases) require.

5. *That*, as in the case of every other pleading, the party is not entitled to

(1) *Cases* on this rule, 1 Cai. 7.—3 Cai. 139.—3 J. rep. 145.

take a rule against the opposite party to *answer* until the *pleading* to be *answered* shall be filed, so the plaintiff shall not be entitled to take a rule against the defendant to *plead*, until the *declaration* shall be filed.

6. *That* the rule to *plead*, and every other rule to *answer*, comprehending the rule in ejectment for the tenant to appear and enter into the *consent-rule*, and the rule on a *scire facias* for the defendant to plead, shall in ejectment or *scire facias*, be a rule of twenty days from the day when the same shall be entered, and in all other cases, shall be a rule of twenty days after service of a notice thereof, and of a copy of the *pleading* to be *answered*; except that the rule to join in demurrer to a plea in abatement, and the rule on *scire facias* for the defendant to *appear*, shall be rules of four days only; and except further, that the plaintiff shall not be held to accept a plea in abatement after the four days, from the day of the service of a notice of the rule to plead, and of a copy of the declaration; and where there shall have been a judgment of *respondeat ouster* on a demurrer to a plea in abatement, the plaintiff, having served the defendant with the notice of the judgment, shall not then be held to accept of any *answer* to the declaration after four days from the day of the service of such notice. (1)

7. *That* if the attorney for the plaintiff shall not have received a notice in writing from an attorney, that he is retained to defend the suit, then in every such case, if the service of the notice of the rule to plead, and of a copy of the declaration shall not have been on the defendant *personally*, the service may be, if the defendant shall be returned in *custodia*, on the sheriff, or one of his deputies; and if the defendant shall be returned *cepi corpus*, the service of a copy of the declaration shall not be necessary, and the service of a notice of the rule to plead, may be by affixing the same in some conspicuous place in the clerk's office; and where special bail shall not be required, and the writ shall be accordingly returned with the defendant's appearance endorsed, the plaintiff may cause the defendant's appearance to be entered in the book for entering common rules, and in such case also the like service as is last specified shall be sufficient. (2) [*Amended, see* 33.]

8. *That* the defendant having appeared, either by filing common bail, or having an appearance entered in the book for entering common rules, or if special bail is required in the cause, by putting in special bail, and the bail, if excepted to, justifying, may at any time thereafter take a rule against the plaintiff, to *declare* before the end of the term next following after service of the notice of the rule. (3)

9. *That* if the plaintiff shall make default in not *declaring*, then the defendant, or if the plaintiff or defendant, which ever may be the party, shall make default in not *answering*, then the opposite party may have the default enter-

(1) *Cases* on this rule, 1 Cai. 118.—2 ib, 103.—5 J. rep. 232.—9 ib. 79.

(2) *Cases* on this rule, 1 J. cas. 28.—2 ib. 122.—3 ib. 300.—1 J. rep. 61.—3 ib. 250.—8 ib. 287, 360.—3 Cai. 150.

(3) *Cases* on this rule 2 Cai. rep. 103.—3 ib. 256.—7 J. rep. 537.

ed in the book for entering common rules; but where the previous service of a notice of a rule, copy of pleading, or of any other matter shall be requisite, the default shall not be entered unless an affidavit of such service shall be filed; neither shall it be entered if special bail is required in the cause, and although twenty days from the service of the notice of the rule to plead may have expired, until four days after notice of bail shall have been received; and if bail shall be excepted to, then not until four days after bail shall have justified. (1)

10. *That* the default being duly entered, the party who shall have had it entered, shall not be held afterwards to accept a *declaration* or *answer*, as the default shall happen to be, and may at any time. after four days in term shall have intervened thereafter, have a rule entered for such judgment, as is to be rendered by law, by reason of the default; *provided, nevertheless*, that the court in term, and a judge in vacation, may, on motion of the plaintiff, against whom the rule to *declare*, or of the plaintiff or defendant against whom the rule to *answer* may have been taken, at any time before the default shall be entered, make such order for enlarging the time to *declare* or to *answer*, as shall be judged reasonable in the case; *and provided further*, that the plaintiff may, at any time before the default for not *replying* shall be entered, if the plea shall be a special plea, or a plea in abatement, or within twenty days after service of a copy of the plea, if it shall be the general issue, *amend* the declaration; and the rule to plead, which may have been taken against the defendant, shall then be deemed to be only from the day of the service of the copy of the amended declaration; and, in like manner, where there shall be a demurrer to a declaration, or any other pleading, not being a plea in abatement, the party against whom the demurrer shall be taken, may at any time before the default, for not joining in demurrer, shall be entered, amend the pleading demurred to; and further, the respective parties may amend of course and without costs, but shall not be entitled so to amend more than once. (2)

11. *That* if the defendant shall plead the general issue, and if the plaintiff shall not within twenty days after service of a copy of the plea, either demur thereto, or amend the declaration, or if either party shall, in pleading in any degree after the plea, tender an issue to the country, and if the opposite party shall not demur to the pleading within twenty days after service of a copy thereof, the cause shall, in each of these cases, be deemed to be at issue; and if a cause shall be put at issue in the vacation, or if it shall be put at issue in term, and there shall not be four days in term thereafter, then, in these two cases, the four first days in the next term, or if it shall be put at issue in term, and there shall be at least four days remaining in term thereafter, then, in this case, the days so remaining in term shall be the time limited to obtain a rule for a commission to examine witnesses, or for a view, or for a struck jury,

(1) *Cases* on this rule, 5 J. rep. 359.—6 ib. 127, 286, 323, 326, 328.—8 ib. 359.—11 ib. 90.—14 ib. 328.

(2) *Cases* on this rule, 1 J. cas. 248, 415.—3 ib. 91.—2 J. rep. 104, 184, 295.—3 ib. 95, 257. 6 ib. 132, 325, 330.—7 ib. 300, 468.—9 ib. 78.—12 ib. 151.—13 ib. 466.—14 ib. 219.—Col. cas. 87.—1 Cai. 153.—2 ib. 109.—3 ib. 102.

whereby the defendant obtaining the rule, may stay the plaintiff from bringing the cause on to trial, or whereby the plaintiff obtaining the rule, may stay the defendant from serving a notice to bring the cause on to trial; and where the rule shall be *subsequently* obtained by the defendant, the plaintiff may bring the cause on to trial, and where it shall be so obtained by the plaintiff, the defendant may serve a notice to bring the cause on to trial, and be entitled to judgment thereupon, notwithstanding the commission may not be returned, or the jury may not be balloted for the view, or may not be struck, as the case may be; and if at the time of giving notice of trial, the jury on such *subsequent* rule obtained by the defendant, shall not be balloted for the view, or not be struck, as the case may be, the plaintiff may proceed to trial on the ordinary jury process; but if the rule shall be obtained within the time above limited, and there shall be a delay in the party obtaining the rule to have the commission returned, or to have the jury balloted for the view, or struck, the court may, on motion of the other party, order the rule to be discharged, and otherwise further order as the case shall be judged to require. (1)

12. *That* where a cause shall be moved from an inferiour court, by *habeas corpus*, if the defendant shall not, in twenty days after the service of the notice of the rule to appear, or that a *procedendo* issue, put in bail, or if the bail being excepted to, shall not within four days after service of the notice of excepting, justify in double the amount of the sum in the writ in the court below, the plaintiff may then, on filing an affidavit of service of the notice of the rule to appear, and purporting also that no notice of bail hath been received, or if bail hath been put in, that the bail hath been excepted to, and hath not justified within four days after service of the notice of excepting, have the default of the defendant in not appearing entered, and may thereupon at any time thereafter, take out a *procedendo* of course and without waiting until the term after the default shall be entered, if it shall be entered in the vacation. (2)

13. *That* where any writ returnable in this court shall not have been returned on the day of the return thereof, the party who may have sued out such writ, may then take out a rule against the officer or person required to make the return of such writ, to return the same within twenty days after service of notice of the rule, or that an *attachment* will be issued against him; and if the writ shall not thereupon be returned, the party taking the rule may, at any time after the expiration thereof, and on filing an affidavit of service of notice thereof, have the default of the officer or person in not returning the writ entered, and may at any time thereafter, and without waiting until the term after the default shall be entered, take out an attachment of course. (3)

14. *That* no private agreement or consent between the parties, in respect to the proceedings in the cause, shall be alleged or suggested by either of

(1) *Cases*, 1 Cai. 73.—2 ib. 160.—3 ib. 102. 1 J. Cai. 135, 391.—3 ib. 137.—2 J. rep. 196.—ib. 211.—3 ib. 251.—9 ib. 266.—11 ib. 200.

(2) *Cases*, 5. J. rep. 231.—11 Ib. 199.—14 ib. 331.

(3) *Cases*, 1. J. rep. 508.—9 ib. 160.

them against the other, unless the same shall have been reduced to the form of a rule by consent, and entered accordingly in the book for entering common rules, or unless the evidence thereof shall be in writing, subscribed by the party against whom it shall be so alledged or suggested. (1)

15. *That* if the want of an original bill shall be assigned for error on a judgment had in this court, upon confession, *nil dicit*, or *non sum informatus*, the plaintiff in this court may file an original bill as of course, and *nunc pro tunc*, as of the term when the suit was commenced.

16. *Surrender of Bail*, forms and rules adopted this term.

1. Two certified copies of the bail piece must be made out by the clerk in whose office it is filed, on one of which the judge indorses the following *committitur*.

"The defendant, on the prayer, and for the indemnity of his manucaptors, is committed to the custody of the sheriff of ——— at the suit of the plaintiff in the plea above (or within) mentioned, Dated," &c.

This *committitur* is to be signed by the judge, when the bail surrenders the defendant to the sheriff, before, or in the presence of the judge. It is then delivered to the sheriff to be retained by him. The defendant may surrender himself before the judge, without the act or presence of the bail, and then it is stated to be "on the prayer of the defendant."

2. *If* the defendant be in *custody*, and do not appear before the judge, the sheriff must sign the following *acknowledgment* of it:

"I acknowledge that the defendant is in my custody in the goal of ——— Dated," &c.

The *proof* of this acknowledgment must be made by a subscribing witness on oath, before a judge or commissioner, or by a certificate of the judge in whose presence it was made; and the *proof* or certificate must be under the acknowledgment in the following form:

"A B, the subscribing witness to the above acknowledgment, being sworn, saith, that he saw ——— the sheriff of —— or ——— deputy of the sheriff of —— (as the case may be) sign the same. Sworn," &c. Or,

"I certify that A B (or C D, deputy of A B) sheriff of —— signed the above acknowledgment in my presence." The judge after this signs the *committitur* as above mentioned.

3. *The* surrender being made as above directed, the judge indorses *on the other copy* of the bail-piece, the following order and notice:

"Let notice be given without delay to the plaintiff, that the defendant hath, on the prayer, and for the indemnity of his manucaptors, been committed to the custody of —— the sheriff of ——— at the suit of the plaintiff in the plea above mentioned; and that unless cause to the contrary be shown by the plaintiff before me at my chambers, in —— on —— at — o'clock in the —— noon of that day, an *exoneretur* will be endorsed on the bail-piece accordingly. Dated," &c. The form of notice is in substance the same as the order, and must be served four days before the time specified therein.

(1) Cases, 1. J. rep. 507.—3 ib. 143.—7 ib. 320.—2 Cai. 95.—3 ib. 129, 131

4. *If* the plaintiff appears, and shows no cause, or does not appear, and proof be made of the due service of the notice, by affidavit to be annexed to the copy of the bail-piece, on which is the order for the notice, the judge then orders the *exoneretur* to be entered as follows:

"The plaintiff having appeared, and not having shown sufficient cause to the contrary, [or the plaintiff not having appeared, and due proof being made of the service of notice, as appears by the affidavit hereunto annexed, or otherwise, as the case may be] let an *exoneretur* be endorsed on the bail-piece accordingly. Dated," &c.

If proof of notice be wanting, or sufficient notice be not given, the judge may order a new notice as above.

If the surrender was not made in the presence of the judge, but only upon an acknowledgment by the sheriff, then before any *exoneretur* can be entered, the sheriff must make a *further acknowledgment*, as follows:

"I acknowledge that the defendant was still remaining in my custody, when the *committitur* of him for the indemnity of his manucaptors at the suit of the plaintiff in the plea above mentioned came to my hands. Dated," &c.

This acknowledgment must be proved or certified in the same manner as the former.

5. *The* following is the form of the *exoneretur* to be endorsed on the original bail-piece:

"The within defendant having, on the prayer and for the indemnity of his manucaptors, been committed to the custody of the sheriff of —— at the suit of the plaintiff on the within plea, the said manucaptors of their recognizance, within contained, are fully exonerated.

When the *exoneretur* is endorsed, the copy of the bail-piece, with the proceedings, is annexed to, and remains with the original on file.(1)

1796. *July term.*

17. *Ordered, That* on trials, one counsel only on each side shall examine or cross examine a witness; and that two counsel only on each side shall sum up the evidence to the jury. *Col. cas.* 44.

1797. *October term.*

18. *Ordered, That* no person shall hereafter be admitted to practice as an attorney of this court, unless he shall have served a regular clerkship of seven years with a practising attorney of this court; but any portion of time, not exceeding four years, during which a person, after he shall be fourteen years of age, shall have regularly pursued classical studies, shall be accepted in lieu of an equal portion of time, of clerkship; and the attorney with whom

(1) N. B. Except the *committitur*, *notice to the plaintiff*, and the *exoneretur*, all the proceedings before the judge are entered on the copy of the bail-piece.

By the act (Rev. Laws, Vol. 1. p. 387) the *surrender*, *committitur*, and sheriff's *receipt* thereon, may all be made before a judge of the court of common pleas, and on due proof thereof, a judge of supreme court makes the order for notice, and enters the subsequent proceedings to the conclusion of the business.

the person is to serve the clerkship, shall file a certificate in the office of one of the clerks of this court, certifying, that the person hath commenced a clerkship with him, and the clerkship shall be deemed to have commenced on the day of the filing of such certificate; and if the clerkship shall be intended to be for less than seven years, by reason that the person hath pursued classical studies for a portion of time, as above mentioned, then an application shall be first made to a judge, who, on examination of the matter, shall make an order to be annexed to the certificate, purporting, that it hath satisfactorily appeared to him, that the person hath pursued classical studies, after he was fourteen years of age, for such a period of time, not exceeding four years, as shall be specified in the order, and thereupon ordering that the clerkship, in such case, may be for a term which shall remain after deducting from seven years, the time so to be specified in the order; and every person who shall be so admitted to practice as an attorney, and having practised four years, shall be entitled, of course, to be admitted to practice as counsel. (1)

19. *That* neither of the above *three* rules shall be deemed to affect any person who shall already have commenced a clerkship; but every such person shall be admitted to practice as an attorney, and also as counsel, in like manner as if the said three rules had not been made. (2)

20. *That* every rule heretofore made, respecting the admission of persons, who may have served a clerkship, or been admitted to practice as attornies or counsel in another state, to practice as attornies or counsel in this court, shall cease.

1799. *January term.*

21. *Ordered, That* the following *enumerated* motions, to wit, all motions to bring on to be argued a question arising on *special verdict, case reserved* at the trial, *case agreed* between the parties without trial, *demurrer to evidence or pleadings, writ of error, or writ in the nature of a writ of error*, comprehending the writ of *mandamus*; and all motions to set aside *nonsuit, verdict, inquisition, or report*, otherwise than for irregularity only, shall be heard according to the priority of the time when the question arose; the evidence of which, when two or more causes shall be moved in before leave granted in any one of them to be heard, shall be a note thereof in writing signed by the attorney in the cause. (3)

22. *That* with respect to all other motions, the motion first made shall be first heard, and they shall have preference to the *enumerated* motions; but if there not being any *non enumerated* motion about to be heard, the court shall proceed to hear an *enumerated* motion, then all the *non-enumerated* motions shall lose their preference for the day. (4)

(1) *Cases.* 3. J. rep. 261. 2. J. cas. 102.
(2) The 2d. and 3d rules referred to as adopted at this term, were afterwards repealed.
(3) *Cases.* 1 Cai. 73.—2 ib. 94, 100, 381, 385.—3 Cai. 127.—2 J. rep. 186.—3 ib. 143.
(4) *Cases,* 1 Cai. 22.—2 ib. 377.—4 J. rep. 192. *see rule* 46.

23. *That* in cases of special verdict, demurrer to evidence, case reserved at the trial, and motion to set aside nonsuit or verdict, the question shall be deemed to have arisen on the day when the verdict in the cause was taken, or non-suit was granted. In cases of demurrer to pleadings or writ of error, or writ in the nature of a writ of error, the day when the joinder in demurrer or joinder in error was received by the party demurring, or having assigned the errors; and in cases of return to any such writ, and no joinder of error on the record, or motion to set aside inquisition or report, the day when the writ with the return, or when the inquisition or report was filed.

24. *That* where it shall be intended that a *default*, *nonsuit*, *verdict*, *inquisition*, *report*, *judgment*, *execution*, or other proceedings should be set aside, the matter shall always be brought before the court, on a notice of a motion for the purpose; so that the practice which hath sometimes taken place in those cases, of obtaining a rule against the opposite party to show cause, shall in future be discontinued; and instead thereof, the party intending the motion, may apply to a judge at his chambers, or to the recorder of New-York, for a certificate, (and which either of them may in their discretion grant) certifying that there is probable cause for staying further proceedings until the order of the court on the motion; and a service of a copy of the certificate, at the time of, or after the service of the notice of the motion, shall thenceforth stay all further proceedings accordingly; but if such party shall neglect to bring on the motion to be heard during the term, then the proceedings shall not be longer stayed, and he shall moreover be liable to pay costs to the other party, for not having brought on the motion according to notice. (1)

25. *That* the practice of entering a rule, assigning a day, or setting down a cause for argument, shall, in future, be discontinued; and instead thereof, an argument shall always be brought on to be heard in consequence of a notice for that purpose; and every notice of a motion or argument, shall be for the first day in term, or for as early a day in term thereafter, as the circumstances of the case will reasonably permit; and whenever a motion or argument shall go off from day to day, it shall still be entitled to be heard on the notice, without the necessity of a rule for enlarging the time to hear it. (2)

26. *That* whenever it shall be intended to move to set aside a non-suit or verdict, there shall in future, instead of the report of the judge, where the same would heretofore have been requisite, be a case, to be prepared by the party intending the motion, and a copy thereof to be served on the opposite party, within two days after the trial, and which opposite party may, within four days thereafter, propose amendments thereto, and serve a copy on the party who prepared the case, and who may then within four days thereafter, serve the opposite party with a notice to appear within convenient time, not less than four days, nor beyond the first day of the then next ensuing term,

(1) *Cases*, 1 J. cas. 239, 245.—1 J. rep. 138, 275, 310—*Col. cas.* 90.—3 J. rep. 253, 261.—8 ib. 352.—10 ib. 486.—1 Cai. 506.—2 ib. 380.—3 Cai. 83, 106, 151, 2, 174, 484.

(2) *Cases*, 1 J. cas. 242.—1 J. rep. 143, 316.—2 ib. 186.—3 ib. 244, 5, 261, 425.—1 Cai. 6, 7.—2 ib. 104, 259.—3 ib. 151, 174.

before the judge who tried the cause, to have the case and amendments corrected, and the judge shall thereupon correct the same, as he shall deem to consist with the truth of the facts; but if the parties shall omit, within the several times above limited, unless the same shall be enlarged by a judge, or the recorder of New York, the one party to propose amendments, and the other to notify an appearance before the judge, they shall respectively be deemed, the former to have agreed to the case as prepared, and the latter to have agreed to the amendments as proposed. (1) [*Extended to cases made subject to opinion of the court, see* 52.]

27. *That* where there shall be a rule to show cause, or a notice of a motion or argument, if the party on whom the rule or notice shall have been served, shall not appear to show cause, or to oppose the motion, or to argue on his part, he shall be deemed to have renounced his right against the rule, motion, or judgment, claimed by the party having served the rule or given the notice; and such latter party shall thereupon be entitled to his rule, motion, or judgment equally, as if the other party had appeared and *consented* thereto. (2)

28. *That* every attorney, residing in the city of *New York*, shall have an agent residing in the city of *Albany*, and every attorney residing in the city of *Albany*, shall have an agent residing in the city of *New York*; and all attornies residing elsewhere, shall have two agents, the one residing in the city of *New York*, and the other residing in the city of *Albany*. That no person shall be an agent, unless he shall also be an attorney of this court, and every appointment of an agent shall be in writing, signed by the attorney, and filed in the office of the clerk, in the city of *New York*, or *Albany*, wherever the agent shall reside, and the clerk shall have constantly the names of the several agents, and of the respective attornies appointing them, and the latter, in alphabetical order, entered in a book to be kept in their offices for the purpose. That, except services during a vacation in suits, where the attornies for the respective opposite parties shall reside within forty miles of each other, services on the agent shall be as valid in all cases, as if made on the attorney himself; and if there shall be no agent, the service of a notice may then be by affixing the same in some conspicuous place in the clerk's office. That where the service shall be on the agent, or by affixing the notice in the clerk's office, it shall be *double the time of service* which would be requisite if the service was on the attorney himself; and that all services on agents, or in the clerk's office, shall, during a term, be in the city where the term shall be held. This rule, however, not to take effect until after the first day of the ensuing term of *April*. (3) [*Amended, see* 48, 49.]

29. *That* notices or rules of two days, shall be abolished, and instead thereof, such notices or rules shall be of four days. (4)

(1) *Cases*, 2 J. rep. 481.—3 ib. 140.—9 ib. 264.—12 ib. 431.—14 ib. 220.—2 J. cas. 71, 115.

(2) Means no more than an implied admission, that the rule be made absolute. Determined *Ap.* 1799.

(3) *Cases*, 1 J. cas. 244, 391.—3 ib. 300.—8 J. rep. 346.—11 ib. 90, 195.—1 Cai. 252.—3 Cai. 150. (4) *Case*, 3 J. rep. 261.

30. *That* the practice requiring a term's notice of trial, or inquiry, shall be abolished.

31. *That* in future, no costs to counsel for perusing pleadings or entries, shall be taxable against the opposite party, unless there shall be a certificate, signed by the counsel, certifying that he perused the pleadings, or entry, charged in the bill as *special*, and that in his opinion, they were *special*.

32. *In* order to provide a remedy against the grievance of having useless counts in the declaration taxed against the defendant, ORDERED, that except where the cause of action shall be for goods sold and delivered, or services performed, there shall not be more than one count in the declaration taxed against the defendant for each distinct cause of action, and where there shall be more than one count for the same cause of action, the attorney for the plaintiff may, in such case, elect the count to be taxed. That where the attorney for the plaintiff shall claim to have more than one count taxed against the defendant, he must then produce an affidavit to the judge or clerk, taxing the costs, that the suit was brought for several causes of action to be specified in the affidavit, and he shall then be entitled to have as many counts taxed as there shall be causes of action specified in the affidavit; and further, if there shall have been a trial, and the defendant shall procure a certificate from the judge, certifying the counts on which the plaintiff recovered, or if there shall have been an inquiry, and the defendant shall procure a certificate from the sheriff or clerk, certifying the counts on which the damages were assessed, that then only the counts specified in the certificate shall be taxed against the defendant, the affidavit of the plaintiff's attorney notwithstanding; otherwise, that is to say, for want of such affidavit, or of such certificate, such one count in the declaration as the plaintiff's attorney shall elect, and no more, shall be taxed; provided, that in the above excepted cases of goods sold and delivered, or services performed, the plaintiff shall be entitled to have a count in an *indebitatus assumpsit*, and a count on a *quantum meruit*, or *quantum valebat*, taxed for each of these respective causes of action, the above restriction of one count only for each distinct cause of action notwithstanding. (1)

33. *In* order to provide for a case omitted in the rules of *April* term, 1796, *ordered*, that in future where a notice of the rule to plead shall be affixed in the clerk's office, if the attorney for the plaintiff shall, before entering the default of the defendant, receive a notice from an attorney, that he is retained to defend the suit, he shall be held to serve the attorney for the defendant with a notice of the rule to plead, and with a copy of the declaration, and the rule for pleading shall be from the time of such service; so that the time, for which the notice of the rule to plead may have been affixed in the office, shall not be taken into computation. (2)

34. *That* where a suit shall be commenced for a non-resident plaintiff, before security for costs, by a sufficient householder of the state, in the sum of one hundred dollars in the usual form shall be given, the attorney shall be

(1) *Case*, 9 J. rep. 130. (2) *Cases*, 3 J. rep. 250.—6 ib. 323.—13 ib. 466.

deemed to have become security for costs; and where, at any time pending the suit, the plaintiff shall remove out of the state, and the attorney shall thereafter proceed in the cause before such security shall be given, he shall in such case also be deemed to have become security for costs; but he shall not in any case, be liable to an amount exceeding one hundred dollars, or where if there shall be a plurality of plaintiffs, one of them shall be resident within the state. (1)

1802. *October term.*

35. *Ordered, that* when the plaintiff stipulates to bring his cause to trial, he shall within twenty days from the time of demand made, pay to the defendant the costs ordered to be paid thereon; and if the same be not paid within that time, on demand and on service of a certified copy of the rule to pay costs and the taxed bill, the defendant, on filing an affidavit of such demand and non-payment, may, after the expiration of the said twenty days, enter judgment as in case of non-suit as of the preceding term (2)

1803. *January term.*

36. *Ordered, that* every attorney, when he gives notice of the argument of any *enumerated* motion, shall furnish the clerk residing in the city where the court is held, with the date thereof; who shall, by the first day of the term, make a calendar of all causes which may be noticed, according to such dates. Causes of the same date shall be placed on the Calendar in the order in which they are received by the clerk. Each cause shall be argued according to its standing on the calendar, if the party entitled to bring it on be ready, otherwise it shall lose its preference, and not be called on again until all the others are disposed of. The attorney of either party may give notice of the argument. If any cause be inserted in the calendar during the term, it shall not take place, whatever may be its date, of any other cause on the calendar at the opening of the court. (3) [*Amended, see* 53.]

37. *That* to every case there shall be added a note of the questions to be made, and to them the argument shall be confined; if, however, any facts in the case give rise to other questions, these also may be argued; unless the adverse party object that *these* are facts not appearing material to a discussion of such new questions, in which case they shall be abandoned, or the case be referred for amendment, if the court shall think it necessary. (4)

*November term.*

38. *Ordered, that* in future, the days for *non-enumerated motions* be *Monday* and *Thursday* in the first week of term, and *Friday* in the second week.

(1) *Cases*, 2 J. cas. 67. 109.

(2) *Cases* 1. J. cas. 30.—2. ib. 218.—2. Cai. 56. 250, 380.—3. ib. 95, 135.—2. J. rep. 480.—3. ib. 442.—13. ib. 156.

(3) *Cases.* 1. Cai. 24. 487. (4) 2. Cai. 274, 378.—1. J. rep. 69.—2. ib. 549.

39. *That* every person who shall have regularly pursued juridical studies, under the direction or instruction of a professor, or counsellor at law within this state, for four years, *or shall have been admitted to the degree of counsellor at law, in any other of the United States, and practised as such for four years in such state*, shall be admitted as counsel in this state; and that the *second* rule of *October* term, 1799, be annulled. [*part in italick repealed, see* 47.]

1804. *November term.*

40. *Ordered, that* every person who hath been or shall hereafter be, admitted to the degree of attorney of this court, and practised as such for three years, shall be admitted to practice also as counsel in this court; and that the *third* rule of *October* term, 1797, as far as the same is repugnant hereto, be repealed.

1805, *February term.*

41. *Ordered, that* in error on *certiorari* under the *ten pound act*, the plaintiff be entitled to have costs taxed against the opposite party, only for a general assignment of errors; special assignments being unnecessary, as the court is bound to decide on the merits, and overlook the defects of form.

42. *That* hereafter the defendant shall not try a cause by *proviso*, without a previous rule for that purpose, to be granted by the court on the usual notice.

43. *That* in future, only the oath of office be administered to persons admitted as counsel or attorney in this court.

1806, *August term.*

44. *Ordered, that* hereafter, no peron, other than a natural born, or naturalized citizen of the United States, shall be admitted as an attorney or counsellor of this court.

1808, *November term.*

45. *Ordered, that* hereafter, a plaintiff in any cause, at any circuit court or sittings, may, at the opening of the court, on each day, or on such days as the presiding judge shall allow, and before the court shall proceed to try any litigated cause, take an inquest: *provided*, the intention of the plaintiff to take an inquest, shall be expressed in the notice of trial: and unless (before a jury are impannelled to take the inquest) the party defendant or his attorney, shall file with the clerk of the circuit court, or sittings, an affidavit satisfactory to the judge presiding at the circuit, or sittings, that such defendant has a good and substantial defence, and serve a copy thereof on the opposite party; the defendant shall be held liable to pay the costs of the trial,

provided the inquest is afterwards set aside, together with the costs of the application. (1)

1809, *February term.*

46. *Ordered, that* motions in arrest of judgment, be hereafter brought on, as belonging to the class of *enumerated* motions, and that they be entitled to a preference to other causes on the calendar.

47. *That* so much of the rule of *November* term, 1803, as provides, that persons who have been admitted to the degree of counsellor-at-law in any other of the United States, and practised as such for four years in such state, shall be admitted as counsellors in this state, be annulled.

*August term.*

48. *Ordered, that* all attornies of this court, not residing in the village of *Utica* in the county of *Oneida*, shall have an agent residing in the said village, who shall be an attorney of this court, or a deputy clerk in the clerk's office at *Utica*; and that in every respect, not herein provided for, the provisions of the eighth rule of this court, of *January* term, 1799, shall apply to such agent. That this rule shall go into operation from and after the first day of the next *November* term. (2)

49. *That* the deputy clerks in the clerk's office, in *Albany* and in *New York*, may also be appointed agents, under the rule aforesaid of *January* term, 1799.

1813. *January term.*

50. *Ordered, that* whenever a motion shall be made to set aside a report of referees, on the merits, or for a new trial upon newly-discovered evidence, copies of the affidavits whereon the motion is made or opposed, shall be furnished to each of the judges on the opening of the argument; and whenever a motion shall be made in arrest of judgment, copies of the pleadings, or of so much thereof as may be necessary, shall be delivered to each of the judges on making the motion.

1814, *May term.*

51. *Ordered, that* in all notices for argument, and in all special verdicts, demurrers, cases, and other papers, on which arguments are to be had, or motions made, or resisted before the court; the *names* of the *attornies* on record for the plaintiffs and defendants, shall be inserted, or written thereon.

(1) *Cases* 5. J. rep. 355. 360.—11. ib. 82.
(2) *Case.* 8. J. rep. 360.

1816, *January term.*

52. *Ordered, that* the sixth rule of January term, 1799, as to preparing, amending, and settling *cases*, shall extend to cases made subject to the opinion of the court.

*May term.*

53. *Ordered, that* after the next August term, no cause be entered on the calendar of enumerated motions, unless a note of the issue be filed in the clerk's office of this court, in the city where the court is to be held, before the Friday next preceding the term.

*August term.*

54. *Ordered, that* whenever special bail shall be regularly excepted to, bail thus excepted to, or such other persons as become special bail in lieu of, or in addition to the said bail to which exceptions have been taken, may justify before those officers authorized by law to take recognizance of bail in actions depending in this court, due notice being first given to the opposite party of the time and place, and before whom such bail will justify; to the end that the sureties in any such recognizance of bail may be examined concerning the value of their estate and their personal circumstances; unless one of the judges of this court shall before such justification, by order, direct the justification to be in open court, reserving to either party aggrieved, when such justification is not made in open court, a right of appeal to this court from the decision of such officer, making such examination of the sureties, on an affidavit of the facts, and on regular notice of a motion to set aside any such Justification. (1)

(1) *Note.*—In all cases not provided for by the rules, the practice of the K. B. is to be observed. 5. J. rep. 236.

## Rules of the Court for the trial of Impeachments, and the correction of Errors.

*Adopted at the city of Albany*, 1818, *September*, 18.

1. *The* plaintiff in error shall cause the writ of error, with the transcript of the judgment or proceedings on which the writ of error is founded, to be returned pursuant to the directions of the statute, or lose the benefit of the said writ, unless this court shall see cause to allow such plaintiff a further day for that purpose.

2. *If* the plaintiff in error shall allege diminution of the record, it shall be done on the day the writ of error shall be returned, or within eight days thereafter, and shall thereupon apply to the clerk of this court for a certiorari to certify the diminution alleged, which the clerk shall issue of course and without special order, which certiorari the plaintiff in error shall cause to be duly returned within twelve days, or shall lose the benefit thereof, unless this court shall see cause to allow a further day for that purpose.

3. *That* the plaintiff in error, on the day the writ of error shall be returned, with the transcript of the record or proceedings, if diminution shall not be alleged, and if diminution shall be alleged, then on the return day of the certiorari, shall assign errors and file the same with the clerk, or in default thereof the plaintiff in error shall lose the benefit of the writ, unless this court shall see cause to allow further time for that purpose: and the defendant in error may thereupon, on motion, obtain an order that such writ of error be dismissed with costs to be taxed.

4. *That* when the plaintiff in error shall have filed an assignment of errors with the clerk of this court, an order may be thereupon entered by the plaintiff in error as of course, for the defendant to join in error in eight days after the service of a copy thereof, or be precluded: and if the defendant in error shall not comply with the said order, he shall be precluded from joining in error, and the plaintiff in error may take judgment by default.

5. *That* in every cause upon a writ of error, the plaintiff in error shall make a case for the use of this court, on an argument thereof, and furnish to each member of this court a printed copy of such case, on or before the day of hearing, or in default thereof the plaintiff in error shall not be heard in support of the errors assigned.

6. *The* case to be made and printed upon a writ of error, shall consist of the record or proceeding upon which the writ is brought, and the errors assigned, to which each party may add briefly the points or reasons upon which they intend to rely in argument.

7. *That* in cases of appeals, the petition of appeal addressed to this court shall be filed in the office of the register or assistant register, with whom the

decree, or order appealed from, shall have been entered; which petition, when filed in the recess of this court, shall pray that the decree, decretal, or other order appealed from, may be sent to this court on the first day of the next session thereof, and when filed during the sitting of this court, the same shall pray that the decree, decretal, or other order appealed from, may be sent to this court without delay.

8. *That* in every such petition of appeal, it shall be sufficient to set forth the decree, decretal, or other order appealed from, without reciting the pleadings in the cause, and stating that the said decree, decretal, or other order, so appealed from, or some part thereof, (specifying what part or parts) is erroneous, and that the same ought to be reversed or modified, as the case may be.

9. *That* the officer of the court of chancery, with whom such petition of appeal shall be filed, shall make and annex to the said petition of appeal, the decree, decretal or other order appealed from, and such other orders as may be required to be returned to this court, without any of the pleadings, proofs and exhibits in the cause; and in case the cause had been set down for hearing, and heard prior to the decree or order appealed from, then he shall cause to be annexed also a copy of the minutes taken by the register, or assistant register, respecting what was read or used in the court below, or offered and overruled on objection, or admitted at the hearing; authenticated copies of which pleadings, proofs, and exhibits, or such of them as may be relied on by either party, shall be produced at the hearing by the parties.

10. *That* the party appealing shall, in every case, cause the petition of appeal, with the matter to be annexed to the same, as aforesaid, to be brought into this court, and filed with the clerk thereof, by the day mentioned in such petition, or when duly prepared by the officer as before directed, or in default thereof, shall lose the benefit of such appeal, unless this court shall see cause to allow a further day for that purpose.

11. *That* on the petition of appeal being filed, as aforesaid, the appellant may thereupon, as of course, obtain an order for the respondent to answer the petition of appeal in eight days after service of a copy thereof, or be precluded; and if the respondent shall not comply with the said order, he shall be precluded from answering the petition of appeal, and the appellant may proceed to take such decree as the case may require.

12. *That* previous to any argument of counsel upon any appeal, a state of the case of each party, as it appears on the pleadings and proofs, and to be signed by their respective counsel, shall be delivered to each member of the court.

13. *That* in cases of writs of error, the attornies for the parties respectively, and in cases of appeals, the solicitors for the respective parties in the courts below, shall be deemed the attornies and solicitors for them respectively in

all the proceedings on such writs of error, or appeals in this court, under these rules, unless a new attorney or solicitor shall have been employed in this court and notice thereof given.

14. *That* all causes which have been put at issue in this court, and ready for argument, but not argued during the session thereof, and consequently continued to the next session, shall be deemed to be set down for argument for the first day of such next session; and the clerk of this court shall make a list thereof, arranging them in the order in which the joinder in error, or answer to the petition of appeal therein was filed, and a list of all causes, whether on writs of error or appeal, which shall be put at issue during the session of this court, shall in like manner be made by the clerk and added to the list: and when this court shall be ready to proceed to the hearing of causes, the same shall be called in the order in which they stand on the list.

15. *When* any cause put in the list as aforesaid, shall have been twice called and passed in consequence of the plaintiff in error, or appellant, not being in readiness to proceed with the argument thereof, the defendant in error shall be entitled to a judgment of non-pross of the writ of error, and the respondent to a decree dismissing the appeal, as the case may be, with costs, unless this court on good cause shown shall otherwise order.

16. *That* the remittitur, in case of a writ of error, shall contain a copy of the judgment of this court annexed to the writ of error, and the transcript of the record of proceedings, as brought into this court, under the seal of this court, and signed by the clerk thereof: and the remittitur, in case of an appeal, shall contain a copy of the decree or order of this court annexed to the petition of appeal, and the matters thereto annexed as brought into this court, under the seal of this court, and signed by the clerk thereof.

17. *That* all costs awarded by this court, in causes upon writs of error or appeal, shall be taxed by the chancellor or a judge of the supreme court, and inserted in the judgment of this court, and form part of the remittitur, for which costs the supreme court shall award execution according to the course of that court; and all costs awarded by this court, in cases upon appeals, shall be taxed in like manner, and the court shall award execution for the same, or enforce payment thereof, according to the course and practice of that court.

18. *That* no member of this court shall, as attorney, solicitor, or counsel, be concerned in or argue any cause in this court, either upon error or appeal, unless such member was, without reference to this court, actually retained and employed in the cause in the court below, before the judgment or decree on which the writ of error or appeal is founded was rendered: provided, however, that this rule shall not extend to causes in which any member of this court was actually retained as attorney, solicitor or counsel, previous to the adoption thereof.

19. *That* at the hearing of causes on appeal or writs of error, not more than one counsel shall open the argument, and no more than two counsel shall answer, and no more than one counsel shall reply or close, except in special cases on appeal, where there are distinct parties on the same side having distinct interests in question.

20. *That* special motions shall require a notice to the opposite party of such motion, to be duly served two days at least before the motion is to be made.

21. *That* in all cases on error and appeal brought into this court, the judges in cases of writs of error, and the chancellor in cases of appeal, shall give the reasons for their judgment or decree, immediately after the reading of the record or decree, and before any counsel in the cause is heard.

22. *That* when an appeal from any decree of the chancellor shall be heard in this court, the chancellor may state his opinion upon every matter that shall arise on such hearing, but shall not have a voice in the decision of the court on any question whatever arising on such appeal: and that when a cause shall be brought into this court by a writ of error on the question of law in a judgment of the supreme court, the judges of such court may severally state their opinions upon every matter that may arise on such hearing, but shall not have a voice in the decision of the court on any question whatever arising in the cause so brought into this court.

23 *That* hereafter it shall be the duty of the appellant or plaintiff in error in this court, to deliver a copy of the opinion of the chancellor or supreme court to each member, as an appendix to his case, previous to the argument thereof.

24. *That* in cases not already provided for, *the practice of this court* shall be similar to the practice of the court of exchequer chamber in England; and that on appeals it shall be conformable to that of the house of lords in England, *when sitting as a court of appeals*, until further order; and that all former rules made by this court relative to its practice be vacated.

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NOTE.—*It is proper to remark here, that the* 99*th rule of* July 2*d* 1818, *is the last of which there is any printed account. That of* July 29*th* 1818, *denoted as the* 100*th for the reasons stated in Mr. Gould's edit. of* 1818, *is numbered as a rule.*

*It will appear on inspecting this publication of the rules and index, in the Law Register, that some care has been taken to afford additional facility to the bar, in the use of this elaborate, comprehensive and finished code of equity practice, established in the Chancery of New York.* *Ed.*

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NOTE —*These rules of the Sup. court as before published, do not appear to conform to any principle of arrangement; neither that of a* "chronological" *(or historical) order; nor of particular* "titles," *and the rules applicable to the subject of each title, in their proper connexion under it; nor in a mere* "numerical" *arrangement, without regard to time or subject.*

*A series of rules on various points, made in* April term, 1796, *and numbered from* 1 *to* 13, *inclusive, forms one division: another series additional to these, appear to have been established in* Jan. term 1799; *and numbered from* 1 *to* 14, *forms a second division: after these follow various other rules enacted in different years, commencing with* Oct. term 1802, *and ending in* Aug. term 1816, *inclusive, and published without any numerical designation, forms a third division: another class of rules relative to* attornies and counsellors, *passed in* Oct. term, 1797, *and numbered from* 1 *to* 5 *inclusive, follow, intended at the time to class together all on this head; these however are succeeded by others on the same subject, made between* November term, 1803, *and* Feb. term 1809 *inclusive, without numbers or classification, being a* fourth *division.*

*Then follow* three *rules (unnumbered,) on different subjects, made in* Oct. 1791, 1793, *and* July 1796, *making a* fifth *division.*

*The proceedings relative to the* manner of surrender by bail, *appear to be founded, principally on* 5 *rules, adopted by the judges in* Ap. term 1796, *and are inserted together in numerical order from* 1 *to* 5 *inclusive, forming a* sixth *division.*

*These divisions are again separated, by intervening* notes *of cases decided on several of the rules; which though doubtless useful, tend in some degree to perplex investigation.*

*In this situation it appeared advisable, to adopt the* chronological *order, in which the several rules were enacted, designating them by a series of numbers to the end, with references from one to another, where any alteration, or amend-*

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*The* answer *to question No.* 124, *p.* 142, ante, *having been omitted, my correspondent afterwards sent me the following reply :*

124. The English law is for the most part adhered to on this subject; but it has been ruled in the supreme court, that where there had been regular dealings between the parties plaintiff and defendant, and the plff. proves, that he keeps fair honest books of account, and that some of the articles charged to deft. had been delivered, and that plff. kept no clerk, the books of account were permitted to go to the jury.

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*ment of the particular rule had been made; and to form an alphabetical* index *referring to the* numbers, *supposed to have relation to the* titles *assumed in the index.*

*On this plan, the rules commence with one made in* Oct. 1791, *(said to be found in "Coleman's cases of practice," and supposed to be the first existing rule,) and are continued in the order of their passing to August term,* 1816 *inclusive, the last of which I find any publication; the whole as numbered being* 54.

*References are made to* cases *decided on each particular rule, by noting where they may be found, at the foot of the page where the rule occurs.*

*I persuade myself that this arrangement (not made without some pains,) will contribute something to the convenience both of the bench and bar; and facilitate future alteration or additions.*

# NORTH CAROLINA.

# STATE LAW

AND

# REGULATIONS.

1821, 2.

# NORTH CAROLINA.



### STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. Jesse Franklin,* Surry county, (1) term of office 1 year, and not eligible longer than 3 in 6 successive years; app. by the senate and house of commons in joint ballot; salary $2000, per ann.

2. —— Secretary of state &c.?
*A. Wm. Hill,* Raleigh, app. triennially by the general assembly in joint ballot; $600, with fees, and $50, as librarian.

3. —— Chief justice of the supreme court of law, &c.?
*A. John Louis Taylor,* Raleigh, during good behaviour; app. by the gen. assembly in joint ballot; $2500.

4. —— Clerk of the superiour or supreme court, &c.?
*A. Wm. Robards,* clerk of supreme court, Granville county; app. during good behaviour. (2)

5. —— Attorney General: &c.?
*A. Wm. Drew,* Halifax, app. during good behaviour, by the gen. assembly, in joint ballot.

6. When, and where, is the annual meeting of the legislature?
*A. Raleigh*; assemble annually, 3d Monday in November.

### UNITED STATES OFFICERS.

7. Who is District judge, &c.?
*A. Henry Potter,* Raleigh, (he presides in all the districts.)

8. —— Clerk of the District court &c.?
*A. William H. Haywood,* Raleigh, clerk of the cir. court.

*District* courts are held at Wilmington, *Carleton Walker,* clk; at Newbern, *Jeremiah Brown,* clk; at Edenton, *John M. Littlejohn,* clk.

9. —— District Attorney, &c.?
*A. Thomas P. Devereux,* Raleigh.

10. —— Marshal, &c.?
*A. Beverly Daniel,* Raleigh.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?
*A.* C. Just. *John Marshall;* Virginia & N. Carolina, being the 5th circuit.

12. At what times and places, are District courts of the U. S. held, &c.?
*A.* At *Edenton* for the district of Albemarle, 3d *Monday in April and October.* At *Newbern,* for the district

(1) The city of Raleigh, is by law the official residence, but not required in the constitution. In practice, the residence has been at Raleigh during the spring and fall circuits of the superiour courts, and sessions of the legislature, and occasionally at other times.

(2) There being a superiour court in each county, there are 62 clerks of the superiour courts of law, in this state.

of Pamptico, on the 1st *Monday after the 3d Monday, in April and October.* At *Wilmington*, for the district of Cape Fear, on the *2d Monday after the 3d Monday, of April and October.*

13. —— Circuit courts &c.?

*A.* At Raleigh, on the *12th of May*, and *November*, annually.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?

*A.* A "*Revisal* by *judge Iredell*, 1 *vol.* from 1715, (the earliest statutes of which we have a record,) to 1790," inclusive.

A "*Revisal*, by *Francis X. Martin*, (now judge Martin of New Orleans,) from 1715 to 1803, inclusive," the first quoted, "Iredell's Revisal," the last "Martin's Revisal."

Now in the *press*, a "*Revisal* of the acts of the general assemby, to contain in its 2d *vol.* the statutes, or parts of statutes of Great Britain, in force in this state; compiled by *judge Potter, C. J. Taylor*, and *Bartlett Yancey esq.* by authority of the legislature, and will contain all the acts of assembly to 1819, inclusive, with a copious index."

15. Can the publick laws in pamphlets, be procured, &c.

*A.* A few copies of the acts of any recent session of the legislature, can probably be had of *Thomas Henderson* state printer, Raleigh.

16. Is there any Digest of the state laws &c?

*A.* There is one, by *John Haywood esq.* (1) brought down to 1806, by himself, and since continued to 1817, inclusive, by others; it was at first and is still called, "Haywood's Manuel," and is the usual book of reference in practice, unless when it becomes important to examine the context of the act.

17. Are there any Reports of cases in your state courts, &c.?

*A.* "*Notes of a few decisions in the superiour courts of the state of N. C.* and in the *circuit court of the U. S.* for N. C. *district*," 1 small *vol.* bound up with a "Translation of *Latch's cases*" by F. X. Martin, esq.

"*Reports of cases in the superiour courts of law and equity of the state of N. C.* from the year 1789 to 1798," 1 *vol.* by *John Haywood*, esq. quoted 1 *Haywood's Rep.*

"*Cases determined in the superiour courts of law and equity of the state of N. C.* between 1799 and 1802, by *John L. Taylor esq.* (now c. justice,) 1 *vol.* quoted *Taylor's Reports.*"

"*Reports of cases determined by the court of conference of N. C.* from 1800 to 1804, inclusive, by *D. Cameron and W. Norwood*; quoted "*Conference Rep.*" or "Cameron and Norwood's Rep."(The court of conference was at that time the court in the last resort.)

"*Reports of cases adjudged in the superiour courts of law and equity, court of conference, and federal court for the state of N. C. from the year* 1797 to 1806, 1 *vol.* by *John Haywood esq.* quoted "*2d Haywood's Rep.*"

The "*Carolina Law Repository*," begun in March, 1813, and published in pamphlet form semiannually, to Sep. 1816, containing, (together with various miscellaneous articles,) "*cases adjudged in the supreme court of the state of N. C. from July term*, 1811, to July term 1816 inclusive, 2 *vols.* by *John L. Taylor esq.*" (now ch. just.)

"*Cases adjudged in the supreme court of N. C. from July term*, 1816,

(1) Late one of the judges of the supreme court of law and equity in this state, and now one of the judges of the sup. court of errors in the state of Tennessee.

*to Jan. term* 1818 *inclusive,* 1 *vol.* by *John Taylor esq.*"

This is a continuation of judge Taylor's Law Repository, under another title, and is usually bound up as the 3*d vol. of the Carolina Law Repository,* and so quoted.

"*Reports of cases argued and adjudged in the supreme court of N. C.* from Jan. term, 1819, to May term, 1819, by *Archibald D. Murphy esq.* quoted, Murphy's Rep."

Mr. *Murphy,* a short time one of the judges of the superiour courts, under a new organization of them, was appointed state reporter of the *sup. court,* and published these decisions in 3 *nos.* and it is said is about publishing a 4th no. which will make 1 *vol.*(1)

18. Is there any Digest of cases in your state courts, &c.?

*A. None,* nor any in preparation.

19. Are there any Treatises on the law, in your state &c.?

*A.* "*The office and authority of a justice of the peace, and of sheriffs, and coroners &c. by F. X. Martin esq.*" *pub.* 1791.

*On the* "*jurisdiction of justices of the peace in civil suits, according to the laws of N. C. by F. X. Martin esq.*" a small pamphlet, pub. 1796, not often cited.

"A *Treatise on the Powers and duties of a sheriff according to the laws of N. C. by F. X. Martin esq.*" *pub.* 1806.

"*Laws of N. C. by F. X. Martin esq.*" *pub.* 1806.

"*Treatises* on *the powers and duties of a justice of the peace,*" have been published by *Davis,* by *Haywood,* and by *Potter,* in the order of time as above; Davis' is very rare, and perhaps to be found in none of our book stores.

20. —— Foreign law books republished in your state, &c.?

*A.* A "*Treatise on the powers and duties of Ex'rs and adm'rs,* by *F. X. Martin esq.*" 1803.

The ground work of this was, the then latest edition of *Toller,* which is copied verbatim, or nearly so, omitting that part which derives authority from British statutes, not in *force* here; quoted "*Martin on Executors.*"

"*Essays of William David Evans, on the action for money had, and received; on the law of insurances; and on the law of bills of exchange and promissory notes,* 1 *small vol.* by F. X. Martin esq." pub. 1802.

*A translation of M. Pothiers* "*treatise on obligations,*" 2 *vols.* by F. X. Martin esq. pub. 1802.

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?

*A. None,* except those comprised in the state reports, before referred to.

22. Is there any Digest of cases in those courts, &c.?

*A.* No such digest.

23. Have any books been composed, in your State, &c.?

*A.* None, but the foregoing.

### ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

*A.* There is none.

(1) It is understood Mr. Murphy has in press, "*Decisions of the supreme court,*" subsequent to those by Cameron and Norwood, and previous to judge Taylor's Law Repository. *In* 1805, the name and style of the "court of conference," was altered to that of "the supreme court of N. C."

*Thomas Ruffin esq.* of Hillsboro, (now state reporter,) will continue the decisions of "the supreme court" subsequent to May term, 1819, to which they were brought by Mr. Murphy. By law, the reporter is required to publish the decisions, within *nine* months after they are made.

25. By whom are attornies, or counsellors admitted, &c.?

*A.* The rule adopted in 1815 is as follows; "No applicant for license to practice law in the courts in this state, shall be examined, except during the terms of the supreme court: License to practice in the county courts only, shall be granted in the first instance. Nor shall any person be admitted to practice in the superiour courts, until one year after having obtained license to practice in the county courts."

No particular term of study is requisite. The candidate for admission, must produce a certificate of unexceptionable moral character.

COURTS.

27. What are the names of the several courts in your state, &c.?

28. Their style, &c.?

29. The extent of their several territorial jurisdictions, &c.?

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

33. Which are courts of equity, and which of law, &c.?

34. What methods are used to carry up judgments &c.?

*A.* I. *Justices of the peace.* (1)

This is not a court of record and an *appeal* lies to the county, or superiour court.

II. "The *Court of pleas and quarter sessions.*" Generally denominated, the county court.

It is a court of record holden quarterly in each county, by any 3 of the justices; there is however one justice in each county stiled "*chairman* of the court of pleas and quarter sessions."

This court has exclusive *original* jurisdiction as a court of *probate*, for issuing letters testamentary, and of administration, and in binding apprentices, and a concurrent jurisdiction with the superiour courts, in appointing guardians to orphans; and takes cognizance of all matters concerning orphans, and their estates; in practice, this business is done almost entirely in the county courts.

From its acts as a court of probate, and in appointing and removing guardians to orphans, there is an *appeal* to the superiour court.

It has *original* jurisdiction concurrent with the superiour courts, in all *civil* actions; excepting for sums due on bonds, notes, and liquidated accounts not exceeding $100 where the jurisdiction of a single justice is exclusive, as before stated.

Its original process can not be executed *out* of the county, except

(1) Commissioned by the governor, (to whom they are recommended by the representatives in general assembly,) during good behaviour; removable by the general assembly, only for misbehaviour, absence, or inability.

Their authority is confined to the county in which appointed.

Since the first settlement of the state, a Justice of the peace at his chambers and without a jury, had jurisdiction in civil cases where a small amount was claimed. In 1777, was enacted what we commonly call the "Court law," organizing our courts; it enacted, that all debts and demands of £5. and under, for a balance due on any *specialty, contract, note, or agreement, or for goods, wares, and merchandize sold and delivered, or work and labour done*, should be cognizable &c. by any one justice of the peace, who may give judgment and thereupon award execution, against the goods and chattels, or body of the debtor. This jurisdiction has been gradually extended to £10. to £20. to £25. to £30. and by an act at the last session of the Legislature is extended to all sums due "*on bonds, notes, and liquidated accounts, not exceeding* $100." And "all suits hereafter commenced in the superiour or county courts, on any bond, promissory note, or liquidated account for a less sum than $100, shall be abated on the plea of the defendant." Thus then we have the extent of jurisdiction of the first and lowest judicial tribunal, a single justice of the peace.

"where two or more persons are joined in one action, and one of them is personally served with process in the county where the writ issued, and the other resides in another county in the state, then it may issue —— process to the county or counties where the defendants reside."

By an act in 1762, "legacies, filial portions, distributive shares of intestates estates, sum or sums of money, or other estate due or owing from guardians, or from exrs. admrs. or other persons to orphans, may be recovered by petition to the *superiour courts, or courts of pleas and quarter sessions.*"

The proceedings on this petition are by plea, answer or demurrer, as in *equity*, only more summary.

This court, has *original* jurisdiction concurrent with the superiour courts, of all *crimes* and misdemeanors committed within the county, (except *perjury*, and *such* felony and criminal causes, where judgment upon conviction is for loss of *life, limb* or member.)

Either plaintiff or defendant, dissatisfied with the *sentence, judgment*, or *decree*, may *appeal* to the *superiour court of law* for the county—where, if the trial in the county court, was on an issue to the country, a trial *de novo* is had; if on the hearing of a petition for a legacy, filial portion, distributive share of an intestates estate, or other matter relating thereto, a rehearing in the superiour court; also a *writ of error* in the nature of an appeal, lies from this court to the superiour court of law, for the county.

III. The "*Superiour court of law and equity*," for each county in the state. (1)

This court (beside their appellate jurisdiction from the county courts, as before stated, and their general powers of correcting the errors of all inferior judicial tribunals,) has *original* jurisdiction *concurrent* with the county courts, in all *civil* actions:—Its process extends to any county: transitory actions, must be brought in the superiour court of the county where both parties reside; when they live in different counties, to the court of either, at the option of the plaintiff;—when the plaintiff resides beyond seas or in a different state, to the court of the county where the defendant resides.

These courts have *exclusive original* jurisdiction of all matters in *equity*, but their equity and common law jurisdiction is distinct, the judges sitting as chancellors, usually on the last days of the terms, and referring all issues of fact, to the jury returned to the superiour courts.

These courts, have *exclusive original* jurisdiction in *petitions* for divorce, and the emancipation of slaves; as also of perjury, and such felony and criminal causes where the judgment upon conviction, is for loss of life, limb or member, committed within the county; and have (beside the appellate jurisdiction as before,) *concurrent* with the county courts, *original* jurisdiction of *all* crimes and misdemeanors committed within the county.

From the *final* judgment, sentence, or decree of the superiour court, in *all* causes civil and criminal, there is an *appeal* to the *supreme court.*

IV. The "*Supreme court of North Carolina*," is the highest judicial tribunal known to our laws, being the court of the last resort.

(1) "Previous to the year 1806, (when an important change was made in our judiciary,) the state was divided into districts consisting of several counties each, and there was a superiour court of law and equity for each district.

It is holden at the city of *Raleigh* on the *third Monday of June*, and the *last Monday of December* in each year by the three judges, who are styled "judges of the supreme court of N. C." and whose duty it is made, "to keep the said court open from day to day, until every cause proposed for a decision, shall be heard and decided."

This court has no *original* jurisdiction, *save* in the case of certain delinquent officers receivers of publick monies, against whom the publick treasurer is authorised to enter up judgment, before any court of record.

Cases at *law*, can only be brought up from the superiour courts by *appeal*, as before stated, and can be *reheard* only on the questions of *law presented by the record*, it being the duty of the court, "to render such judgment, sentence, or decree, as on an inspection of the whole record, it shall appear to them ought to be rendered."

In cases *pending* before the *superiour courts* as courts of *equity*, "they may (on sufficient cause shown by affidavit, rendering such a removal necessary,) order the said cases *before* a hearing, to be removed into the supreme court; *provided*, that such removal shall not be permitted, until the cause shall be set down for hearing;" and here, a jury may be empanneled for the trial of issues of fact, as in equity cases, before the superiour courts.

Our courts of *equity* proceed by bill and subpœna, as in the English chancery.

MISCELLANEOUS.

35. Who is State Printer, &c.?
*A. Thomas Henderson*, Raleigh.

36. Who is the principal *Book-seller* at the seat of Government?
*A. Joseph Gales.*

Since 1806, a superiour court of law and equity has been holden semiannually in each county. The state, (comprising 62 counties) is divided into *six circuits*, 4 of 10 counties each, and 2 of 11 counties each.

From 1806 to 1818, (when another very important change was made in the system,) there were but six judges in the state, each rode a spring and fall circuit, holding the superiour court of law and equity in each county in his circuit, no one riding the same circuit twice in succession.

The same 6 judges met semiannually in January and July at the city of *Raleigh*, and held the "supreme court of N. C." which had no original jurisdiction, but to which questions of law and equity were carried from the superiour courts, either by appeal, or in the form of a case reserved by the judges below.

In 1818, *three* judges were appointed, whose sole duty it is to hold the "supreme court," leaving the six judges of the superiour courts of law and equity to the circuits, and who do not now sit in the supreme court. The judges of the superiour courts allot the circuits among themselves previous to each circuit, no one riding the same circuit twice in succession. The circuits commence throughout the state, on the 1st *Monday* of *March* and *September*, one week being generally allotted to each court; in a few instances, two are thrown into one week where there is little business.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* It is that of "*bargain and sale.*"

2. Does the legal possession pass without livery, &c.?

*A.* The legal possession, passes to the grantee without livery of seizin.

The statute of uses 27 Hen. viii. c. 10. is in force here.

By an act of 1715. c. 38. no conveyance, or bill of sale for *lands*, (other than in mortgage,) in whatever manner or form drawn, is available in law, unless it is *acknowleged* by the vendor, or *proved by one or more evidences upon oath*, either before the *chief justice* for the time being, (by subsequent acts, before any of the judges) or in the *court* of the county where the land lies, and *registered* by the publick register of the same county; deeds *so* done and executed, are valid, and pass estates in land or right to other estate, without livery of seizin, attornment, or other ceremony whatsoever.

There is no usage here applicable to this subject, not derived either from the common law, that part of the English statute law in force here, or our own statutes.

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* In the creation of estates in fee by deed, the word *heirs* is indispensable, we have no estates in *fee tail.*

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* Generally by the rules of common law.

5. Are attesting witnesses &c. required to conveyances?

*A.* The attestation or execution in the presence of *witnesses*, not being of the essence of the deed, but necessary rather for preserving the evidence, under the English law (*2 Blk. Com.* 311.) and the act of 1715, (*see No. 2.*) permitting deeds *acknowledged* by the vendor, to be registered, and the certificate of registry regularly given on the deed, being sufficient proof of authenticity to entitle the party to read it in evidence, it is conceived, *attesting witnesses* are *not* required to conveyances by deed of real estate, whether absolute, or by way of mortgage.

6. Must the deed be sealed?

*A. It must.*

7. Is a scroll sufficient?

*A.* A scroll is *sufficient.*

8. Are the common law requisites for the perfection of Deeds &c. altered, in any particulars in your state?

*A.* They are not, otherwise, than as stated in other answers.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* It is *necessary* to the validity of a deed conveying *real* estate. (*see No. 2.*)

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* The answer to this question, and in part to the preceding, will be found in the subjoined epitome of our laws on the subject.

I. *As to deeds or absolute conveyances of land.*

All deeds must be *registered*, before they can be read in evidence. By the act of 1715. c. 38. this was required to be, within 12 *months* from the *date* of the deed. It was after-

wards in 1756. c. 6. extended to 2 *years*.

By a series of acts passed in different years, down to 1818, *further* time was given for the registration of conveyances previously made, and not registered within the time appointed by law. The act of 1818. c. 9. (the last of the kind,) enacted "that all grants for lands, all deeds of mesne conveyance, and powers of attorney under which any lands tenements or hereditaments had been or may be conveyed &c. might within *two* years after the passing of the act, be admitted to registration under the same regulations and restrictions as theretofore appointed by law; and be valid as if proven and registered, within the time theretofore allowed."

When registered, the deed has relation back to the time of execution. The registration as observed before, must be in the office of the county in which the land lies.

The *answer* therefore is, that as against subsequent purchasers, the *prior* deed to be valid, need not necessarily have been *recorded* before the execution of the subsequent deed, though like all others it must be, before it can be read in evidence. Where fraud is alledged, the want of registration will of course be a circumstance relied on.

II. As to *mortgages, or conveyances in trust.*

By the act of 1715. c. 38. "every *mortgage* of *lands*, tenements, *goods* and chattels, first *registered* in the register's office of the county where the land lies, or if goods and chattels, where the mortgagor lives, is to be held the *first* mortgage, *unless* the prior mortgage be registered, within 50 *days* of the *date*."

And by an act of the last session 1820. c. 3. "no *mortgage*, or deed or conveyance in *trust*, for any estate whether real or personal, executed after the 1st day of June following, to be available in law, against creditors, or purchasers for a valuable consideration, *unless proved and registered* in the manner already prescribed by law in the case of conveyances other than mortgages, within *six months* after the *execution* of the mortgage, or deed or conveyance in trust: and if not so proved, and registered within the time aforesaid, to be held as against such creditors, or purchasers, utterly null and void."

These are the *laws* which govern the subject: it is not recollected that any decision has been made, as to the effect of *notice*.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?
*A.* She *may*.

Her right of *dower*, by act of 1784. ch. 22. extending only, to the lands, of which her husband died *seized* or possessed, (conveyances made fraudulently to children or otherwise, with intent to defeat her dower, being by the same act declared void as against her,) it follows, that the husband's bona fide conveyance in his life time, deprives her of dower.

12. Is this done by joining with him in the conveyance, &c.?
*A.* It must be by writing sealed and delivered by them *jointly* and duly acknowledged by them, and registered, according to law. *See act* 1715. c. 28.

13. Is a private examination of the feme necessary, &c.?

14. What officers may take this examination, &c.?
*A. A private examination*, (by the act of 1715) is necessary. It may be taken by any of the *judges* of the sup. court, or of the superiour courts of law and equity; by the *county*

*court* where the land lies (a member of the court stepping one side with the feme in private;) or by two or more *commissioners* appointed under the order of a *judge*, or of the *county court* where the land lies, if the feme is a resident of another country or so *aged or infirm* that she cannot travel to the judge or county court; the commission being issued under such order by the clerk of the county court. *See act* 1715, *c.* 28, *relative to deeds by feme covert. Hayw. man. tit. feme covert.*

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution,&c

*A.* It is believed the following *form* will contain every thing that is essential in the *certificate* of a *judge* when the examination is taken before him; when before a *court* or *commissioners*, it will of course vary according to the authority which takes it.

"*State of N. Car. July* —— 1821.

*Before me* * * * *one of the judges of the superiour courts of law and equity for the state aforesaid, (*or one of the judges of the supreme court of N. C.*) came A. B. and C. D. the bargainors in the foregoing deed, and acknowledged the execution thereof, she the said C. D. being first examined by me privily and apart from her husband the said A. B. touching the execution thereof, and it appearing that she hath executed the same freely and of her own accord, without fear or compulsion of the said A. B. her husband, and that she doth voluntarily assent thereto, Let it be registered.*

E. F. *J. S. L. & E.*"

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* See *answer* No. 11. ante.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* See *answer* No. 11. ante.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A.* The *county court* of the county where the land is, or any one of the *judges* of the *sup. court* of N. C. or of the *superiour courts of law and equity; & see no.* 14.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* The following is believed to be sufficient.

"*State of N. Carolina.* —— 1821.

*Then was the execution of the foregoing deed, acknowledged before me by A. B. the bargainor, in due form of law. Let it be registered.*

C. D.—*J. S. L. & E.*"

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

"*State of N. Carolina.*—— 1821.

*Then was the execution of the foregoing deed proved before me in due form of law, by the oath of E. F. the subscribing witness thereto. Let it be registered.*

C. D. *J. S. L. & E.*"

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A. No.*

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* It is not usual, nor is it believed necessary.

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* No form in particular prescribed. In practice it is usually administered thus: "*You A. B. do solemnly and sincerely declare and affirm that*

*the evidence you shall give the court and jury" &c.* If a quaker were the witness to the deed, the *certificate* of the judge would, or need in no way differ from that stated in answer to No. 20. save by using the word "affirmation" in the place of "oath."

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* In answer to this I subjoin the substance of our laws on the subject.

The 7th *section of the act of* 1715, *c.* 38. (the first act on the subject,) in substance provided, that conveyances of land made in foreign parts, remitted and *proved here* as deeds made here, or *acknowledged* or *proved* before the *chief magistrate* of any city, town or corporation, within the *king* of G. Britains dominion's and attestation thereof affixed thereto; or before the *governor* or commander in chief of any of his *majesty's plantations*, and attested under the *publick seal*; and registered in the office of the precinct where the land lies, within 1 year after the *arrival* of the deed, should be as valid &c. as if made and executed, within the province."

By an *act in* 1802, *c.* 22, it is enacted, that where inhabitants of *other states* by *will* or *deed*, devise or convey property in this state, and the *original cannot be obtained* to register in the *county* where the land lies, or where the property is in dispute, then a copy of the will or deed (after it has been proved and registered, or deposited according to the laws of the state where the person died, or made the same,) certified according to the *act of congress* of May 1790, by the proper officer, with the testimonial of the governor &c. that the person certifying, is duly authorized &c. may be read in evidence in the courts of this state in like manner, as a copy from any of the registers or clerks offices therein.

*By an act in* 1810 *c.* 21, *sec.* 2. If a deed for conveyance of lands be *executed* without the state, and the *subscribing witness or witnesses*, are without the state, the *court of pleas and quarter sessions*, of the county in which the lands lie, may direct a *dedimus* to two or more *commissioners* in the state where they reside, empowering both or either to take the *acknowledgment* or *probate* of the deed, and return it with a *certificate* of the probate or acknowledgment to the court; which dedimus, certificate and deed, may be registered, and be effectual to all intents and purposes.

And it is provided, that if a subscribing witness to a deed or any instrument requiring registration is dead, proof of his or her hand writing, *together* with proof of the hand writing of the *grantor*, shall be sufficient for that purpose.

*By an act of* 1810, *c.* 9, 1*st sec.* If a conveyance for lands is by *husband and wife*, residing out of this state in any of the U. States, or territory of the U. S. the *acknowledgment* may be before one of the judges of the courts of supreme jurisdiction there, (or by the *wife*, before *two* or more *commissioners* authorized under a commission for that purpose from some court of record in such state or territory,) the wife being privily examined before the judge or commissioners, whether she voluntarily assents thereto; the attestation of which acknowledgment endorsed on or affixed to the deed or commission, by the judge or commissioners, with the certificate of the governor of the state or territory duly authen-

ticated and annexed to the deed, that the judge before whom &c. was at the time one of the judges of the courts of supreme jurisdiction in &c. or that the court issuing the commission is a court of record, and the person signing it is clerk of such court; the deed then being exhibited to the court of pleas &c. of the county where the lands lie, or to one of the judges of the superiour courts, shall be ordered with the certificates and commission to be registered, and when so registered, is valid to convey the estate of the feme, and is evidence without further proof.

*By the 2d sec.* If a conveyance or power of attorney to convey lands in this state, made by *husband and wife* residing without the limits of the U. States, is *acknowledged* before the Mayor or other chief magistrate, of any city, town, or corporation, (the wife being first privately examined by the magistrate, whether she voluntarily assents thereto,) and the attestation thereof is endorsed or affixed thereto, upon being exhibited to the court of pleas &c. of the county where the lands lie, or one of the judges of the superiour courts &c. it shall be ordered &c. and be registered, as if proved and acknowledged in the court of such county, and be valid in law to pass the estate of the wife, and when registered is evidence, without further proof.

*By a subsequent act*, 1816 c. 82. the provisions of the first sec. of the act of 1810 c. 9, are extended, to the district of *Columbia*, except that instead of the certificate &c. of the governor, the certificate and authentication of the *secretary* of *state* of the U. States is required.

Beside the above modes of conveyance by those residing *abroad*, there remains one other viz, by *attorney*.

*By an act of* 1798, c. 37, *sec.* 2, a *power of attorney* to convey real estate, executed by any person residing out of the state, proved or acknowledged before the *chief justice*, or any judge of the courts of supreme jurisdiction in the state where such person resides, or in any county court thereof, duly certified by the *clerk* of the court, or a *Notary* or Tabellion publick, upon being exhibited to the court of pleas &c. of the county where the land lies, or one of the judges of the superiour court, shall be ordered &c. and be registered, in the same manner, as if the power had been proved or acknowledged in open court of the county where the land lies.

*The 3d Sec. of the act of* 1810. c. 9. provides that *powers of attorney* made by persons in *foreign parts*, being acknowledged or proved, before the *mayor* or *chief magistrate* of any city, town or corporation, and the attestation endorsed or affixed thereto, and on exhibition to the court of pleas &c. of the county where the lands lie, or to one of the judges of the superiour courts of this state shall be ordered &c. and be registered; and are then evidence without further proof.

*And by the act of* 1798. c. 31. a conveyance made by any person under a *power of attorney* from a *feme covert* residing *without* the state by her freely executed jointly with her husband, is made valid to pass the estate of the feme in the lands mentioned and included in the power, whether in fee simple, right of dower or otherwise: *provided*, the power is separately *acknowledged* by the feme, and is duly *proved* as by the existing laws, deeds of conveyance by femes covert are required to be acknowledged or proved.

It will be observed the 2d *sec.* of

the act of 1810. c. 9. above recited, provides again expressly for powers of attorney to convey lands in this state, made by husband and wife who reside without the limits of the U. States.

Thus then it is believed is given, every mode in which conveyances of real estate, by persons residing *out* of this state, can be authenticated or admitted to registration under our laws.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c ?
*A. See answer* to *No.* 24.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases, for secondary proofs, &c. ?
*A.* The *act of* 1810. *c.* 21 *s.* 2*d* provides for the case of the *death* of subscribing witnesses; it is not recollected that any express provision is made for the other cases; but the act of 1715. c. 38. (ante, *No.* 2.) directing the *proof* to be by one or more *evidences* upon oath, it is conceived does not necessarily require the oath of *subscribing* witnesses, in cases in which from necessity, the common law rules of evidence admit of secondary proof.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country ?
*A. See ante No.* 24.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified ?
*A.* They *are*; copies are exemplified by the register in whose office the deed or mortgage is recorded. As however the deed or mortgage after being recorded, is returned to the party entitled to it; he cannot read a copy in evidence, until he accounts for the want of the original.

29. In what order, do mortgages take preference of each other ?

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering ?
*A. See ante, No.* 10.

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c ?
*A.* It is conceived they may; the general terms used in the acts being "deeds of conveyance for lands &c."

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c. ?
*A.* Nothing is recollected.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state ?

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c. ?

35. What is the order of priority among judgment creditors, in respect of lands ?

36. Does a judgment bind, after acquired land ?
*A.* As the law at present seems to be settled here, a judgment is *not* a lien upon lands, but from the *teste* of the *fi. fa.* where a fi. fa. is the species of execution which the plaintiff takes out upon it; but that it binds a *moiety* of the lands, if the creditor elects to sue out an *elegit*, from the term in which rendered.

I have subjoined an explanatory *note* on this head. (1)

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* See answer to *No.* 33, 34 &c.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

40. Is there any Court in which a Judgment will bind the lands, in every county?

41. Can execution be taken out at once, in every county, &c.?

*A.* To the first part of these questions, the answer results from that under *Nos.* 33, 34 &c.

The *final* process of the *sup. courts*, may be directed to any county in the state; and by act of 1777. c. 2. s. 77. upon a judgment or decree in a *county* court of pleas and quarter sessions for debt, damages, portion, legacy, or distributive share of an *intestates* estate, if the defendant removes him or herself and effects, or reside out of the jurisdiction, the *clerk* of such court at the plff's request, may issue execution to *any* county of the state, where the deft, or his goods may be found.

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* From the same term, against real and personal estate, (see *answer to No.* 33, 34 &c.) which may be sold after advertising (40 days for real, and 10 for personal property,) without any previous appraisment: conditions of execution sales, always cash, unless ordered otherwise by the plff.

(1) The question, whether a judgment is a lien upon the lands of the debtor, had never received its conclusive and authoritative answer until a late decision of our sup. court, *Howell Jones & others vs. Edmonds*, (Murphy, 43.)

There had been some obiter dicta, (1st Hayw. 95.) and it is believed many decisions on the circuit, that a *judgment* bound the *lands* of the debtor from the time it was rendered. This case decides, that a judgment creates no lien upon the lands of the debtor where a fieri facias is sued out; and it is said by the court, that a judgment is still a lien upon a *moiety* of the land of which the debtor was seized at the time of its rendition, if the creditor sue out an *elegit*; but if he resort to a *fieri faciae*, the lands are only bound as *chattels*. This requires some explanation.

The stat. of *Geo.* 2d. c. 7th. sec. 4. (considered in force here, as expressly relating to the colonies, and not being inconsistent with the spirit of our government,) had enacted, that *lands* should be liable to and chargeable with all just debts, and be assets for the satisfaction of debts, in the same manner as real estates by the law of *England* are liable to debts, due by bond or other specialty; and be subject to the *like remedies with personal estates*. Our act of 1777. c. 2 s. 29. had enacted, that all *process* which theretofore issued against goods and chattels, lands and tenements, should for the future issue in the *same* manner; and such as issued only against *goods* and chattels, should thereafter issue against *lands* and tenements, as well as goods and chattels; and the sheriff, upon such attachment, execution or other process, should proceed to levy the same upon the goods and chattels of the defendant in the first instance if any, but if to the best of his knowledge there were no goods and chattels, or not sufficient to answer the plaintiff's demand, to execute the same upon the lands and tenements to the amount of the whole debt, or of so much, as remained more than the value of the goods and chattels found; and that *lands* and tenements be liable (under such restrictions,) to be *sold* to satisfy the plaintiff's judgment; and that where process is levied upon lands and tenements in such manner, *and judgment shall have been thereupon had,** he should not proceed to *sell* the same, until advertised for 40 days.

Under these laws, it had become the settled practice, to issue the *fi. fa.* against the goods and *lands*, and as the stat. of 29th c. ii. ch. 3d. is not in force here, it is believed, the fi. fa. as at common law has relation to its *teste*, and binds the defendant's *lands* and *goods* from that time; no case is known where the *elegit*, (or any other writ of execution against property than the fi. fa.) has been prayed.

* These words in italick are in the manuscript. *Ed.*

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* No acknowledgment in court, or confirmation is necessary; his acknowledgment, or proof by a witness, to entitle the deed to *registration*, is requisite in this, as in all other cases of deeds of land or slaves, before they can be read in evidence, as heretofore shown.

There is no summary redress for fraud or irregularity, other than may fall within the power of the court (on return of the execution,) by way of motion on common law principles.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* Nothing of this kind is required.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* See *answer* to *No.* 33, 34 &c. when money only is recovered as debt, or damages, (and not any specifick chattels, as in detinue, replevin &c.) the only executions in use are, the ca. sa. and fi. fa.

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* Not at this time; the act of 1812. c. 8. for suspending executions ceased to operate, from the first term of the court, after the 1st of February, 1814.

48. May the debtor redeem land sold on execution, &c.?

*A.* He has no such privilege.

49. May judgments on warrant of attorney, be entered in vacation?

50. Can judgments be entered on warrant of atty. before the debt is payable?

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* By act of 1783. c. 9. judgment bonds, notes, and other writings, with power to any person to *confess judgment* thereon, are declared *void* as to the power, and proceedings to be as on common bonds and penal notes.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* The *fi. fa.* being the only execution on which lands are sold, and there being no act of assembly declaring the effect of a reversal, nor any adjudged cases recollected, I refer to what may be found in the cases collected in 2 *Bac. ab.* 740. *tit. Exn. 6th ed. pr. Williams, Let. Q.* and 5th *Binn.* 273.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* It is; and bail are exonerated on surrender &c. *See Hayw. Man.* "*Bail.*" *act of* 1777. c. 2d s. 19, 20. By this act, if the sheriff takes no bail bond, or an insufficient bond, he is to stand in the place of special bail: the bail bond is to be taken as special bail: the surrender may be made in court or to the sheriff in the recess of the court, and at any time before final judgment on the sci. fa.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* He may, unless he has taken the benefit of the insolvent (or honest debtors) act, or of the prison bounds.

Females, fathers &c. are not exempted.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* So far as recollected, it is.

56. Are any kinds of personal estate exempt from execution?

*A.* Our insolvent law of 1773. c. 4, entitled the debtor to his discharge on swearing that he had not the worth of 40s. sterling, in any worldly substance, in debts owing to him or otherwise, besides his wearing apparel, working tools, and arms for muster, and delivering up his property with a schedule; and the 2d s. of the act protected them from sale. The act of 1808. c. 11. exempts from sale on execution, and excepts in the insolvent's oath, 1 bed and its necessary furniture, and the act of 1810. c. 15. further exempts, a wheel and cards, also one loom.

## No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

60. Is there any thing peculiar in your insolvent law?

*A.* 1. *By an act passed in* 1773, a person charged on mesne process or in execution for debt, and having remained *in close prison* 20 *days*, on *petition* to any two justices of the peace, or two judges of the inferiour, or one judge of the superiour court, either in or out of court, and having given notice to the creditors at whose suit imprisoned, of his petition, is intitled to be discharged from *personal* imprisonment by the justices, judges, or judge applied to, on taking the "*poor debtors oath*," in substance, that he is not worth 40 *s.* sterling, (except the articles mentioned No. 56) and had not directly or indirectly at any time, disposed of any of his property to defraud his creditors. (1)

2. By another *sec.* of this act, a debtor who has remained *in close prison* for 20 days, may petition the court to be discharged from imprisonment upon *surrender* of all his property, and upon filing a schedule, and giving *notice* of his petition with a copy of the schedule to the *creditors*, at *whose* suit imprisoned, and taking a prescribed oath to the truth of the schedule, he is to be set at liberty by the court, if satisfied with the truth of his oath.

All the property by another section is vested in the sheriff, who is to sell it and pay over the proceeds, which finally according to provisions in the act, are to be distributed among the creditors who may come in, pro rata.

And in such case, by another section, the person discharged is never to be arrested for the *same debt.* (2)

*An act in* 1808, dispensed with that part of the law of 1773, requiring

(1) I understand this section, merely to exempt the debtor taking the oath, from personal imprisonment for the *same* debts, but not as against all creditors. Ed.

(2) I understand on the whole, that upon this branch of the act the debtor is discharged from future personal arrest by any of his existing creditors, at the time of his surrender, whether they come in or not under the assignment; although the terms of the act are, that such debtor after such discharge shall never be arrested for the *same* debts, which appears to have no relation but to the debts for which he was imprisoned, and the creditors to whom notice had been given. Ed.

20 days previous confinement in *close prison*, substituting the prison bounds; but in 1809, this being deemed too *indulgent*, the legislature *revived* the act of 1773 for 20 days *close imprisonment*, before the debtor could petition to deliver up his property.

*By an act passed in* 1820 to take effect on the 1st *Jan.* 1821, actual *imprisonment* in gaol on ca. sa. was in effect abolished.

By this, a debtor arrested on ca. sa. upon entering into a bond &c. to the creditor for his appearance at the next county court, and to abide the order of the court, touching his taking the benefit of the act of 1773, and tendering such bond to the officer, is to be discharged from custody.

On appearance, he is entitled to take the "poor debtor's oath," *or* to surrender his property, and is discharged as to imprisonment of his *body*, against *all* creditors to whom notice is given, according to the provisions of the act.

If any creditor suggests fraud or concealment, the fact is to be tried by a jury. (1)

No. v. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* They are.

62. What formalities of execution, are essential to a will of lands &c?
*A.* By *statute*, no will of *lands* is valid in law or equity, unless written in the testator's life time, and *signed* by him or some other in his *presence* and by his direction, and *subscribed in his presence* by *two witnesses* at least, no one of which shall be *interested* in the devise of the lands—— *Unless* the will is found among the valuable papers or effects of the deceased, or have been lodged in the hands of any person for safe keeping, and be in the *hand writing of the deceased*, and his *name* be subscribed, or inserted in some part of the will; and if such hand writing is generally known by the acquaintances of the deceased, and it be proved by at least 3 credible witnesses, that they verily believe the will and every part to be in the hand writing of the deceased: in such case, it shall be sufficient to convey an estate in lands.

63. What formalities are required, in the revocation of wills of land?
*A. By the* 1*st clause of an act* 1819; *c.* 17. no devise in writing, of *lands*, tenements or hereditaments, or any clause thereof, is revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the devisor himself, or in his presence and by his direction and consent; but all devises of lands and

(1) The foregoing, is a mere sketch of the insolvent law of N. C. as I understood it to be, when the questions were answered: The gentleman who did me this favour, is very minute in his detail of the last act of 1820, for the relief of "honest debtors," manifesting great satisfaction, that the odious and impolitick right of a creditor over the *body* of his debtor, to consign him at his pleasure to a shameful and unavailing punishment *preliminary* to a surrender, had been abolished in N. Carolina.

This consideration would induce me to give a pretty full abstract of the act of 1820, had I not received information from this gentleman some time in the autumn, that an attempt would be made at the ensuing session of the legislature to repeal it. Not having heard the result, I concluded it best, to defer the communications received from him at large, on the insolvent laws of N. C. What is mentioned above, is a summary taken from his statement, and which perhaps, is not entirely comprehended by me. Ed.

tenements shall remain and continue in force, *until*, the same be burnt, cancelled, torn, or obliterated by the devisor, or in his presence and by his consent and direction; or *unless*, the same be altered, or revoked by some other will or codicil in writing, or other writing of the devisor, signed by himself, or some other person in his presence and by his direction, and subscribed in his presence by *two* witnesses at least; or *unless*, the same be altered or revoked, by some other will or codicil in writing of the devisor, and his name subscribed thereto or inserted therein, *and* be lodged by him with some person for safe keeping, or left by him in some secure place, or among his valuable papers or effects; *and* every part of which will or codicil or other writing, be proved to be in the hand writing of the devisor, by three witnesses at least.

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?

*A.* They are not, further than appears in *answer*, *No.* 62.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law?

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

67. In what office is the will and inventory registered: are office copies evidence?

*A.* All wills are proved, and administrations granted, in the court of *Pleas* and quarter sessions of the proper county, and the wills recorded there.

The *proper* county, is where the deceased had his or her usual residence at his or her death, or if he or she had fixed places of residence in more than one county, in either; and in case of a written will, it is to be proved by at least *one* of the subscribing witnesses if living; if contested, by all the living witnesses to be found, and by such other persons as may be produced to support the will; and where the validity of any will is contested, whether written or nuncupative, it is to be tried by a *jury*, on an issue made up by the court for that purpose.

*Probates* of wills of land, as well as attested *copies* certified by the proper officer (the clerk of the court where proved,) are *evidence* in the same manner as the originals; but if fraud is suggested in obtaining the will, or any irregularity in proving it, the party may insist on the *original* being produced if to be found, and compel its production.

Original wills and inventories, are to remain in the clerk's office among the records.

These are all statute provisions, and may be found in Hayw's manuel, and furnish answers to questions *Nos.* 65, 66, 67. (1)

68. What formalities are required, to wills of chattels?

*A.* They are proved according to the common law: nuncupative wills, for a small amount, under certain restrictions are allowed. By the 2*d. sec.* of the act of 1819. no will in writing bequeathing *personal* estate of greater value than 100*l.* is *revocable*, otherwise, than by cancelling, burning.

(1) It is not stated expressly, but I infer from the provisions in these acts, that the probate in the county court in the first instance, with or without contest, is *not* conclusive on a trial at law in case of lands, nor does it seem clear, that the probate there as to the personalty, is conclusive against those claiming by intestacy. *Ed.*

tearing or obliterating the same, or by other writing declaring the same; or other will or codicil executed with such formalities, as a will good and sufficient in law to pass a personal estate, of greater value than 100*l.*

*By the act of* 1811. c. 17. no person is capable of making a will of chattels, until 18 years of age.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A. See answer to No.* 68.

70. May executors, or administrators having letters in another state, sue in your state?

71. If not, what is to be done to enable them to sue?

*A.* It was decided by the court of conference, (the then highest judicial tribunal in the state, *adm'r of Butts vs. Price, Conf. Rep.* 68.) that letters of *adm'n* granted in another state, (Georgia) would not enable the administrator to maintain a suit in our courts; adm'n should be taken out here; in which case the bond and security required of all adm'rs, must be given.

In "*ex'rs of Stephens vs. Smart's ex'rs,*" (1 L. Repository 471.) it was decided by the sup. court, that letters *testamentary* issued in another state, (S. Carolina) were sufficient to enable the executor to sue in this state.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

73. How are foreign wills and testaments proved in your state, &c?

*A.* In cases where inhabitants of *other* states, by *will* or *deed,* devise or convey property situated in this state, and the original will or deed cannot be obtained to register in the county where the land lies, or where the property is in dispute, a copy of the will or deed (after it has been proved and registered or deposited agreeably to the laws of the state where the person died or made the same) being properly certified, either according to the act of congress passed in May 1790, or by the proper officer of the state, and the testimonial of the governor or commander-in-chief of said state, that the person certifying is the proper officer, or duly authorised by law; in such case, the copy may be read as evidence in the courts of this state, as a copy from any of the registers' or clerks' offices therein might.

On the part of these questions which relate to deeds &c. *see answer to No.* 11. *Judgments* in other states are of course exemplified under laws of the U. S. 2 *vol.* 102. 3 *vol.* 621. for authentication of records.

### No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

The *act of* 1808 *ch.* 4*th* (intended to obviate many difficulties which arose in the construction of *previous* laws on the subject,) (1) drawn by a distinguished gentleman of the bar, contains the following "rules for regulating the descent of inheritances."

1st. Inheritances shall lineally descend to the *issue* of the person who died last actually or legally seized, forever, but shall not lineally ascend, except as is hereafter provided for.

(1) Acts of 1784, *c.* 22. 1784, *sess.* 2, *c.* 10. 1801, *c.* 11.

2d. Females shall inherit *equally* with males, and younger with older children.

3d. The lineal descendants of any person deceased, shall *represent* their ancestor, and stand in the same place as the person himself would have done, had he been living.

4th. On failure of lineal descendants, and where the inheritance has been transmitted by *descent* from an *ancestor*, or has been derived by *gift*, devise or settlement from an ancestor, to whom the person thus advanced would in the event of such ancestors death have been the heir, or one of the heirs, the inheritance shall descend to the *next collateral* relations of the person last seized, who were of the *blood* of such *ancestor*, subject to the two preceding rules.

5th. On failure of lineal descendants, and where the inheritance has *not* been transmitted by descent, or derived as aforesaid from an *ancestor*, or where, if so transmitted or derived, the blood of such ancestor is extinct, the inheritance shall descend to the *next collateral relations* of the person last seized, whether of the paternal or maternal line, subject to the second and third rules.

6th. Collateral relations of the *half blood*, shall inherit equally with those of the whole blood, and the degrees of relationship shall be computed, according to the rules which prevail in descents at common law: *provided* always, that in all cases where the person last seized, shall have left no issue, nor brother nor sister, nor the issue of such, the inheritance shall vest for *life* only in the *parents* of the intestate, or in either of them, if one only be living, and on the death of one of the parents, then in the survivor, and afterwards be transmitted according to the preceding rules.

Sec. 2d. The act to be in force from and after the 31st of December 1808, and all laws within the meaning and purview are repealed and made void. *Provided*, that it shall not be construed to repeal so much of the existing laws, as prohibits children who have had lands settled on them by a deceased parent, from claiming more of the inheritance of such parent, than will make their shares equal to those of the other children. (1)

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* The admr. by an act in 1766, and another in 1784, is to distribute the surplus as follows:

*If there are not more than two children*, one third part to the wife of the intestate, and all the rest, by equal portions, to and amongst the children of the intestate, and such persons as

(1) The provisions alluded to in the *proviso*, excludes *children* from inheritance who have had lands *settled* upon them by the parent in *fee simple*, equal to the share which shall descend to the other children respectively, and in case it is not equal, then so much shall descend to the child provided for, as will make such child equal with the others inheriting.

If a person dies seized of real estate of inheritance, leaving no person who can claim as heir by the laws of the state, but leaving a *widow*, she shall inherit the estate.

Where aliens are next in descent, the *nearest* descendant or relation of the deceased, being a *citizen* of the U. S. inherits.

See 1 *Murp.* 333, 410.—2. *Law Rep.* 103, 406, on the construction of the act of 1784 and 1808, being the most important, altho' not the only cases decided upon these acts.

legally represent such children, in case any of the said children be then dead, other than such child or children who shall have any estate by the *settlement* of the intestate, or shall be *advanced* by the intestate in his life-time, by portion or portions equal to the share which shall by such distribution be allotted to the other children to whom such distribution is to be made; and if such settlement or portion be not equal, then so much of the surplus of the estate of the intestate, to be distributed to such child or children as shall have any *land* by settlement, or were *advanced*, as shall make the estate of all the said children to be equal as nearly as can be estimated. If there be *no* children, nor any legal representatives of them, then *one third* to the wife, and the residue equally to every of the next of kin of the intestate who are in equal degree, and to those who legally represent them, provided that there be no representatives admitted amongst collaterals, after brothers' and sisters' children. *If there are more than two children, then the widow shall share equally with all the children, she being entitled to a child's part;* if there be no wife, then to be distributed equally to and amongst the children; if no child, then to the next of kindred in equal degree of or unto the intestate, and their legal representatives as aforesaid. If after the death of the father, any of his children die intestate without wife or children in the life-time of the mother, every brother and sister and the representatives of them, shall have an equal share with the mother, of the estate of the child or children dying intestate.

*By an act in* 1792, children to whom the intestate had given, or put into their possession any personal property, are bound to render an *inventory* of such property, under oath to the admr. setting forth the particulars, and on refusal are barred from any share.

By *an act passed in* 1799, it is provided, that if a *woman* dies intestate leaving *illegitimate* children, (and none legitimate,) her estate real and personal shall descend to such children, as if born in wedlock; and if any such illegitimate child die intestate, and without leaving a child or children, the estate real and personal of such intestate, shall descend to, and be divided among the brothers and sisters of the intestate, born of the body of the same mother and their representatives, in like manner as if they had been born in lawful wedlock.

Although the *stat. of* 29 *car.* ii. *c.* 3. *s.* 25, which was passed in England to clear up a *doubt* in regard to the *husband's* right as admr. of his wife, to her personal estate, is not in force or re-enacted here, yet the opinion is, (though not settled by any judicial determination) that he *is* entitled to *admn.* on her effects, and to receive and enjoy them to his sole use.

It will be perceived, that our act of 1784 in terms, comprises the stats. of 22 and 23 car. ii. c. 10, and the stat. 1 jac. ii. c. 17, called the statutes of distribution: (*see* 3 *Bac. ab. Exrs. and Admrs. let. I.*) except, that if there are more than 2 children, the widow only shares *equally* with them, taking a child's part; and takes a *third* in the cases of there being no child or not more than two children: whereas, by the English acts aforesaid, she takes a third in every case where there is a child or children, whether two or more, and where no child, is entitled to a *moiety*.

No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

83. Are entails abolished; converted into fees; or otherwise modified &c?

84. How barred by the tenant?

*A.* The 23*d sec.* of our bill of rights, (made a part of the constitution,) declares, "that *perpetuities* and *monopolies*, are contrary to the genius of a free state, and ought not to be allowed," and the 23*d sec.* of the constitution declares, "that the future legislature of this state shall regulate *entails*, in such a manner as to prevent perpetuities."

And the *act of* 1784. *c.* 22. *sec.* 5. declaring "that whereas *entails* of estates, tend only to raise the wealth and importance of particular families and individuals, giving them an undue and unequal influence in a republick, and prove in manifold instances the source of great contention and injustice," enacts "that from and after the ratification of this act, any person seized or possessed of an estate in general or special tail, whether by purchase or descent, shall be held and deemed to be seized and possessed of the same in fee simple, fully and absolutely, without any condition or limitation whatsoever, to him, his heirs and assigns for ever, and shall have full power and authority to sell or devise the same as he shall think proper; and such estates shall descend under the same rules as other estates in fee simple; and all sales and conveyances made bona fide, and for valuable consideration, since the first day of January, 1777, by any tenant in tail in actual possession of any real estate, where such estate hath been conveyed in fee simple, shall be good and effectual in law, to bar any tenant or tenants in tail and tenants in remainder, of and from all claim and claims, action and actions, and right of entry whatsoever, of, in and to such entailed estate, against any purchaser, his heirs or assigns, now in actual possession of such estate, in the same manner as if such tenant in tail had possessed the same in fee simple."

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* By *an act of* 1784. *c.* 22. if a person dies intestate, (or makes a will, not devising and bequeathing therein to the widow, such real or personal estate for a provision as is satisfactory to her,) she is entitled to $\frac{1}{3}d$ of the *lands* &c. of which her husband *died seized*, as her dower for life.

But to entitle her to dower, where there is a devise to her of real or personal estate in the will, she is to *dissent* to the will, in the superiour or county court of the county in which she resides, within 6 *months* from the probate of the will.

As she is only entitled to dower of the lands of which the husband *died* seized, there is a provision making *void* all conveyances by the husband fraudulently to children or others, to defeat her of dower.

Her $\frac{1}{3}$ is to comprehend the *whole* of the mansion house, outhouses and improvements belonging to it, unless the court is of opinion that this would be manifestly unjust to the children or other relations, in which case she is to have such *part* or portions of the house &c. as the court conceives sufficient to afford her a decent residence, regard being had to her rank and past manners of life.

To obtain dower, a petition is to

be filed by her in the sup. court of the district, or the court of the county where the husband dwelt, setting forth the lands in which she claims dower, praying an allotment; upon which the court is to award a writ to the sheriff, to summon a jury of 12 freeholders, who (upon oath administered by the sheriff,) are to allot her dower in the lands and put her in possession; and also put her in possession of the mansion house, or part or portion thereof, allowed by the court.

If the lands lie in different counties, the court is to award writs to the respective sheriffs, who are to proceed in like manner.

The proceedings on the petition, are to be *summary* at the first court when prosecuted, on which the judges or justices are to determine as to them may seem right; but 10 days previous notice of the petition must be given to the heirs, ex'rs, or adm's, and a copy of the petition served on them.

By the same *act of* 1784. it is further provided, that if the husband leaves *no* child, or not more than 2 children, the widow shall have $\frac{1}{3}d$ of the *personal* estate, but if more than 2 children, then to share *equally* with the children, taking a child's part.

And it is directed, that the sheriff and jury at the time they allot her dower, shall *also* allot and set off to her, such portion of the *personal* estate as she is entitled to under this act.

By an *act in* 1791. it is provided, that where the widow *dissents* to the husband's will, the jury summoned to allot dower in the husband's lands shall *first* inquire, whether by the *will*, the widow is *as* comfortably provided for, as if dower of her husband's lands was allotted to her according to the act of 1784. and if of that opinion so to return; by which she is precluded from any further claim to lands except those devised to her.

And by the *same* act it is provided, that when a jury is summoned to allot to a widow so dissenting, her proportion of the *personal* estate to which she is entitled under the act of 1784. they shall *first* inquire, if the legacy or legacies given in the will, be *equal* in value to the *distributive* share she would take under that act, and if of this opinion, so to return; and the widow shall therewith be content.

But if they are of opinion, the provision made for the widow is not equal in value to the distributive share, and there is a residuum of the estate not given away in particular legacies; they are to *allot* to her so much of the residuum (if it consists of *specifick* property) as will make up the deficiency, and if it consist of *money*, to *assess* the deficiency, and return the assessment to court, on which the court shall give judgment for so much against the ex'rs or adm'rs, with stay of execution for such time, as the court under the circumstances may think fit.

If there is *no* residuum or an insufficient one, and the jury think the provision of *personal* estate made in the will for the widow, is not equal to the part to which she is entitled; they are to assess the amount which will make up the deficiency, and the sheriff is to make return accordingly to the next court, (which issued the writ,) and judgment is to be entered against the ex'rs or adm'rs for that amount, with stay of execution for such time, as the court under circumstances may think fit; and where there are *no assets* in the hands of ex'rs &c. and they have fully administered, the widow is to

have a *scire facias* against the *legatees*, in like manner as is prescribed for creditors. (1)

The widow, as to all *creditors*, is to be considered as a legatee, and be chargeable for the whole amount of her husband's estate which may come to her hands, as a legatee, or under this act, and be bound to *refund* to ex'rs or adm'rs her rateable part of debts &c. afterwards sued for and recovered, or duly made to appear against the husband; *provided*, that nothing herein is to subject the *dower* of the widow in the lands of the husband, or such lands as may be devised to her in the will, (if not exceeding the quantity she would be entitled to for dower,) to the payment of debts of the husband, during her life.

By an *act of* 1796. where a man dies intestate, the widow may take possession of the whole personal estate, and *use* so much of the crop, stock and provisions as are absolutely necessary for the support of herself and family, *until* adm'n is granted on the estate, when her possession is to cease.

And at the same court, where letters of adm'n are granted, the widow may petition the court to appoint a justice of the peace and 3 freeholders to view the estate, and *allot* to her and family, such part of the stock, crop and provisions as they may think adequate for their support for *one* year, and make return to the next court, of the particulars allotted; the commissioners first taking an oath faithfully &c. to apportion and allot &c.

This allotment is to vest such property absolutely in the widow (and children if any,) and is to be returned by the ex'rs or adm'rs in the inventory, noting that it had been allowed to the widow &c. and they are not to be chargeable therefor to claimants on the estate or to creditors, nor is it to debar the widow, from her distributive share allowed by law.

By *an act in* 1813, *c.* 14, there is another provision, in case of a deficiency of crop, stock &c. for one year *quod vide.* (2)

(1) Who must refund proportionably, to make up the amount assessed. Ed.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

87. What savings &c?

88. Is there a saving in favour of foreigners or citizens of other states?

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

90. Is there any thing peculiar in your state on this head?

91. What length of time bars recovery &c. in personal actions?

92. What savings?

93. Are there any in favour of citizens of other states, or foreigners?

*A. Act of* 1715, *c.* 27, *s.* 2.

I. All possessions of, or titles to land, tenements &c. derived from *sales* made by creditors, exrs. admrs. husbands and wives or husbands in right of their wives, or by indorsment of patents or *otherwise*, where the purchaser, possessor, or any claiming under them have or shall *continue in possession* of the same, for the space of 7 years, without any

(2) The foregoing is put down *as* the answer of my correspondent to this question; he referred me to the several acts, and left it to myself how to frame the reply; they are somewhat prolix, and it is possible for want of some local knowledge &c. I may not exactly have comprehended these various provisions, so ample and just, to the widow and family of a deceased man.

*suit* at law, are hereby ratified and confirmed against all manner of persons, any other title or claim, act, law, usage or statute notwithstanding. (1)

2. No person nor their heirs, which shall hereafter have any right or title to lands &c. shall *enter*, or *make claim*, but *within 7 years* next after his, her or their right or title which descend or accrue, and in default thereof shall be utterly excluded from entry or claim thereafter.

*Provided*, that persons entitled, who at the time of the right or title, *first* descended, accrued, come, or fallen, are within 21 *years of age, feme covert, non compos mentis, imprisoned*, or *beyond seas*, may notwithstanding the 7 years are expired, make entry or claim as before the act, *so as* such persons shall within 3 *years* next after coming of full age, discoverture &c. (or persons beyond seas within 8 years after the title or claim becomes due,) sue for the same, and not after, but that all possessions held without suing such claim as aforesaid, shall be a perpetual bar against all and all manner of persons whatsoever, that the expectation of heirs may not in a short time leave much land unpossessed, and titles so perplexed, that no man will know of whom to take or buy lands.

3. *Actions* of account render, upon the case, debt for rent, detinue, replevin, tresspass quar. claus. freg. within 3 *years* next after the cause of action accrues, and not after, *except* such accounts as concern the *trade* of merchandize, between merchant and merchant, their factors and servants.

(1) To this section judge Haywood affixes the following note: "This clause in my opinion has had its effect long ago, and I only retain it out of deference to the opinion of some of the profession."

Actions of trespass, assault and battery, wounding, and imprisonment, within 1 *year* after the cause of action accrues, and not after; and on the case for *words*, within *six months* after the words spoken, and not after.

If in any of said actions, the plaintiff's judgment is reversed by error, or *after* verdict is arrested, or any of them is brought by original writ, and the defendant cannot be attached, or legally served with process, he, his heirs exrs. or admrs. may bring a new action or suit from time to time, within 1 year after judgment reversed or given against the *pltff.* or till *deft.* can be attached, or served with process so as to compel him to appear and answer.

*Savings*, persons intitled to any of the beforementioned *personal* actions, being within 21 *years of age, feme covert, non compos mentis, imprisoned*, or *beyond seas*, may bring the same, within the times before limited, after being of full age, discovert, of sound mind, at large, or returned from beyond seas, as other persons having no such impediment might have done.

*Act of* 1748, *c.* 4, *s.* 5.

This act makes 20 years possession of lands *before* passing it, a bar against the king and the earl of Granville, his heirs &c. proof thereof being made before the governor and council, or general court, or court of the county in which the land is; the possessors paying the highest quitrents which were made payable to the lord's proprietors &c.

*Act of* 1786, *c.* 4. *s.* 5.

This act applies the limitations of the act of 1715, c. 27. to all *bonds*, bills, and other *securities* made transferable by this act, *after* the assignment or indorsment, in the same manner as it operates by law against promissory notes.

*Act of* 1791, *c.* 15, *s.* 1.

Where persons or those claiming under them, have been, or shall continue to be in possession of lands, under title derived from *sales*, by creditors, exrs. or admrs. or by husbands and their wives, or by *indorsment* of patents, or other *colourable title* for the space of 21 years, such possessions are confirmed, and shall be a bar against the *entry* of persons claiming under the *state*, provided the possession has been ascertained and identified, under *known and visible lines or boundaries.*

*Act of* 1795, *c.* 15, *s.* 1.

*Sureties* for guardians discharged from their suretyship, if the orphan within 3 *years* after coming to 21 does not call on the guardians for a full settlement; the act not to extend to persons *imprisoned, beyond seas, or non compos mentis.*

*Act of* 1804, *c.* 29.

When persons against whom there is cause of action, are beyond sea at the time of such action given, accrued, fallen or come, the person having such cause may sue, within the time limited for bringing such action by the act of 1715, *after* return.

*Act of* 1808, *c.* 8.

This act limits *penal* actions to 3 *years* after the cause accrued; but not to affect suits on any *penal* act of the general assembly, wherein a time is limited.

*Act of* 1810, *c.* 18.

Suits on clerk's and sheriff's *bonds*, to be within 6 *years* from the right of action accrued; *savings;* to *infants feme covert, non compos mentis,* if suit brought in 3 *years*, after impediment removed.

*Act of* 1811, *c.* 17.

*Fees* due to clerks, sheriffs &c. to be collected within 3 *years*, from the time of judgment, unless the person owing &c. lives out of the state.

*Act of* 1814, *c.* 17.

Actions of *debt*, grounded on any lending or contract without specialty, limited to 3 *years* after cause of action accrued; savings; persons *under* 21, *non compos mentis, feme covert, imprisoned, or beyond seas.* (2)

## No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

95. Before a sale, is notice to be given &c?

96. What officer is to give this notice?

97. In what manner &c.

98. If a sale takes place, is the deed absolute?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* Lands may be *sold* for taxes in this state by the *sheriff* on default of payment, agreeably to law.

The sheriff before sale, is bound to advertize the property to be sold, in certain *newspapers* for the space of 1 month, and also at 3 of the most publick places within the county, and at the *court-house* of the district

(2) Of these acts of 1810, 1811, 1814, I have only memoranda; they are without doubt, imperfectly stated; and there may be others; the notice of them here, is all I could give.

I subjoin here, certain observations made

within which the lands are; which advertisements are to mention the *situation* of the land, the *streams* near or on which they lie; the estimated quantity; the names of the tenant in possession if cultivated, and the owners, or reputed owners, where they can be ascertained; and no sale to take place previous to the *1st day of August* in each year.

The *whole* of the land taxed is to be set up, and the person who will pay the tax due and all charges, for the *smallest* part, is the purchaser, and may select his part in one compact body, as nearly square as may be, adjoining to some of the outlines of the tract.

By *an act in* 1805, *c.* 3. Lands sold by the sheriff for taxes, may be *redeemed* by the owner, his heirs, exrs. or admrs. from the *purchaser* within 12 months after sale, on payment of the purchase money, and 25 per cent on the same and all costs, and if not so redeemed within that time, the sheriff is to convey the part sold and selected to the purchaser.(1)

A very important amendment of these laws is made by an *act of* 1819, *c.* 19, tending still further to protect the owners of land, against the frauds of officers and others.

By the 1st clause, the *sheriff* shall, at the time of the *court of pleas* and quarter sessions of his county preceding the day fixed by him for the sale, in open court return a *list* of the

by the gentleman from whom the matter relative to N. Carolina was received, on the subject of *limitations*, as regards *land* titles in that state.

"On the construction of these acts, particularly of 1715, its 2d and 3d sections relating to *lands*, I might refer to a variety of cases decided in our different courts. Almost every vol. of reports will be found to contain some. I shall only however refer you to some observations on the act of 1715, ch. 27, to be found at the end of *Tay. Rep.* 321, which are from the pen of judge Haywood, (now of Tennessee.)

The view there taken of the act, is supported by one uniform current of decisions, and may be considered as establishing this point, that the 2d sect. regards irregular, invalid, and informal conveyances made *before* the act, and that the 3d and 4th sec. are *prospective*, and established the principle or rule, that a *7 years continued and actual possession under colour of title*, gives a valid title against all who are not within the savings.

The *two* questions therefore occurring in every case, where a title is attempted to be supported under the act of 1715, ch. 27 will be—Has there been an *adequate possession* in the party? And has it been *under a colour of title?*

The objects of the act, and the *nature* of the possession required to perfect a bad title, will be found well detailed in the opinion of the court, delivered by judges Haywood and Stone, in *Grant vs. Windborne*—2. *Hayw.* 56. "Hence (say the court in that case,) arises the necessity, that the *possession* should be *notorious* and publick, and in order to make it so, that the adverse claimant should either possess it in *person*, or by his slaves, servants or tenants; for feeding of cattle or hogs, or building hog pens, or cutting wood off the land may be done so secretly, as that the neighbourhood may not take notice of it; if they should, *such* facts do not prove an adverse claim, as all those are but acts of trespass," whereas, when a *settlement* is made upon the land, houses erected, land cleared and cultivated, and the party *openly continues in possession*, such acts admit of no other construction than this, that the possessor means to claim the land as his own; in order to make this notorious in the country, he must also *continue* the possession for 7 years; occasional *entries* upon the land will not serve; from this view of the subject, arises a possession under colour of title, taken by a man himself, his servants, slaves or tenants, and by him or them continued without interruption for 7 years together."

As to "*colour of title*" and what shall be such, it has never been doubted, that a *deed* or grant *is* a colour of title. *Vide* "observations" at the end of *Tay Rep.* 338. In *Trustees of University vs. Blount* 3 Car. L. Repos. 13, it is decided, that a *Will* may be a colour of title. A *bond* for title is not a colour &c. *Vide* 2. Hayw.

(1) The preceding, is what I collect from the great number of acts, to which my correspondent referred me, any way material to the subject of taxes, as connected with the objects of the law register. The time and places of *advertising* by the sheriff may possibly be altered; the thing material to know is, the officer to sell, and whether the land is redeemable; the act as to this last particular is as here stated, and in force; what follows is from my correspondent himself. Ed.

tracts of land upon which the taxes are unpaid, and which he proposes to sell; therein mentioning the *owner* of each tract; if unknown, the name of the *last* known or reputed owner; the *situation* of the lands; and the *amount* of tax due; which list shall be *read aloud* in open court, recorded by the clerk upon the *minutes* of the court, and a copy be put up by the clerk during the said term, in the *court room.*

By the 3d *sect.* it is enacted, "that it shall be competent for *any* person desirous to redeem the lands, to pay the sum due for redemption to the *clerk* of the said court, whose receipt shall discharge the lands from all claim of the purchaser; *provided* such payment be made within the time fixed by law, for redemption of lands sold for taxes, and *provided* also, that nothing herein contained shall be construed, to dispense with the advertisement by the sheriff of his sales of lands for taxes, as now by law directed."

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* We have no provisions to prevent debtors from alienating property, *pendente lite.*

On writs against the body in civil cases, the sheriff must take a bail bond, (except from exrs. and admrs,) with 2 sureties in double the sum for which the party is arrested; if he neglects this, or on the return of the writ, the bail on exception at the same term are held insufficient, (the sheriff having notice of the exception,) he stands as special bail.

The bail bond is to be assigned to the *pltf.* at the return of the writ, and is to be taken as *special* bail.

The bail are not liable until after *non est inventus*, returned on execution against the body of *defdt.* and until after *scire facias* against them.

The bail may take, and *surrender* the body of defendant before final judgment against him to the court, or to the sheriff, during the sitting *or* in the recess of the court. (1)

### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?

*A.* The *act of* 1798. *c.* 37.—provides for the acknowledgment or proof and registration of *powers of attorney*, for the conveyance of lands; the acknowledgment, or proof of its execution by one or more of the witnesses, before a *Judge* of the Superior court, or in the *court* of pleas &c. of the county where the land is, will authorize its registry.

For other acts, relative to letters of attorney, made *out* of the state, and in foreign parts, and by feme coverts, *see* No. 24.

### ALIENS.

104. Do aliens stand on the footing of the common law, in respect of

(1) What is here put down respecting *bail*, is extracted by myself from the laws referred to by the gentleman who sent me what relates to N. C. There appears to be some difference between the practice in the *superiour courts*, and the county courts; not material to mention; my object is not to detail the practice; what I principally have in view is, to make known the general method of obtaining bail to the *action;* and whether the bail *bond* serves, or whether *special* bail is to be put in above. Ed.

taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A.* By the 40th sect. of our state constitution, "Every foreigner who comes to *settle* in this state, having first taken an oath of allegiance to the same, may purchase, or by other just means acquire, hold and transfer land or other real estate, and after 1 years residence, shall be deemed a free citizen."

The title of lands purchased by an alien continues in him, till office found. *Blounts lessee vs. Horniblea* 2. Hayw. 37. 38. 1. Hayw. 485. 1. Mur. 202.

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* By an act of 1777. c. 2. *administrations*, are to be granted by the *courts* of pleas and quarter sessions.

By a subsequent act, the admn. is to be granted in the *court* of the county, where the intestate had his usual residence at the time of his death; or if he had fixed places of residence in more than one county, then in either.

The *right* to administer, was in 1792 given to the greatest creditor residing within the state, *after* the widow and next of kin.

Previous to the revolution, the governors, and the county court afterwards, granted administration to the widower and widow, although neither is named in the act of 1715, (which speaks only of the next of kin and creditor,) considering perhaps the statutes, 31st Edwd. iii. and 21. Henry viii. as in force, and the act of assembly as cumulative. Mar. exr's. 38. and 39.

106. May guardians be appointed by will: does the common law regulate &c?

*A.* By an act in 1762, c. 5. (nearly in the words of 12. Ch. ii. c. 24.) the father is empowered to dispose of the custody of his infant child, by deed or will.

The usual guardianship under our law is derived, from the 5th sect. of the act of 1762. giving the superior and inferior *courts* power to appoint guardians to orphans, in cases where to them it shall seem necessary. This act is to be found in Hayw. Man. under title "guardian," and is very full in its provisions.

By *an act in* 1816, c. 30, *guardians* are entitled to recover compound interest, on notes, bonds, or obligations, payable to them in the capacity of guardian, as if the notes, bonds, or obligations, had been renewed annually.

PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* By act of congress in 1797, if the estate of a deceased debtor in the hands of ex'rs and adm'rs be insufficient to pay his debts, the debt due to the U. S. is to be first satisfied.

And our act of assembly, in 1786, *ch.* 4. makes bills, bonds, and notes, whether with or without seal, and all settled and liquidated accounts signed by the debtor, of *equal* dignity. There is no other alteration of the English law in this respect, recollected.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* This stands on common law principles; but lands cannot be sold by

execution on a judgment against ex's or adm'rs.

After the judgment against them, a *sci. facias* must issue to the respective heirs, and devisees, to show cause why execution should not go &c. on which they may contest the want of personal assets in the hands of the ex'r or adm'r &c.

JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?
*A.* By *an act in* 1784 *c.* 22. all estates real and personal, held in joint-tenancy, the part or share of any tenant dying, vests in his heirs ex'rs or adm'rs respectively, as estates held by tenancy in common.

There is an exception in favour of partners in trade or manufactures, in which cases, the survivor takes so far as to enable him to adjust and pay the debts &c. but afterwards to account to the representatives of the deceased partner.

SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?
*A.* Particular acts of the legislature have in some instances partially changed the common law in this respect, as for example, in paying debts by ex'rs or adm'rs, bills, bonds and notes with or without seal, are of equal dignity; and the same act which makes promissory notes negotiable, makes all bills, bonds, or notes for money, as well with seal as without seal, or with or without words, payable to order, or value received, assignable and sueable in the name of the assignee, and in all things negotiable as promissory notes and with like liabilities &c. except in these cases, and possibly there may be others, the common law governs.

111. Is a scroll &c. equivalent to wax &c?
*A.* A scroll is *equivalent*, in all instruments.

BASTARDS.

112. Are bastards subject to common law disabilities?
*A.* By *act of* 1799 *c.* 8. if a woman dies *intestate*, leaving children born out of wedlock, all her estate real and personal, shall descend to and be divided in the same manner among them as if born in wedlock.

And if any such illegitimate children die intestate, without leaving any child or children, the estate real and personal of the deceased, is to be divided among the brothers and sisters of the intestate by the same mother, as if born in lawful wedlock.

113. Are antinuptial children, legitimated by marriage of the parents?
*A.* As at common law.

ALLUVION.

114. Does the common law in respect of alluvion prevail?
*A.* It does.

FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

116. Is this so by statute, or usage?
*A.* We have no statute regulation on these subjects, nor reported adjudications, establishing any important principle.

It is presumed the common law

would govern here in such cases, in so far as might consist with the frame of our government, and local circumstances of the country.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

*A.* These statutes, have always been considered as in force here. Our act of 1715, *c.* 38, *sec.* 8. in substance is nearly the same as 13 Eliz. see Hayw. *man. Tit. frauds*, &c. also, *acts of* 1789, *c.* 39. 1793. *c.* 16, and 1806, *c.* 9.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?

*A.* This *stat.* is not in force here, such of our laws on the subjects it embraces, relating to *wills* &c. have been already noticed under other heads. *(see No.* 63.*)*

*The act of* 1819, (mentioned at No. 63.) makes all *contracts* to sell *lands*, or any interest in or concerning them or slaves, void, unless the contract, or some memorandum or note of it is put in writing, and signed by the party to be charged, or some other person authorized by him: except contracts for leases not longer than 3 years.

Our act of 1812, c. 4, respecting declarations of *trusts*, is very similar to the 10th *sect.* of the English stat. of frauds, in respect of lands, and is further extended to *goods* and chattels in trust.

The 2d *sect.* of this last act, subjects the *equity* of redemption in lands, to execution on a judgment against the mortgagor, and makes it assets descending in the hands of the heir.

The 3d *sect.* obliges the sheriff to set forth in his deed to a purchaser, that the lands sold were under mortgage at the time of levy and sale.

By a law made in 1806, after judgment, the plt'ff not being able to find property of the *def't* to satisfy it, and believing that the defendant has fraudulently conveyed his property, real or personal, may institute a proceeding against the supposed trustee, who must answer on oath, and if he is found to hold real or personal estate of the debtor, it is made liable to the execution, or if converted by the trustee, judgment is against him *pro tanto.*

This is a sketch of the last act: see it at large, *Hayw. Man.* 180.

USES.

119. Is 27. H. viii. called the *Stat. of uses*, (or similar provisions) in force?

*A.* It is. Some of its sections however it will be observed, are not applicable to the situation of our country, or form of government.

120. Is the English law of uses and trusts, in force?

*A.* In general it is; so far as the common law is altered by English statutes passed *since* the settlement of this state, (and therefore not in force here) it is not.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?

*A.* The common law is in force.

USURY. INTEREST.

122. What is the rate of interest?

*A. Six* per cent. per annum.

123. What provisions against usury?

*A.* Our *stat. of* 1741 *c.* 11. *s.* 2, is similar to the stat. 12. *Ann. c.* 2. 16. (see 7 Bac. ab. B. tit. usury.) making the contract, bond, &c. *void*, and the forfeiture *double* the value of the monies, or thing lent or bargained &c. instead of treble the value, as in stat. of Ann.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* Books of account, *(by act of* 1756 *c.* 4. *s.—)* are to be received as evidence for goods sold, or services performed, for all charges within 2 years, on oath of plt'ff, that the account is just, and he cannot otherwise prove the delivery &c. and so, for exrs. or admrs. on oath of their belief &c. and that they cannot otherwise prove the account.

And a *copy* from the book on like oath is to be received, unless the defendant at joining issue, requires the original book to be produced.

And the like rule takes place, between exrs. and admrs, where both the original parties are deceased, the exrs. or admrs. being *plt'ff*, making oath as aforesaid.

But no such oath is allowed, to prove any article or articles, the amount of which, exceeds *L*30. proc.

The defendant however, may contest the justice of the account, by any lawful evidence in his power.

No book account is admitted at all (upon *any* evidence,) for goods sold, or services done &c. but within 5 *years* before suit brought, except in cases of persons out of the government, or where the account is settled and signed. (1)

125. Is interest recoverable on book debt?

*A.* This rests on common law principles.

It is not usual to allow interest on accounts, unless they have been liquidated, or some agreement to pay it, can be collected from the usage of trade, or otherwise. *See tit. interest, Hayw. Man. and act of* 1786, *c.* 4.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

129. Is there any peculiar practice in your state, on this subject?

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A. By an act of* 1762, *c.* 9, *s.* 2. promissory notes are made negotiable and suable as instruments and also in the name of the indorsee. The act is substantially a copy of the *stat.* of 3 and 4 Ann. c. 9. *See Bac. ab. tit. mercht. Let. M.* 3.

By the same act, s. 4, there is a provision to this effect, that when a

(1) My correspondent referred me to the act itself from which I have made these extracts; there are other provisions on this head; I have merely inserted this much, to show the general nature of book account law, and without exactness or detail.

person by *order* in writing signed by his *proper hand*, directs the payment of any sum of money in the hands of another person, to the *bearer* or any person or persons, the said money shall be due and payable to *such* payee or payees, and may be put in suit against the drawer, or the drawee after acceptance, by the payee or payees, and damages recovered.

But no suit to be against the person giving such order, before protest for non-acceptance, and notice to the drawer. (1)

*By an act of* 1786, *c.* 4. bills, bonds, and notes for money, as well with as without seal, and payable to order or for value received or not, are made assignable, negotiable, and sueable in like manner and under the same rules of law, as promissory or negotiable notes.

*And by another act in* 1789, *c.* 57. the assignee or indorsee of any bond, bill or note under seal, may maintain an action of *debt* in his own name, provided, the original obligee could have maintained such action.

*By act passed in* 1741, c. 16, upon protest of *foreign* bills of exchange drawn for value received, on non acceptance, or non payment, 10 per cent. *interest* is chargeable from the date, until payment is made, but not more than 18 months interest is allowed, previous to the protest and presentment, to the drawer or endorser.

The *damages* allowed to the holder on foreign bills is 15 per cent, with costs and charges of protest.

*By act* 1796, *c.* 22, on bills drawn as aforesaid, by any person residing *in* the state, for monies payable in any of the U. S. 6 per cent *interest* is allowed from the date, and 10 per cent. *damages* upon protest &c. with costs and charges of protest.

By *act of* 1812, *c.* 22, the protest of a notary publick, or (for want of one,) by a justice of the peace, is made evidence of a demand against the drawer of a bill, or maker of a note, or other negotiable security, as in cases of foreign bills of exchange.

By *act of* 1819. *c.* 16. a protest of any bill, note, or negotiable security, by a notary publick, setting forth a demand on the drawer, maker or endorser of a bill, note, or other negotiable security, and the manner of doing the same, is *prima facie* evidence that it has been done in the manner set forth.

By *the act of* 1796. *c.* 22. on a protested inland bill of exchange, the holder may sue the drawer or endorsers jointly or severally; and by *an act of* 1817. c. 5. the holder of any negotiable note, bill, bond or other negotiable security, may sue the makers, obligors and endorsers jointly or severally.

As to *due diligence*, many cases are to be found in our state reports, and the law not settled upon any very precise principles. A late case (*state bank vs. Smith.* 1 *Murph.* 70.) seems to have gone the full length of the English rule on this head.

Smith the endorser and def't, resided in Newbern within 300 yards of the bank; the note fell due at the bank on the 11th, the notice was left at deft's house on the 17th; the de-

(1) I do not perfectly understand this provision, or rather the necessity of it; it seems to be in some respects nothing but the inland bill of exchange at common law, confining its operation to the original parties, but making a protest a precedent condition to a suit against the drawer.

The gentleman who contributed this article for N. Carolina, referred me to Haywoods manuel, for the statutes on this subject previous to 1812, and they are given as I understand them. The substance of the acts of 1812, 1817, and 1819, are as sent to me. Ed.

fendant was held to be discharged, on the ground, that the notice was not in due time.

The court say, "the residence of the endorser within a short distance of the bank, rendered the most prompt notice equally necessary and convenient; allowing the days of grace, the notice should have been given on the 15th, but was *delayed* to the 17th; rule for a new trial discharged." (The verdict was for the def't below.)

Previous to this case, nothing like a rule had been laid down on the subject; the decisions in the circuits, varying often according to the particular opinions of judges, or the discretion of the court, under all the circumstances of each particular case: it is believed however, that the general opinion of the profession, would have yielded a little greater indulgence to the loose practice and prevalent opinions, of a country as yet so little commercial.

### DIVORCE.

131. Are Divorces, a vinculis granted in your state &c ?

*A.* Previous to 1814, divorces were granted, by the general assembly only; in that year by an *act c. 5.* jurisdiction is given to the *superiour courts.*

1st. Where either party at the *time* of the contract was, and still is *naturally impotent*: 2d, or where either party has *separated* him or herself from the other, and is *living in adultery*; in either of which cases the court may decree at their discretion, a divorce from bed and board, or from the bonds of matrimony.

The proceedings are on petition or libel; the facts to be set out and sworn to, as true to the best of petitioners knowledge and belief, and that the proceedings are not by collusion, &c.

The petitioner is also required to swear, that the facts, (the grounds of his or her complaint,) have existed at least 6 months prior to filing the petition; and the act requires, that the material facts charged in the petition or libel, shall be tried by *jury.*

If *adultery* is the cause alledged, and it appears the plaintiff has been guilty of the like crime, or there has been conjugal intercourse after knowledge of the fact, or that the husband, (if he is the petitioner,) allowed of his wife's prostitution, or exposed her to lewd company &c. it shall be a perpetual bar to the suit.

The special causes assigned in the act, for divorce *a mensa et thoro,* and *alimony* for the wife are, where the husband *abandons* his family; *maliciously turns his wife out of doors; or by criminal or barbarous treatment, endangers her life; or offers such indignities to her person, as to render her condition intolerable, or life burdensome.*

The *alimony* to be allowed, such as the husband's circumstances admit, not to exceed $\frac{1}{3}d$ of his annual income, or profits of his estate, or of his occupation, or labours; or, by assigning to the wife $\frac{1}{3}d$ of the real or personal estate of the husband, not exceeding $\frac{1}{3}d$ part, to continue until reconciliation of the parties; provided, that this provision is not to affect creditors.

The party to sue must be a *citizen* of the state, at the passing of the act, or have resided within it 3 *years* preceding the petition; the court may award costs against either party, or decree each to pay his or her own costs.

By *another act* 1816. c. 33. after a decree *a mensa et thoro,* the effect shall be, to secure to the wife any

property acquired by her, or coming to her in any way, unless the court shall otherwise decree.

*An appeal* lies, in cases of divorce, to the supreme court. (1)

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?
*A.* The property, real and personal of a debtor who is removed out of the county, or about removing, or conceals himself so as not to be served with process, may be *attached* where ever found, or in the hands of a third person (or garnishee.) So the property of debtors residing in an other government, lying in this state, may in like manner be attached, by a resident in this state.

The acts make all proper and usual provisions on this subject: *see Hayw. Man. Attachment.*

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A.* It is not. *(Vide, Dalglush vs. Grundy, Conf. Rep. 22.)* That was a proceeding by warrant of distress. The court say "if this mode of proceeding had ever been sanctioned by custom before the revolution, it is utterly irreconcileable to the spirit of our free republican government. Justice does not make a distinction in favour of a creditor, whose debt arises from the lease of land, rather than that of him who has hired a chattel; it does not require, that the former should be entitled to a process *in rem*, when the latter, can only proceed *in personam*, but both should ascertain their demand by the verdict of a jury; allowing to the debtor an opportunity of contesting it, *before* his property is seized. The legislature has provided for these cases, when it is expedient that property should be taken in the first instance, and their refusal to enact any law authorizing distresses, has been upon the ground that it was unconstitutional."

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A.* Where there are mutual and subsisting debts between parties, one may be set against the other, on being pleaded in bar, or given in evidence on the general issue, on notice of the set off, and on what account due; and notwithstanding the debts are deemed in law to be of a different nature; but if either debt arose by reason of a *penalty*, the sum intended to be set off shall be pleaded in *bar*, setting forth what is justly due on either side.

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?

136. Is the common law in respect of choses in action, adopted?
*A.* As at common law; except in the particular cases before mentioned, in which the legislature have made bonds &c. negotiable. (*See Nos.* 126 &c. *p.* 225.)

(1) My correspondent in this, as in other cases, was so obliging as to send me the act at length, which appears well drawn, and a good precedent; but I could only give this, as the substance. Ed.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* In general they are. Perhaps the definition of *waste* however might not be precisely the same, as under the English laws, owing to the great difference in the state of our country.

In *Ballentine vs. Poyner*, 2 *Hayw.* 111. Haywood J. says "I would define waste thus, an *unnecessary* cutting down, and disposing of timber, or destruction thereof upon woodlands, where there is already sufficient *cleared* land for the *widow* to cultivate, and over and above what is necessary to be used, for fuel, fences, plantation utensils and the like; but if it respects *juniper swamp*, and *other* lands similarly circumstanced, where the timber made into staves and shingles, is the only use to be made of the lands, then the *devisee* or *widow* shall not be liable to waste for using such timber, according to the ordinary use made of the same, in that part of the country. And in *Parkins vs. Cox*, 2 *Hayw.* 339. Taylor J. says, "it is not waste to *clear* tillable land, for the necessary *support* of his family, though the timber be destroyed in clearing; nor is it waste, to cut down timber for making or repairing fences, necessary buildings, or plantation utensils; but it is waste, to cut down timber for *sale*; so is it waste to collect together the lightwood, and extract tar from it, for that is a permanent injury, as it takes several years to produce as much lightwood." These opinions delivered by different judges on the circuit, though not precisely agreeing with each other, may yet it is conceived give some idea, how our law will be decided, when a case shall be brought before the supreme court.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

*A. (Not answered. Ed.)*

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?

*A.* They are *not. (See answers, No.* 107, *and* 108.*)*

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?

*A.* All *lands* within our state, not granted by the lords proprietors before the revolution, or by the state since, belong to the *state.* These consist, mostly of vacant pieces left between the lines of others, and often not known to the adjacent proprietors, until discovered on running out their own or neighbours lands; of parts of swamps in the eastern section of the state; of barrens, in the western, and a section of country, in the south-western corner of the state, to which the title of the Cherokee Indians has lately been extinguished. Of this last section, the state has already offered a part, and will probably soon offer the remainder for sale, at publick auction.

As to the *manner* of purchasing vacant lands from the state, *vide our entry laws, Hayw. Man. tit.* "*Entries,*" and the several acts there re-

ferred to.(1) I shall mention only one of them. An *act of* 1818. *c.* 12. requires, "that 10 cents shall be paid to the treasurer, for every acre of land hereafter entered in this state," before this it was 5 cents.

(1) I have looked through these laws; they are too numerous and long to be put into any form proper for this work; my intention in putting this question was merely to ascertain the fact, whether there *were* publick lands for sale, the general method of obtaining a title, and the price, for the sake of foreigners, and citizens of other states. The method of obtaining lands in N. C. appears to be, by application to a person called an *entry taker* in each county, for such lands as the applicant has selected as vacant, and wishes to purchase, describing it as near as may be; and on paying to the entry taker, the stated price for the state; he issues a warrant to the *surveyor* of the county, who surveys and makes a plat of it; if any dispute arises with prior claimants, it is to be settled in the county *court* by jury or agreement; all surveys, are finally within a given time, to be returned to the proper office, and a state *grant* then issues to the party, on proof of the price paid to the entry taker, for the state.

A vast many provisions exist, in order to obviate intervening difficulties, and controversies; on the whole however, where land is clearly unlocated, the method is plain, and the object soon effected. Ed.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation? *A.* They are, and without any limitations.

*Note.*—The answer to quest. 85, p. 214, relating to *curtesy*, is by mistake omitted: it is "that the common law remains unaltered." Ed.

# APPENDIX.

## RULES OF PRACTICE, in the SUPERIOUR COURTS of LAW and EQUITY, of *North Carolina.*

*In* 1815, the following "Rules of Practice" were established, by the *supreme court*, as stated in the preamble "with a view to improve the administration of justice by expediting the trial of causes, and precluding a laxity of practice, tending to impair the security and rights of the citizens." (1)

1. *It is ordered* by the court, that all causes now set for hearing on the equity dockets, shall be prepared for trial by the ensuing fall term; after which period, no further time to complete testimony shall be allowed to either party without special order: and no cause in equity shall hereafter be set for hearing, until the testimony shall be completed.

2. *In* all suits at law, brought on for trial at the ensuing fall term, or thereafter, declarations shall be filed before the trial; and no suit shall be tried after that period, unless this rule be complied with.

3. *In* all cases, civil and criminal, where no evidence is introduced by the defendant, the right of reply and conclusion shall belong to his counsel.

4. *Where* several counsel are employed on the same side, the examination or cross examination of each witness, shall be conducted by one counsel; but the counsel may change with each successive witness.

5. *When* a party in any civil suit moves for a continuance, on account of absent testimony, such party shall state in a written affidavit, the nature of such testimony, and what he expects to prove by it.

6. *No* person who is bail in any suit either civil or criminal, or who is security for the prosecution of any suit, shall appear as counsel or attorney in the same cause. And it shall be the duty of the clerks of the several superiour courts, to state on the docket for the court, the names of the bail and security for the prosecution in each case.

(1) At this time (1815,) the supreme court, was formed by the judges of the several superior courts of law and equity, and they made these rules for their respective courts, in their capacity of judges of the supreme court. *See* p. 198. 9. *n.* 1.

7. *No* entry shall be made on the records of the superiour courts (the appearance docket excepted,) by any other person than the clerk, or his regular deputy.

8. *In* all cases of general replication, no special *matter* shall be heard.

9. *From* and after the next term of the supreme court, no applicant for licence to practice law in the courts in this state, shall be examined, except during the terms of the supreme courts; licence to practice in the county courts only, shall be granted in the first instance. Nor shall any person be admitted to practice in the superiour courts, until one year after having obtained licence to practice in the county courts.

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# PENNSYLVANIA.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# PENNSYLVANIA.



### STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. Joseph Hiester*, Reading, Berks county; title "governor of the commonwealth of Pennsylvania," (1) term of office 3 years; app. by the people; salary $4000. (2)

2. —— Secretary of state &c.?
*A. Andrew Gregg*, Bellefonte, Centre County, (official residence Harrisburgh,) app. by the governor, during the governor's continuance in office, if he so long behave himself well; salary $1600.

3. —— Chief justice of the supreme court of law, &c.?
*A. William Tilghman*, Philadelphia; term of office, during good behaviour; app. by the governor; salary $2666 $\frac{66}{100}$, together with a *per diem* allowance of $4, while on the circuit: He is ch. just. of the sup. court of the commonwealth of Penn. There is no court of equity.

(1) "And shall be commander-in-chief of the army and navy of the commonwealth, and of the militia." *Const.*

(2) The governor's official residence is at Harrisburgh, during the legislative sessions; he is chosen at the general election held on the 3d tuesday of Oct. his term of office commences on the 3d tuesday of Dec. and cannot hold longer than 9 years in any term of 12 years.

4. —— Clerk of the superiour or supreme court, &c.?
*A. Wm. R. Atlee*, clerk of the sup. court, for the eastern district, resides at Philadelphia.
*Thomas Baird jr.* western do. Pittsburgh.
*Peter Lazarus*, middle do. Sunbury.
*John Shryock*, southern do. Chambersburgh.
*Nathl. Lightner*, Lancaster do. Lancaster.
These clerks are appointed by the governor, and hold their offices during pleasure.

5. —— Attorney General: &c.?
*A. Thomas Elder*, resides at Harrisburgh; app. by the governor, holds his office during pleasure; salary $300, besides fees.

6. When, and where, is the annual meeting of the legislature?
*A. Harrisburgh*, (a borough,) in Dauphin co. The legislature assemble there 1st tuesday in December annually, and may be sooner convened by the governor; adjourn at their own pleasure.

### UNITED STATES OFFICERS.

7. Who is District judge, &c.?
*A. Richard Peters*, for the eastern district, resides in the vicinity of Philadelphia.

*Jonathan H. Walker*, western district, resides at Pittsburgh.

8. —— Clerk of the District court &c.?

*A. David Caldwell*, eastern dist. res. Philadelphia.

*Robert J. Walker*, western do. do. Pittsburgh.

9. —— District Attorney, &c.?

*A. Charles J. Ingersoll*, eastern do. do. Philadelphia.

*Alexander Brackenridge*, western do. do. Pittsburgh.

10. —— Marshal, &c.?

*A. John Conard*, eastern do. do. Philadelphia.

*Hugh Davis*, western do. do. Pittsburgh.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?

*A. Bushrod Washington*; Pennsylvania and New Jersey compose the 3d circuit.

12. At what times and places, are District courts of the U. S. held, &c.?

*A. At Philadelphia*, eastern dist. 3d *monday in February, May, August*, and *November*.

At Pittsburgh, 2d *monday in May and October*.

13. —— Circuit courts &c.?

*A. At Philadelphia*, east. dist. 11*th of April, and October*.

There is no circuit court for the *western* district; the district court having circuit court powers and jurisdiction.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?

*A.* The publick *laws* of Pennsylvania from 1700 to 1812, were collected, revised, and published under the authority of the legislature, with notes, and references to law decisions &c. and a general index, in 5 vols. by *Charles Smith, Esq.* (1)

A *continuation* of the laws from that period to the present time, is preparing in a 6th and 7th vol. under the authority of the legislature, by *Joseph Reed, Esq. Philad.* (2)

15. Can the publick laws in pamphlets, be procured, &c.

*A.* They can probably be procured of H. C. Carey and I. Lea. Phila.

16. Is there any Digest of the state laws &c?

*A.* Read's abridgment of the laws of Penn. *"being a complete digest, of all such acts of assembly as concern the commonwealth at large," to which is added, "an appendix, containing*

(1) The general index was published separately in 1812.

(2) The following collections appear to have been made and published, of the laws of Penn. at different periods.

Laws and charters of the province of Penn: and city of Phila. Franklin's edit. 1 v. 1742.
Do. do. do. compared with the publick records. 2 vols. 1762.
Do. from the settlemt. of Penn. to 1790, 7 vols.
Do. and charters, colonial and state. Dallas's edit. to 1797, 4 vols.
Do. laws of Penn. 14 Oct, 1700 to 6 April, 1802, 6 vols. pub. by Carey and Bioren, under authority of the legislature; and continued to 28 March 1808, by Bioren, in 2 vols. in all 8 vols. 1803, 1808.
Do. to 1820, 18 vols. (pamphlets.)

Beside these, the following compilations appear to have been made.

Laws of Penn. to 1775, 1 vol.
Do. from 1775 to 1781, 1 vol. C. Justice Mc Kean's Ed. 1781.
Do. and charters &c. from 1781 to 1785, 1 vol. Hall and Seller's Edit.
Do. from 1775 to 1787, 2 vols, Bailey's edition. 1788.
Do. from 1777 to 1790. 4 vols.
Do. from 1781 to 1790, 3 vols.
Do. in German 1 vol. 1807.
Do. relating to the poor. 1796.
Journals of the house of representatives 1744 to 1781.
Laws of Delaware (when connected with Penn.) 1 vol. 1752.

*precedents adapted to the several acts for the use of justices of the peace, coroners, attornies, and conveyancers:" 2 vols. by Collinson Read, Esq.* 1801, 4.

Purdon's Digest; "*being a digest of the laws of Penn. from the year* 1700 *to* 24*th March* 1818, *with references to reports of judicial decisions, in the Sup. court of Penn." by John Purdon,* 1818.

A 2d *edit.* is preparing, to be continued to the present time, (1822.)

17. Are there any Reports of cases in your state courts, &c.?

*A.* Dallas's Reports; "*being cases adjudged in Pennsylvania, from September* 1754, *to December* 1806 *inclusive." 4 vols, by Alexander James Dallas: cited, Dallas' Rep.* (1)

Binney's Reports; "*being reports of cases adjudged in the Supreme court of Pennsylvania,* from 1799 *to* 1814, 6 *vols. by Horace Binney;* cited Binney's Rep. (2)

Sergeant's and Rawle's Reports; "*being reports of cases, adjudged in the supreme court of Penn."* 4 *vols. by Thos. Sergeant and Wm. Rawle jun. counsellors at law. Cited Sergeant's and Rawle's Rep.* (3)

Yeates' Reports; "*being reports of cases adjudged in the sup. court of Penn. with some select cases at the Nisi Prius and in the circuit courts, between the years* 1791 *and* 1808 *inclusive."* 4 *vols.* by *Jasper Yeates, one of the judges of the supreme court of Penn.* (4)

(1) *Vol.* 1, includes cases in the Sup. court; court of oyer and term; court of common pleas; and high court of errors; between Sep. 1754, and Dec. 1789.

*Vol.* 2. Cases in the federal court of appeals, in the years 1781, 1782, 1783, 1787. High court of err. and app. in 1792, 1795. Sup. court of Penn in the years 1766, 1781, 1785, 1786, 1787, 1788. (being a few detached cases,) and from 1789 to Dec. term 1797, inclusive. Com. Pleas of Penn. from Aug. to Dec. 1790, inclusive. In the Sup. court U. S. from Feb. 1790, to Aug. term 1793, inclusive; and circuit court of U. S. from April 1792, to April term 1798.

*Vol.* 3. Cases in the Sup. court U. S. from Feb. term 1794 to Feb term 1799 inclusive; Sup. court Penn. from Dec. term 1798, to Mar. 1799 inclusive; and circuit court U. S. Ap. term 1799.

*Vol.* 4. Cases in the Sup. court U. S. Aug. term 1799, and Aug. term 1800. In the circuit court U. S. Ap. term 1796 Ap. term 1797, and from Ap. term 1800, to Oct. term 1806.

In the Sup. court Penn. in the years 1797, 1798, and from Sep. term 1799 to Dec. term 1806. inclusive.

Also cases in the High court of Errors and Appeals of Penn. July sess. 1799, Jan. sess. 1802, 1804. And decisions in the court of Errors and appeals in the state of Delaware, in 1788. A decision in the mayors court of Philada. in 1797, and one in 1760, before the Privy council in England, on appeal.

(2) *Vol.* 1, includes decisions from Dec. 23, 1799, to end of Mar. term 1809, inclusive.

*Vol.* 2. from July 8, to May term 1810, inclusive; with an *appendix* containing cases in the High court of Errors and appeals, in Jan. 1803, July 1807. A case at N. Prius, Feb. 1809, and 3 cases in June and July 1809, in the C. Pleas of Penn.

*Vol.* 3. from June 1810 to end of May term 1811, with an *appendix* containing the "Report of the Judges of the Sup. court on the subject of the British statutes in force in Penn. &c."

*Vol.* 4, from June 1811 to the end of March term 1812.

*Vol* 5, from May 1812 to the end of March term 1813.

*Vol.* 6, from 1813 to June 1814, with a general index to the 6 vols.

(3) This is a continuation of Mr. Binney's reports, (from June 1814,) commencing where they end.

*Vol.* 1, extends to June 1815.
2, from that time, to the end of 1816.
3, 1817, and part of 1818.
4, residue of 1818.
*Vol.* 5, is now in the press, to include 1819.

(4) These extend over a great portion of the period within Mr. Dallas's and Mr. Binney's reporting, and possibly supply many or all omitted cases.

*Vol.* 1, contains cases decided from 1791 to 1795.
2, from 1795 to 1800.
3, from 1800 to 1803.
4, from 1803 to 1808.

**Addison's Reports**; "*being reports of cases in the county courts of common pleas of the 5th circuit, and in the high court of errors and appeals of the state of Penn. and charges to grand juries of the county courts.*" 1 *vol. by Alexander Addison, president of the 5th circuit of the state of Penn. pub. in* 1800. *cited Addison's Rep.* (1)

**Browne's Reports**; "*being cases adjudged in the court of common pleas of the 1st Jud. dist. (city and county of Pha.)*" 2 *vols. by Peter A. Browne, counsellor at law. Cited Browne's Rep.* (2)

18. Is there any Digest of cases in your state courts, &c.?

*A.* There is *none.*

A *digest* is in the press and will shortly be published, to contain all the adjudged cases in the state and United States courts in Penn. to the present time. By Thomas I. Wharton. 1822.

19. Are there any Treatises on the law, in your state &c.?

*A.* American Pleader's Assistant; "*being a collection of declarations, writs, returns, and pleadings in the several actions now in use, in the U. S.*" 1 *vol. by Collinson Read esq.* 1806.

Precedents "*in the office of a justice of the peace;*" *to which is added,* "*a short system of conveyancing, in a method entirely new,*" 1 *vol. 3d edit. by Collinson Read esq.* 1810.

Forms "*of conveyancing and of practice in various courts and public offices.*" 2 *vols. by Wm. Graydon.* 1810.

Sergeant's Treatise; "*on foreign attachment, with the acts of assembly now in force in Penn. on the subject of foreign and domestick attachments;*" *by Thomas Sergeant, esq.* 1811.

The Manual of a Penn. Just. of the peace, "*containing principally the laws, adjudications, and process for the exercise of his jurisdiction, in civil cases.*" 2 *vols. By Richard Bache jun. atty. at law.* 1814.

Law miscellanies; "*containing an introduction to the study of the law. Notes on Blackstone's commentaries, showing the variations of the law of Penn. from the laws of England; and what acts of assembly might require to be repealed and modified: observations on Smith's edition of the laws of Penn: strictures on decisions of the sup. court of U. S. and on certain acts of congress, with some law cases, and a variety of other matters chiefly original;*" *by Hugh Henry Brackenridge, a judge of the supreme court of Pennsylvania;*" 1 *vol.* 1814.

Justice and Constable's assistant; "*being a general collection of forms of practice, interspersed with various observations and directions, together with a number of adjudged cases, relative to the offices of justice and constable; with an appendix, containing a variety of useful forms in convey-*

(1) The cases in the com. pleas are from 1791. to 99. inclusive. In the high court of errors and appeals, in 1793 and 1797.

(2) *Vol.* 1 includes cases, from 1806 to 1811 inclusive.

2 *vol.* continues the decisions to 1814.

The following *trials* are published in pamphlets.

*Trial and acquittal, of Edward Shippen esq. C. Just.* and *Jasper Yeates and Thomas Smith, esqrs. associate justices of the Sup. court; before the senate of Penn.* 1805.

*Trial* of *journeymen cordwainers at Pittsburgh, for conspiracy to raise wages.* 1817.

*Trial and acquittal of Francis Hopkinson, judge of the court of admiralty, and Joseph Nicholson, comptroller general of Penn. on impeachment.* 1795

*Olmstead's case* 1 *vol* 1809.

*Trial of Saml. M. Fox and others for false imprisonment of Patrick Lyon.* 1798.

*Trial of Evans and Yarnall, of the society of Friends.* 1811.

*ancing;" by Wm. Graydon: first published* 1805—*new edition improved,* 1820.

The American Law Journal; and Miscellaneous Repository; *"containing adjudged cases in the supreme court, and district courts of the U. States, and in the state courts; opinions of eminent counsellors; essays on legal questions; notices of new publications; biographical memoirs; congressional and parliamentary debates; legal information concerning the most important laws of the different states."* 6 *vols. by John E. Hall esq.*

The journal of jurisprudence; *"being a new series of the American law journal;" by John E. Hall esq.* 1821. (1)

Addington's revenue Law; *"wherein is arranged under distinct heads, the duties of collectors, revenue officers, surveyors, masters of vessels, and other persons connected with the imports; with an appendix, containing the forms of oaths at the custom house."*

Abridgement of the laws of U. States; *"being a complete digest, of all such acts of congress as concern the U. S. at large;" to which is added, "an appendix containing all the existing treaties, the declaration of independence, articles of confederation, rules and articles of the government of the army &c." 2 vols. by Wm. Graydon,* 1813.

Ingersoll's Digest *"of the laws of the U. States, from the 4th of March,* 1789, *to 11th May,* 1820, *including the constitution, and the old act of confederation, and excluding all acts relating to the District of Columbia, and post roads, and private acts;" by Edward Ingersoll,* 1821.

Wilson's Works; *"containing lectures on law, delivered at the college of Philadelphia," in* 1790, 1791; 3 *vols. by the hon. James Wilson L.L.D. late one of the associate justices of the sup. court of the U. S.* 1804. (2)

Cooper's Bankrupt law *"of America, compared with the bankrupt law of England," by Thomas Cooper esq.* 1801. And opinion, *of the effect of a sentence, of a foreign court of admiralty;" by the hon. Thos. Cooper,* 1810.

Law Tracts; *"on the constitutional law of the U. States, from the law journal," by John E. Hall,* 1817.

Robert's Digest; *"being a digest of select British statutes, comprising those which, according to the report of the judges of the sup. court, are now in force in Pennsylvania,"* 1 *vol.* 1817.

20. —— Foreign law books republished in your state, &c.?

*A.* A great many, for which I must refer to the law catalogues, published in this city.

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?

*A.* Hopkinson's Judgments; *"being decisions in the admiralty court of Penn. from* 1779 to 1785 *inclusive.* 1 *vol. by the hon. Francis Hopkinson.* (3)

(1) The law journal begun in 1808, and ends in 1817.

The journal of jurisprudence, begun in Jan. 1821, is published quarterly on the 1st of Jan Apr. July, Oct. price $5, contains about 550 pages in a vol.

(2) The 3d *vol.* contains at the end, "political tracts," "orations," "essays," "charges &c." These works are published under the direction of *Bird Wilson esq.* they deserve a careful perusal by American students, desirous of obtaining a general acquaintance with the principles of law, and particularly of the common, statute, and constitutional law of the several states, and U. States.

(3) These decisions are also published at large, in Bees's S. Carolina adm, Rep. they were made in the state admiralty court, of

Peter's Decisions; "*being admiralty decisions in the district court of the U. States, for the district of Penn.*" *2 vols. by the hon. Richard Peters.* 1807.(1)

Wallace's Cases; "*being cases decided by the judges of the court of the U. States for the 3d circuit, in the district of Penn.*" 1 *No. by John B. Wallace esq.* 1802. (2)

Peters's Reports; "*being cases determined in the circuit court of the U. States for the 3d circuit.*" 1 *vol. by Richard. Peters jun.* 1819. (3)

22. Is there any Digest of cases in those courts, &c. ?

*A. None*, except what will appear, in *Mr. Wharton's digest.* See No. 18.

23. Have any books been composed, in your State, &c.?

*A.* See answers to Nos. 18, 19, 21.

(1) These are between the years 1792 and 1806 inclusive. There is an *appendix* to the 1*st vol.* containing the "*laws of Wisbury*" the "*laws of Oleron*" and the "*laws of the Hanse Towns.*" To the 2*d vol.* an *appendix* containing the "*Marine ordinances of France,*" (Louis 14th.) "*A treatise on the rights and duties of owners of ships and masters and freighters, and of mariners;*" and "*the laws of the U. S. relative to mariners.*" They also comprise some "decisions in the admiralty," by the late Francis Hopkinson esq.r and cases in other districts of the U. S.

(2) These cases are determined by the judges appointed for the 3d circuit, in 1801, under the new organization of the circuit courts of the U. S. at that time, but repealed in 1802.

Mr. *Wallace* is preparing a continuation of reports in the 3d circuit, (for Penn.) from 1802 to 1814 inclusive.

(3) This *vol.* contains cases decided in the *N. Jersey* district, from 1803 to 1818, inclusive; and in *Penn.* district, from 1815 to 1818 inclusive. Mr Peters is preparing a 2d *vol.* of decisions in this court subsequent to 1818.

which Mr. Hopkinson was the judge, before the adoption of the new fed. const.

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c. ?

*A.* There is no distinction between attorney and counsellor.

25. By whom are attornies or counsellors admitted, &c. ?

*A.* Attornies are admitted by the respective courts. An admission in any one court of common pleas, by act of assembly entitles the person to admission in any other in the state.

To obtain this admission, there must be a term of study, varying by the practice of the different courts from 2 to 3 years, and an examination by 3 gentlemen of the bar with their certificate to the court, that the applicant is well qualified to practice, and is of good moral character. His term of study must be with some gentleman of the law practising within the state.

To entitle an attorney to admission in the supreme court of this state, and in the circuit court of the U. S. he must have practised for 2 years in a court of common pleas, or a district court of the state.

Their names are registered in the court where admitted.

26. On what conditions, &c. from other states, &c. ?

*A.* Attornies practising in any of the states of New Jersey, Delaware or Maryland, may be admitted at once to practice in this state; but from other states, must reside in this state for 2 years preceding their admission.

COURTS.

27. What are the names of the several courts in your state, &c. ?

28. Their style, &c. ?

29. The extent of their several territorial jurisdictions, &c.?

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

*A.* The following, will convey a summary of the information required in these questions.

I. "*Justices of the peace,*" in each county, and "*aldermen,*" of Philadelphia &c.) have severally jurisdiction in all causes of contract express or implied, trover, trespass for injuries to real or personal estate, and in all civil cases, where the sum demanded is not above $100; *except* actions of *ejectment, slander, replevin*; for breach of *marriage promise*; or in cases of *real contract* for the sale or conveyance of lands; or where the title to land may come in question; and in *assault, battery,* and *false imprisonment.*

The trial by a justice or alderman is without *jury.* (1)

An *appeal* or *certiorari* (as the case requires,) lies to the court of *common pleas* of the county.

II. The "*Court of Common pleas,*" in each county:

This court has *original* and *exclusive* jurisdiction, in all *civil* cases real and personal, above $100; (2) and in the actions *excepted* as above, from the jurisdiction of justices of the peace and aldermen. They have also the authority of a court of chancery over lunaticks, and the committees of their persons and estates.

The state is divided into 15 judicial *districts,* (or circuits,) each composed of one or more counties, and each having a "president of the court of common pleas," who is styled the "president judge" of the district or circuit. (2)

In each county, are two "*associate* judges," who, together with the president of the district, form the court of com. pleas for the county. They are styled, "judges of the court of common pleas of the county of ————."

III. The "*Registers court.*" (*See note at the end of No. 32, post.*)

This court has jurisdiction, of the probate of wills, granting administrations &c. and is composed of the "register of wills," and the "judges of the com. pleas of the county."

Disputed questions of *fact* in this court, are settled on an issue made up and directed out of it, to the court of common pleas, where it is tried by jury.

IV. The "*Orphan's court*" in each county.

It is composed of the president, and associate judges of the *common pleas*; having extensive powers in

(1) There is a provision, allowing justices and aldermen to take cognizance by *amicable suit* in all causes within their jurisdiction; and also, giving them cognizance of all matters within their jurisdiction, *exceeding* $100, where the parties voluntarily appear before them for that purpose; he enters a judgment if confessed, if not confessed, the submission to him is to be as a referee, and judgment is entered for the sum he awards to be due &c.

There is also a provision, that if defendant before the trial will make oath or affirmation, that the *title* to lands will come in question in the action, the justice or alderman shall dismiss the suit.

(2) Except in the city and county of Philadelphia, and Lancaster county. *See post.*

(3) The president judge, is always to be a person of "*legal knowledge, and integrity,*" and receives a salary of $1600, per ann.

The important benefits derived to suitors and the publick from this organization, are universally felt and acknowledged; and *county* courts have assumed an importance and efficiency, adequate to all the ends of *judicial* institutions.

many cases relative to the estates of deceased persons, and jurisdiction over ex'rs, adm'rs, guardians, trustees, minors &c. They are *styled* "judges of the orphan's court of the county of ———."

V. The "*Supreme court, of Pennsylvania.*"

This court has no *original* jurisdiction of cases, within the cognizance of a *jury*; *(except in the city and county of Philadelphia, see post.)*

It is a court of *error* in the last resort, from the several courts of *common pleas*, (and the special district courts mentioned hereafter;) and is possessed of the superintending powers over all inferior jurisdictions, usually exercised in the king's bench in England, where not restrained by special statute provisions.

The state is divided into *five* districts, with reference to the supreme court, in *each* of which it sits as a court of error from the com. pleas of the several counties, composing the district.

There are *three* judges in this court, of whom, one is styled "chief justice," the others "associate judges."

The CRIMINAL jurisdiction in Pennsylvania, is principally vested in the following courts.

I. The "*Court of oyer and terminer*," held *twice* a year in each county; composed of the *judges of the common pleas*, and takes cognizance of the higher crimes and offences.

II. The "*Court of quarter sessions*" formed of the *same* judges, with jurisdiction over offences, of a lower grade; and in pauper, apprentice, road, tavern licenses, and other cases, under special statute provisions.

The courts above enumerated, make up the *general* judiciary system of the state, in civil and criminal causes.

*Special* circumstances have occasioned certain *other* jurisdictions, in certain sections of the state.

In the counties of *Philadelphia* and *Lancaster*, the business of the court of *common pleas* has been divided, and courts of a local nature, and of temporary duration, called "district courts," established.

I. The "*District court of the city and county of Philadelphia.*"

This court has *all* the *original civil* common law jurisdiction, of the court of *common pleas* of the county, where the amount exceeds $100, leaving to the com. pleas, only the power of trying *appeals* from justices and aldermen, and those cases under $100, which are specially exempted from a justice's jurisdiction, and certain other special cases, alluded to in the note. (1)

This court is composed of *three* judges, all gentlemen of legal information; one is styled "President," the others "associates," and the salary is $2000 each.

Any *two* of the judges constitute a court. It has no *criminal* jurisdiction; but writs of *habeas corpus* may be made returnable before them.

Its duration is limited to March 30th, 1825.

II. The "*District court for the city and county of Lancaster.*"

This court has *original* jurisdiction *concurrent* with the common pleas of that county, in all *civil* pleas exceeding $300.

(1) The common pleas of the county of *Philadelphia*, retains its jurisdiction in special cases under particular statutes, and not of a *common law* character, as for example, in granting divorces, the citation of assignees, care of lunaticks, discharging insolvent debtors, and in a few other cases, in which it is made to supply the office of a court of chancery.

It is composed of a single *judge*, styled "President," with a salary of $1600.

The law erecting this court, expires in 1824.

III. "The *Supreme court* of Pennsylvania" has *original* jurisdiction within the *county* of Philad. *concurrent* with the *district* court in *civil* cases, exceeding $500.

Trials are before a single judge at *nisi prius*.

IV. The judges of the supreme court, are also "*Justices of oyer and terminer*," in the *city and county of Philad.*

This court is held *alternately* by the judges of the supreme court, and of the common pleas.

V. The "*Mayor's court*," in the cities of *Philadelphia*, *Lancaster* and *Pittsburgh*.

These have the power of a court of *quarter sessions*, within the limits of the several cities; the quarter sessions of the counties in which the cities are, being confined to causes arising within the county, and out of the limits of the city.

In regard to APPELLATE jurisdiction, to what may be collected from the preceding account, the following is added.

I. In respect of the "*Supreme court*."

This court has a revising jurisdiction, in all causes determined in the courts of *common pleas*, and *special district* courts, either by writ of error or bill of exceptions. A writ of certiorari also issues to the court of common pleas of Philad. county; and to the courts of quarter sessions in the several counties. (See No. 34 post.)

The rule for determining whether a writ of error or certiorari is to issue, is laid down in *Ruhlman vs. commonwealth*, 5. Binn. 24. It is this; if the jurisdiction of the court below is created by statute, and the proceedings summary, *certiorari* lies; in other cases a writ of *error*.

No "*appeal*" lies from any court of *common law*.

An *appeal* after final sentence, lies from the *orphan's court* and *register's court* to the sup. court, with this restriction, that where in the court below an issue of *fact* has been tried, the fact is not to be inquired into, but the law only determined.

II. In respect of the "*Common pleas*,"

They review the judgments of *justices of the peace*, on *certiorari* or *appeal*; by certiorari, where the exceptions are of law, and by appeal, where the mistake is supposed in the fact. But no *appeal* lies, unless the judgment of the justice exceeds $5. 33.

A *certiorari* for any amount.

This court has also jurisdiction by appeal, or certiorari, in many cases of summary proceedings and special authorities under particular statutes, as for instance, uuder the "landlord and tenant law."

Where an *appeal* is taken to this court, the cause is tried by a *jury*, and *quasi de novo*, between the parties. And in *all* cases of simple contract, a declaration filed, containing a count for money had and received, covers the whole cause of action.

III. The "*District courts*," have no appellate jurisdiction.

IV. The "*Orphan's court*," has none.

V. The "*Register's court*," have jurisdiction by *appeal*, from the acts &c. of the *Register of wills*. (1)

VI. The "*Mayor's court*" and court of "*Quarter sessions*," have no *ap-*

(1) It should be here observed, that the "re-

*pellate* jurisdiction, but from orders of removal under the poor laws, from *penalties* inflicted by justices of the peace in summary proceedings, and perhaps in one or two other cases.

In *criminal* cases, there is no *appellate* power, strictly so called; but an indictment may be removed from the mayor's court or court of quarter sessions into the *sup. court*, for trial at nisi prius, with the consent of the attorney general &c.

All sentences of *criminal* courts of record, viz. *oyer and terminer; quarter sessions;* and *mayor's court*, may be removed into the sup. court, by writ of error or certiorari.

The same rule as to the choice of writs, as in civil cases.

33. Which are courts of equity, and which of law, &c.?

*A.* There is no court of *equity* in this state. The constitution in *art.* v. *s.* 6. provided, that "the supreme court and the several courts of common pleas shall, beside the powers heretofore usually exercised by them, have the power of a court of chancery, so *far* as relates to the *perpetuating of testimony*, the *obtaining of evidence from places not within the state*, and *the care of the persons and estates of those who are non compotes mentis*: and the *legislature shall* vest in the said courts, such *other* powers to grant relief in equity, as shall be found necessary; and may from time to time, enlarge or diminish those powers, or vest them in such *other courts*, as they shall judge proper, for the due administration of justice."

In so far as relates to the perpetuating of testimony, the obtaining of evidence not within the state &c. the courts exercise the authority vested in them; but the *legislature* have as yet, refrained from vesting in *any* court or courts, *equity* jurisdiction, in any cases whatsoever.

But equity is part of the *law*, and the courts are to determine causes according to equity as well as the common law, by the rules of equity established in the English chancery, where they apply, deciding as a chancellor would decree when and so far, as such decision can be enforced by common law proceedings.

For *example*, where the object of a suit is to obtain *possession* of muniments of title, the court will direct a jury to give such *damages* as would compel the defendant to deliver up the papers, rather than pay the amount, with directions, that on compliance with the order of the court for the relief of the plt'ff, the damages should be released. (2)

By our act of assembly however, decisions of the courts in *Great Bri-*

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gister of wills," *himself* takes the probate of wills, and grants *letters of administration*, where no objection or caveat is made or put in to the contrary; but if objections are made or a caveat is filed; the question of probate, or letters, is by the register brought immediately before the "register's court." If there be no caveat or objection, and the probate or letters are granted; an *appeal* lies from the register's decision to the "register's court," at any time within 2 years.

The *accounts* of ex'rs and adm'rs are settled in the "orphan's court," though generally filed with, and previously stated by the register, by whom (after previous advertisement by notice placed in publick places for 30 days,) they are filed in the orphan's court.

Parties interested, may appear before this court and except to the accounts, and a decree is there made upon them. The power to compel ex'rs, adm'rs and guardians to account and distribute, belongs to the orphan's court, and not to the register's court.

(2) A gentleman of the bar in Penn. writing to me observes, "There is no court of Equity in Penn. The equitable power exercised by the courts, is altogether *assumed*, there being nothing to warrant it in any other

*tain*, subsequent to the *4th of July* 1776, cannot be read in the state courts, except upon *maritime law*, and the *law of nations*, under which latter exception are comprehended, by the construction of our courts, all cases relative to bills of exchange, promissory notes, and other subjects of the law merchant.

34. What methods are used to carry up judgments &c.?

*A.* The methods in use are, by writ of error, certiorari, and *bill* of exceptions, as has been shown before.

There is also a *practice* peculiar to Pennsylvania under its statute law, by which the judge delivering the opinion of the court on any question, is bound if either party require it, to *reduce the opinion to writing and the reasons of the same*, and file it of record in the cause, and to which a writ of error lies, without a bill of exceptions; and where more than one exception is taken or point made in the court below, the supreme court on removal, are to give their opinion on every point and exception taken and signed in the inferior court; which opinion if required by any party or person interested, is to be filed in writing by the judges, with the prothonotary of the proper district.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A.* There is *none*. The legislature annually choose from the persons applying, such as they deem the most suitable to be employed.

36. Who is the principal *Bookseller* at the seat of Government?

*A.* The seat of government being at Harrisburgh, where are few book stores, *Wm. Graydon* and *John Wyeth* may be mentioned as the principal, if not the only booksellers there.

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cases. but those mentioned in the constitution, *perpetuating* testimony, obtaining it from places not *within* the state, issuing *commissions*, and taking care of the persons and estates of *lunaticks*.

The want of a court of equity is severely felt, there being an infinite number of cases, in which justice cannot be effected by common law process, or the real merits be ascertained through the medium of a jury, without the discovery of truth by the oath of the party, and who cannot by a *general* verdict, give the remedy which the nature of the case, and the situation of the parties calls for.

Actions against *trustees*; of *account* between merchants and partners; secret frauds; accident, and a variety of other cases, which form the appropriate subjects for a court of equity, are under our present system spun out to an interminable length, and often without the possibility or hope of an adequate remedy.

And in all those cases where *specific* relief is sought, either by *restraining* or *preventing* wrong, or compelling the party to comply *specifically* with his contract or duty, there is no redress at all.

The consequence of this defect is, that all or most of these cases, are carried into the *circuit court of the U. S.* when the parties by any contrivance whatever, can bring themselves within its jurisdiction; and which may be effected, in most cases, by crossing the Delaware.

A *bill* is now before the legislature, intended to create an *equity side* in the *common law courts*; its success however is not very confidently looked for; an idea seeming to prevail, though certainly arising out of misconceived notions of equity jurisdiction, that courts of equity are unnecessary &c."

(This has failed as I am informed. Ed.)

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A. Bargain and sale,* is the kind of deed altogether in use; if the purchaser does not pay the whole of the purchase money, the custom is to give a mortgage to the vendor.

The words "grant, bargain and sell" in a deed amounts to a special, and not a general warranty; or in other words, that the *grantor* has not done any act, nor created any incumbrance, whereby the estate granted by *him,* may be defeated. (1)

2. Does the legal possession pass without livery, &c.?

*A.* The legal *possession* passes to the grantee, without livery of seizen, or any other act by either party, by operation of the English statute of uses, (27, H. viii, c. 10.) there is no act of assembly, it passes on the delivery of the deed.(2)

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A. Technical* words are necessary to create such estates; but *estates tail* may be barred, by a common deed of bargain and sale, by the person seized, *provided* he declares it to be his intention in the deed, so to bar the estate; and *provided also,* that the deed after legal proof or acknowledgment, be in open court on motion entered on the records of the sup. court, *or* court of common pleas of the county where the lands lie, and *also* within *six* months after its execution, in the recorders office for the county where the lands lie.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* By the rules of the *common law. See* 1 *Yeates* 393.

5. Are attesting witnesses &c. required to conveyances?

*A. Subscribing* witnesses are not necessary to a deed, but there must be a *sealing* and *delivering,* and of this the jury are to judge; and when there are no attesting witnesses, proof of the *hand writing* of the vendor, is sufficient for a jury to presume these circumstances.

6. Must the deed be sealed?

7. Is a scroll sufficient?

*A.* The deed must be sealed, but an ink *scroll* is a seal.

8. Are the common law requisites for the perfection of Deeds &c. altered, in any particulars in your state?

*A.* The common law requisites are not altered; a deed beginning with any words need not be indented; neither need the consideration be stated *in* the deed, if it appears by the receipt, that there was a good or valuable consideration. *See* 4 *Yeates* 95.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* As between the *parties* &c. it is not necessary that it should be acknowledged or proved and *recorded,* in the manner required by the act of assembly; having first established the deed itself, it is valid without these requisites of the act, as between the parties and their heirs.

A *fraudulent* deed is also good, as between the parties to the fraud and their heirs, though meant to defraud creditors.

(1) Note, this decision is upon the act of 1715. As to this and the general law on the subject, *see* 2 *Binn,* 95.

(2) I understand it is well settled in this state. that although the grantor is not actually seized, the grantee may sue. Ed.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A. Deeds* for the conveyance of land, (other than mortgages, for which there is another provision,) must be *recorded* within *six* months after execution, (1) in the recorders office where the lands lie, otherwise they are void as against *subsequent* purchasers or mortgagees, without notice of the prior conveyance, unless recorded *before* the proving and recording of the subsequent deed or mortgage; but are good without recording as against subsequent *judgment* creditors.

They are void however, unless recorded in time, as against a *purchaser* at *sheriff's* sale without notice, under a subsequent judgment.

*Notice* of the prior conveyance, though the deed is unrecorded, will bar the second incumbrancer.

A patent is notice; and if it appear on the *deed* of the vendor, that the time for paying any part of the *purchase money* is not yet arrived, this is notice to the second incumbrancer, of the *lien* of the purchase money; the grantor always retaining a *lien* for the purchase money against the purchaser, and all claiming under him, with *notice* that it is unpaid.

If this appear however by some other paper distinct from the deed, and which is not proved to have come to the knowledge of the second incumbrancer, it is not notice.

As to *Mortgages*, they are void *also*, even against subsequent *judgment* creditors, if not recorded before them: and are liens only from the time of *recording*, as against *subsequent* purchasers, mortgagees, and judgment creditors, without notice.

As against the mortgagor and grantor, the mortgage or deed, is always good.

The office for recording deeds and mortgages, is the *recorder's* office of the county, where the lands *lie*.

The *six* months for recording deeds, run not from the *date* of the deed, but from the real day of its execution, which may always be shown.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

*A.* She *may*.

12. Is this done by joining with him in the conveyance, &c.?

*A.* She must *join* him in the deed, and must be privately *examined* by the magistrate taking her acknowledgment, who must give a *certificate* on the deed, containing all the *requisites* in the form here mentioned, although the mere form is not material.

"County of P——— ss.

SEAL. *Be it remembered, that on this —— day of —— 18— before me, one of the justices of the peace for the county of ——(*or other proper officer, describing his office,*) personally appeared the above named A. B. and C. his wife, and acknowledged the above (*or within*) written conveyance, as and for their act and deed, and desired that the same might be recorded as such according to law; (she the said C. being by me examined separate and apart from her husband, and the full contents of the said deed being made known unto her, and upon such separate examination the said C. decla-*

(1) Where the deed is made and executed *out* of the province, (state) 12 months is allowed for recording, by act of 1775.

*ring, that she did voluntarily, and of her own free will and accord, and without any coercion, or compulsion of her said huskand, seal and, as her act and deed, deliver the same.) Witness my hand and seal the day and year aforesaid.*

Officers *signature.* (SEAL.)"

13. Is a private examination of the feme necessary, &c.?

*A.* This private examination is *necessary.*

14. What officers may take this examination, &c.?

*A.* By any of the officers mentioned in answer to *No.* 18, *post*; and where executed by husband and wife not residing in the state, it may be taken before any mayor, chief magistrate or officer of the city, town or *place*, where executed, certified under the common or *publick seal* of such city, town or place.

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution,&c?

*A.* See *answer* to No. 12.

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* When land of the husband is sold under *execution*, it is not necessary that she should join in a deed, and acknowledge; the deed of the sheriff, passes the estate of the husband free from dower, in all cases.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* Dower is governed by the common law. In case however of a devise or bequest to her by her husband of *any portion of his estate*, it is to be taken in lieu of dower, unless the testator otherwise declares in his will, or, she elects *dower*; and she must within *one* month after being cited to appear in the orphans' court to declare her election, elect either her dower or the devise; her neglect to do so, is considered an acceptance of the devise, and a waiver of her dower.

This citation may issue at any time after the expiration of 12 months, from the husband's death.

Dower is barred in all lands sold by execution, either before or after the husband's death. (1)

There is dower in lands held by warrant and survey only, without patent; and tenantcy by the *curtesy* of such lands.

There is dower of an *estate tail*; but not of land held by *improvement* alone.

In estimating, or assigning dower in lands sold by the husband, where the wife did not join in the deed, the land must be taken as it was at the time of the transfer, and not with the improvements made by the purchaser. *See* 1. *Yeates* 152. (2)

No instrument executed by the wife during coverture, other than by a deed executed and acknowledged as before mentioned, will release dower.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A. Judges* of any of the courts in the state; *justices of the peace* and *aldermen*, for lands in any part of the

(1) So if lands are sold under a *judgment* on a *mortgage*, made by the husband alone; so where mortgaged by husband, and sold by ex'rs under a *power* in the will, with consent of mortgagee; but a conveyance by an *insolvent* husband to *trustees*, for payment of debts, will not bar dower.

(2) This is so by common law. See *Bac. ab. tit. Dower*, let. B 5. *secus*, where the improvements are made, or value increased by the heir. *Ed.*

state; so also, the *mayor* and recorder of the city of Philadelphia.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* The same form given to answer *No.* 12, omitting, what is in ( ) relating to the wife.

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* The form is,

"County of P——— ss.

*Before me one of the justices of the peace for the county of P———* (or other proper officer, describing his office,) *personally appeared this——— day of ——— 18— A. B. and C. D.* (or one of them, as the case is,) *the subscribing witnesses to the foregoing* (or within) *deed, who upon their solemn oaths,* (or affirmations as the case is,) *to them by me administered say, that they were present at the execution thereof, and saw the said E. F. the grantor above named, seal, and as his act and deed deliver the same; witness my hand and seal on the day and year aforesaid.*

*J. P.* (SEAL.)"

If the deed is made *out* of the state, the acknowledgment of the grantor, or proof of its execution may be made, by one or more of the witnesses on oath or affirmation, either before one of the justices of the peace of *this* state, or before the *mayor*, or *chief magistrate* or officer of the city, town, or *place* where the deed is executed, and certified under the common or *publick* seal, of such city, town or *place*.

If there are no magistrates superiour to justices of the peace, in the county or *place* where the deed is executed, proof before them will be sufficient, accompanied by a *certificate* from the clerk of the county court, under the *seal* of the court of that fact.

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A. No*, the magistrate alone, subscribes the certificate.

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* It must be under the *seal* of the magistrate; a scroll seal is sufficient.

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* Instead of saying "being sworn" or upon his "oath" it is said "being affirmed according to law," or "on his solemn affirmation to him by me administered, according to law."

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A See answers to Nos.* 18, 20, *and answ.* 25 *post.*

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A.* The deed will be admitted to record, and be evidence on the trial, without any authentication to that effect, if the acknowledgment or proof is made by the officers out of the state, and in the manner mentioned in *answers to Nos.* 13, 20.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

*A.* Common law proof is required. If the *grantor* is dead or cannot be had, proof must be made by the witnesses as before stated. If the *witnesses* are dead or cannot be had, proof of their hand writing will be

sufficient, after establishing the fact of death, removal, or not being to be found &c.

And for the purpose of recording the deed, these secondary proofs may be, before any officer authorized to take the acknowledgment of the grantor or the proof of the witnesses to the deed, in or out of the state.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* The *answers* to former questions, include grantors or witnesses, being in a *foreign* country. *See ante* Nos. 13, 20, 25.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

*A.* They are evidence. The officer who has the legal custody of the records, is to exemplify the record, which is an examined copy from the record, and so certified by the officer under the seal of his office.

So the deed itself though not recorded, if acknowledged or proved according to law, is evidence. 1 *Dall.* 63, 93.

29. In what order, do mortgages take preference of each other?

*A.* From the *time* of their *recording*, and not from the date of their execution, except *mortgages* given for the *purchase* money; they take priority from their date, if recorded within 60 days thereafter, but if not so recorded, they take priority also, only from the time of recording.

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* There is none. The mortgage first *recorded*, without notice of a prior executed mortgage, takes the preference as a lien, except in the single case mentioned in *No.* 29.

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* There is no difference, between the proof and acknowledgment required, in deeds and mortgages.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* Nothing. Deeds and mortgages are always good as between the parties, though deficient in the *mode* of proof, acknowledgment or recording, or though executed with a fraudulent intent by both.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A.* Judgments *bind* real property, and every sort of interest in *land*, equitable, legal, or a chattel interest; all which may be sold under execution.

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* From the day of the actual *entry* of the judgment on the docket. *per stat.*

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* By priority of *judgment.* The question, whether or not land sold under a younger judgment is discharged from the lien of a prior judg-

ment, has never yet been judicially determined in Pennsylvania. (1)

36. Does a judgment bind, after acquired land?

*A.* A *judgment* does not bind after acquired lands, but if found in the hands of the debtor unaliened, at the delivery of the execution to the sheriff, they are bound by the execution, and may be sold under it. *See* 6. *Binn.* 135. 2. *Yeates* 23.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* The first execution *delivered.*

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* He may alienate, pledge, or mortgage *bona fide,* before execution delivered; the common law regulates.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* A judgment in any court of the state, is not a lien on lands without the jurisdiction of that court; it is not a lien out of the county in which the judgment was rendered, in any case; (*per stat.*) of course it is not a bar to the alienation of the debtor, without the county, nor against the lien of a subsequent judgment creditor on lands without the county.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* There are *none.*

41. Can execution be taken out at once, in every county, &c.?

*A.* There can be but *one* execution against lands at one time upon the judgment, and it must be returned before another can issue. The execution in a county other than where judgment is obtained, is a *testatum,* and that is only a lien on the land in such county from delivery to the officer, either as against the debtor, or any other judgment creditor. (2)

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* When the defendant, in the opinion of the court, has an unincumbered freehold estate to the amount of the judgment &c. he is entitled to a stay of execution; when the judgment does not exceed $200—for 6 mo; not exceeding $400—9 mo; exceeding $400—12 mo, counted from the return day of the original process in the cause; and where he is not such freeholder, may have like stay, on giving security for the debt and costs &c.

Unless a stay of execution is obtained in this manner, or by the operation of a writ of error &c. it may issue immediately, except as is stated below.

It is provided by *stat.* in order that a party may have an opportunity to take out a writ of error, that execution shall not issue on any judgment upon any special verdict, demurrer or case stated, within 3 weeks from the day of judgment pronoun-

(1) Mentioning this to a gentleman of the bar of Penn he observed "that the general sentiment of the profession was, that the sale on a later judgment discharged the lien of prior judgments, which in that case attached on the proceeds, according to priority; that the *first* judgment creditor might claim the money, and if so, it seemed to settle the point, that the proceeds of sale was the fund out of which executions were to be satisfied, in their order.

(2) *Testatum* writs of execution in England may be taken out into several counties at once, where the court has a general jurisdiction, but I believe no court in Penn. *now* has jurisdiction beyond the county in which judgment is rendered. Ed.

ced, unless by leave of the court in special cases, for security of the demand: A party to obtain a writ of error, must make oath that it is not for delay; and must enter into recognizance with bail &c.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* The deed is only valid, from the acknowledgment by the officer, *in court.* (1)

If there be fraud, or irregularity, the court will not permit the deed to be acknowledged; which fraud or irregularity is shown on motion.

If the deed is acknowledged, and there has been fraud or irregularity, such as avoids the sale, (mere informalities in proceeding will not,) the party complaining and claiming title, may show it by way of defence, on an ejectment for the premises.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* The law alluded to here, was limited, but is continued to November next, (1822.) As the legislature will not then be in session, it must expire; any account of its provisions therefore, would be of no use.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* When *lands* are levied on under a *fi fa.* (lands being chattels for the payment of debts,) the sheriff summons a jury under a writ of inquiry, who, after taking into their consideration the value of the land levied on, and the amount of the incumbrances, determine whether or not the *rents* and *profits* for *seven* years, will discharge all the liens; if they will, the jury then *extend* the lands by returning, that they are sufficient to pay the debt and costs on the execution mentioned, in seven years beyond all reprises.

If they determine, that the yearly rents and profits for seven years will not pay the execution debt and costs beyond all reprises, they in their return say so, which is called "condemnation of the land," and then a *venditioni exponas* issues to *sell.*

If the lands are *extended,* then on the delivery of a writ of *liberari facias* to the sheriff, he is to deliver *actual* possession of the lands to the plaintiff, to be held by him until the debt and costs are satisfied; pltff. accounting for the proceeds according to the *actual profits.*

There is a writ of *levari facias,* which may issue against lands (if any such there be,) not subject to be extended as aforesaid, on which they are directed to be sold, and if the sheriff returns them unsold for want of buyers, a *liberari facias* issues, commanding the officer to deliver to the party those lands &c. or such part as may be sufficient to pay the debt, interest and costs, according to

(1) A member of the Penn. bar observed to me on this, that he thought it must be taken with some qualification, namely, "so far as to intend that the deed is not *complete* till acknowledged and cannot be recorded or given in evidence, till that is done. But when acknowledged, it relates back to the time of its execution, and the legal title vests in the grantee from that time, and the equitable title from the sale, if he paid his money according to the terms of sale; and this might be sometimes important, as in case of an ejectment brought by the purchaser before acknowledgment; and also as to the right of the purchaser, to the rents intervening between the date and acknowlegment. Ed.

the valuation of 12 men, to hold to him as his free tenement, and if it fall short, the party may have execution for the residue against the defendant, his body, goods or lands &c. (1)

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A.* *See answer to No.* 44; and there is no law to force creditors to receive, other than lawful money.

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* There are some provisions to this effect in the act alluded to, but *see answer to No.* 44.

48. May the debtor redeem land sold on execution, &c.?

*A.* There is no *redemption* of lands, or personal estate, after sale on execution.

49. May judgments on warrant of attorney, be entered in vacation?

*A.* They *may.*

50. Can judgments be entered on warrant of atty. before the debt is payable?

*A.* They *may;* execution however cannot *issue* for the debt, until it is due, but may go for the *interest* that is due.

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* Such judgment takes priority as a *lien* from its *entry*, on the lands of the debtor, against subsequent judgments and executions.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* If reversed for error or errors, the estate does *not* revert, but by statute, restitution only of the money for which the lands sold, is to be made to the defendant; unless the sale is under *void* process, which is as if no sale were in fact made, and then the land reverts.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* The officer on a *fi. fa.* is to proceed first against the personal property; for want of that in whole or part to satisfy the debt, must levy on the real estate for the whole or residue as the case is; and no *ca. sa.* can be served unless there is neither; these, and most other of our proceedings on execution, are regulated by statute. (1)

*Bail* are exonerated by the surrender of the principal, at any time before the *quarto die post* of the return of the *scire facias*, and by the discharge of the principal as an insolvent, without surrender, &c.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* Debtors may be *imprisoned* for any sum, (and none are exempted but *women*) but if the debt for which they are imprisoned is under *fifteen* dollars, the *gaoler* must discharge them at the expiration of *thirty* days.

No *woman* can be arrested, or imprisoned for any debt contracted, since the 8th day of *Feb.* 1818.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* Generally, by the rules of the common law.

(1) This also is by *stat.* but no such thing is known in practice.

(1) Observations.

Interest, runs on judgments from entry.

Judgments satisfied, the party or his representatives on request and payment of costs of suit and reasonable charges and expenses of office, is bound to enter satisfaction within 80 days, and

56. Are any kinds of personal estate exempt from execution?
*A.* *Household utensils* not exceeding 15 dollars in value; the necessary *tools of a tradesman*, not exceeding 20 dollars; all *wearing apparel*; 2 *beds and the necessary bedding*; 1 *cow and a spinning wheel*; a *stove*; and 6 *sheep*, are exempted from sale on executions, absolutely, except when seized or distrained for *rent*.

No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?
*A.* There is a general insolvent law, of the nature mentioned.

There is no exception as to the debt or cause of action, but its provisions extend only to such persons as have *resided* within the state *six* months *or* are in *actual* confinement at the time of presenting the petition (1)

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?
*A.* There is a discharge of all persons entitled, at every *term* (of three months;) the claim is determined by the *court* without the intervention of a jury.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?
*A.* Any debtor if in actual confinement, or if not in confinement, who has resided here for six months, may give *bond* with surety to appear at the next court of *common pleas for the county*, to take the benefit of the insolvent laws; whereupon, if in confinement he is discharged therefrom, and at the *next* court having filed his petition, given notice to his creditors and delivered up all his estate to his creditors, he is discharged from *arrest* for debts previously contracted.

The application may be made at any time before or after suit, and before execution and imprisonment. His property subsequently acquired, still remains liable to his previous debts, with the exceptions mentioned in *No.* 60.

The prisoner is also entitled to his discharge, if upon notice to the im-

(1) It is suggested to me by a gentleman of the *Penn.* bar, that "it would seem that a *non resident* in confinement, might have the benefit of the act, but he must have been confined 3 months." Ed.

on neglect or refusal, forfeits to the party grieved any sum not exceeding half the amount of the judgment, to be recovered by action of debt.

Judgments are not a lien on real estate after 5 years from the term in which entered; unless revived by *scire facias*, from time to time, within every 5 years.

Debts, (except by mortgage, judgment, &c.) are not a lien on real estate after 7 years from the decease of the debtor, unless suit brought within 7 years, or where not due within the 7 years, and then, a statement of the debt is to be filed in the office of the proth. of the county, within the same period.

If plaintiff has goods or lands levied on, and then takes defendant in custody on *ca. sa.* he loses the lien of his judgment and execution, against the property; and intermediate purchasers, and judgment creditors, take preference.

Purchasers under orphan's court sales, where the proceedings have been regular, hold discharged of all debts and judgments, except mortgages; but if the proceedings have been irregular, ejectment may be brought, and purchaser ousted.

*Mortgages.* The proceedings against mortgaged premises, are by *scire facias* to the mortgagor or his representatives, to show cause why execution should not issue; and after judgment by default or on plea, a writ of *levari facias* issues to sell, and upon which all the mortgagor's right is sold, and the purchaser holds discharged, of all equity of redemption:—The *sci. fa.* cannot issue, until one year after the whole money is due.

prisoning creditor to pay the daily allowance ordered by the court every week, he fails to pay the same for the space of three days after the time fixed; this order is made by the court, when it is proven to them, that the prisoner has not property sufficient to support himself.

60. Is there any thing peculiar in your insolvent law?
*A.* There is one *provision* in our insolvent laws, which a late decision of the circuit court of the U. S. for this district, determined to be contrary to the constitution of the U. S. and void. It is this, that if the debtor obtains the consent of a *majority* of his creditors in number and value residing in the U. S. he is released from all *suits*; and estate acquired subsequent to the discharge, is exempted from legal process for 7 years after the discharge, for debts contracted previously thereto.

No. v. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* They *are*, with the exception of estates tail, which if not barred by deed or *fine*, cannot be devised. (1)

62. What formalities of execution, are essential to a will of lands &c?
*A. Two* witnesses are necessary to prove a will of lands &c. but it is not necessary the witnesses should be present at the execution of the will, or that there be subscribing witnesses to a will; nor that the proof of the will should be by the subscribing witnesses, if there be any; nor that the will should be sealed or signed by the testator if written by himself, or drawn by his instructions; but the hand writing of the testator, or the special instructions &c. are to be proved by 2 witnesses, or equivalent to two witnesses. (2)

63. What formalities are required, in the revocation of wills of land?
*A.* The same formalities as in making the will where the revocation is in writing; but there are implied revocations, such as, a subsequent will different from the first, an after deed in fee, a lease to the same devisee to commence after testator's death, destroying the will, and other dispositions of the same estate, inconsistent with the will &c. (3)

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?
*A.* They are not.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?

(1) There is a provision in the act relative to intestates, that if a person *after* will made *marries*, or has a *child* or children not provided for in the will, and die leaving a widow or child or children, or either a widow or child, although such child or children be born after the death of the father, such person, so far as respects such widow and children, shall be deemed intestate, and they take, as if he had so died.

(2) The words of the act of 1705 are, "All *wills in writing* whereby any lands &c. shall be devised, *being proved by two or more credible witnesses*, upon their *solemn affirmation*, or other *legal* proof &c. shall be good and available for granting &c. the said *lands* &c. as well as the goods &c. bequeathed."

(3) The proof of wills of lands in Penn. differs in nothing from wills of chattels by the laws of England: *what* is to be proved or how by the 2 witnesses, is not prescribed; all the act requires is, that there be at least *two* witnesses, to prove the writing to be a testamentary act, made by the testator, and this is necessary by the general law, in regard to all testaments of personal estate. Ed.

*A.* Before the *register of wills* in each county. (1) It does not affect the right of the devisee or heir, even after a determination on a feigned issue, to question the sentence at law; it is only, *prima facie* evidence.

It is the *fact* of execution or the *sanity* of testator, which forms the proper subject of an issue, to be directed to the common pleas; when the question is upon the *legality* of the execution, the *register's court* is the proper tribunal to decide.

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

*A.* By witnesses, or other proper evidence, and not by the executors in any case.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* In the office of *register of wills* for the county: office *copies* are evidence.

68. What formalities are required, to wills of chattels?

*A.* The same formalities, as in executing wills of *lands*.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A.* There must be *two* witnesses (or what is equivalent,) to prove every written will of lands or personalty. The *name* of the testator to the will, (where not made by instructions) must be proved by 2 witnesses, but a seal is not required.

(1) If a caveat or objections are made, then before the register's court; or if no caveat or objection, and the register proves or rejects the probate, an *appeal* lies to the register's court within 2 years.

If the party requests it, the register's court must direct an issue, to be tried in the com. pleas.

A *nuncupative* (or verbal) will, where the value of the estate bequeathed exceeds 30*l.* is not good, unless proved by *two* witnesses who were *present* at the making, and were desired by the testator to witness that such was his will; nor *unless* it be made in his last sickness, in his own house, or where he has been residing for the space of 10 days previously, unless he was surprised by sickness abroad, and dies before his return. This is all by act of assembly. (1)

70. May executors, or administrators having letters in another state, sue in your state?

*A.* They may; so also in the circuit court of the U. S, but this is allowed under the terms of the act, of 1705.

71. If not, what is to be done to enable them to sue?

*A. See preceding answer.*

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A.* The *exemplifications*, are evidence.

73. How are foreign wills and testaments proved in your state, &c?

*A.* By act of assembly, all wills of

(1) And such nuncupative will or testamentary words, or the substance, must be committed to *writing* within 6 days after making, or is void after 6 months.

No will in writing concerning personal estate or any part thereof, can be *revoked* or altered by words unless reduced to *writing* in the lifetime of the testator, and be *read* to the testator and allowed by him, and proved to be so done by 2 or more witnesses.

But persons at sea, or in military service, may dispose of personal estate, as before the making the act.

Where there is any undisposed *residue* of personal estate, it is distributed among the next of kin as upon an intestacy, and does not go to the ex'rs. *per stat.*

land or of personal estate, in or out of this state, or wherever made, proved by *two* or more credible witnesses, before such as have the *power* of taking probates, or granting letters of administration, and a copy of such will with the probate annexed, and the *copies* of all wills and probates, under the publick seal of the court or officer granting the same, are evidence to prove the devise or bequest.

A will of *personal* property, must be executed according to the law of the testator's domicil, at the time of his death; and if he dies intestate, be distributed according to the same law.

Letters of administration granted *out* of the U. States, are not sufficient authority on which to bring a suit in this state.

The proof of *Judgments* are according to common law, and acts of congress. *See Bioren's edit.* 2 *vol.* 122, 3 *vol.* 621.

The proof of *deeds* has been mentioned in former answers. *See Nos.* 13, 20, 25.

The *printed* books, of all laws of other states, publick or private, are evidence, without authentication or proof. *See* 1 *Dall.* 458.

### No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

*A.* These 4 questions may be answered by the following synopsis of our several acts of assembly, on the subject of intestacy.

I. If the intestate leaves *children* only, they take *equally* as tenants in common; if children and the issue of children, such *issue* represent their *parents*, and take equally among them what their parents would have taken if living.

If the intestate leaves grand children *only*, they take *equally* as tenants in common; if grand children and the issue of grand children, such *issue* represent their parents as aforesaid, and so on as to *lineal* descendants in the remotest degree.

II. If the intestate leaves only *brothers or sisters* or both, they take *equally* as tenants in common; if any be dead, their issue represent them, and take what the parent if living would have taken.

III. If there be a father or mother *and* brothers or sisters, the father takes all during his life; if no father, the mother all during her life, and after his or her death, the brothers and sisters and the issue of deceased brothers and sisters, take as they would have done, if the father or mother had not survived the intestate.

IV. If there be no brothers or sisters or their representatives, the father if he be living takes the whole in fee, or in case he be dead and the mother living, then she takes the whole in fee; *unless* the estate came to the intestate from the part of the mother, in which case the father shall not inherit; if from the part of the father, then the mother shall not inherit, but it shall be considered as if the intestate had survived such father or mother.

V. If there be no lineal descendants, nor father, mother, sisters or brothers of the whole blood or their issue, then brothers and sisters of the *half blood* and their issue shall take in preference to more remote kindred of the whole blood; *unless* the estate

came to the intestate by descent, devise or gift of some of his ancestors, in which case all who are not of the blood of such ancestor are excluded.

VI. If there be no lineal descendants, nor father, nor mother, sisters or brothers of the whole or half blood, or issue of such brothers or sisters; the inheritance descends to and is divided among the *next of kin of equal degree* of or unto the intestate; and if any of such kindred be dead, their issue represent them.

VII. *Posthumous* children inherit in like manner, as if born in the life time of the father.

VIII. If there be a *widow*, she takes if there be lineal descendants one third, if no lineal descendants one half of the estate during her *life*; and this not as dower at common law, but under the statute of distribution, and in lieu and satisfaction of such dower.

IX. In all cases of descent, not particularly provided for by the statutes, the *common law* is to govern; but this is not by statute provision, but by judicial decision.

78. Is there any thing peculiar in your law of descents?
*A. Nothing*, but what is specified in the preceding answers.

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?
*A.* The widow takes one *third*, if there be lineal descendants; one *half* if there be not; the *residue* is distributed in like manner as *real* estate, *except* that, in the case where the father or mother would take only an estate for life in the real property, they take the personal absolutely; and brothers and sisters of the *half blood*, take equally with the whole blood.

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?
*A.* Neither of those statutes are adopted.

## No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?
*A.* They *may*.

83. Are entails abolished; converted into fees; or otherwise modified &c?
*A.* Entails *exist*. They may be converted into fees however by a simple deed of conveyance by the tenant in tail, expressly declaring therein his intention of barring the entail, legally acknowledging the deed, and having it on *motion* in open court, entered on the records of the supreme court, or on the records of the common pleas for the county in which the lands lie; and *also* recording it within 6 months next after the execution, in the county where the lands lie. *(See No. 3. ante.)*

They are also barred by fine and recovery.

84. How barred by the tenant?
*A. Answered in No. 83.*

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?
*A.* The widow is entitled to dower of an estate tail.

Tenancy by the curtesy, is as at common law.

Dower is barred of lands sold un-

der execution, before or after the husband's death; so also of lands mortgaged by the husband alone, and sold by executors with consent of mortgagee, to pay debts under a power in the will. *(See ante, No. 17.)*

### No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?
*A. Twenty-one* years, after the title first descended or accrued.

87. What savings &c?
*A.* A *saving* to all persons *within* 21 *years of age, covert, of unsound mind,* or *imprisoned,* at the time the right first accrued; *so* as they or their heirs make entry, or bring their action within 10 years *next* after the disability removed. (1)

88. Is there a saving in favour of foreigners or citizens of other states?
*A. None* in favour of foreigners, persons beyond sea, or citizens of other states, merely on such account.

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?
*A.* They *are.*

90. Is there any thing peculiar in your state on this head?
*A.* Nothing.

91. What length of time bars recovery &c. in personal actions?
*A.* Against *specialties* there is no length of time, but the principles of the common law as to 20 years or more, affording a presumption of payment, are adopted.

In actions *on the case*; and upon *account* (other than such as concern the trade of merchandise between merchant and merchant;) *trespass q. c. freg*; *detinue*; *trover*; *replevin*; *debt* on any contract without specialty, or for arrearages of rent; within 6 *years* next after the cause of action accrued: actions of *trespass,* of *assault, menace, battery, wounding, imprisonment,* or any of them; within 2 *years*: and actions on the case for *words,* within 1 *year* next after the cause of such action accrued, or words spoken &c.

92. What savings?

93. Are there any in favour of citizens of other states, or foreigners?
*A.* Persons *within* 21 *years of age, covert, non compos mentis, or imprisoned* when the cause of action accrues, may bring their suits within the time of the preceding limitations, after disability removed. (1)

### No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?
*A. Unseated* lands may. Absentees from the state have no privilege.

95. Before a sale, is notice to be given &c?
*A.* Notice is to be regularly given of the property taxed, the amount, and time and place of sale.

96. What officer is to give this notice?
*A.* The county Treasurer.

97. In what manner &c.
*A. Sixty* days notice of the time and place of sale, the township where the land is situate, number of acres,

(1) There is a provision also, that if the person within the 10 years, dies under any of those disabilities, the heir shall have the same benefit that such person might have had, by living till the disability was removed. Also, if any abatement of the action takes place, 3 years are allowed to renew it.

(1) *One* year is allowed after *reversal* on error, or *arrest* of judgment after verdict, for the party or his representatives to renew the action.

names of warrantees or owners, and the sums due on each tract, must be given at least 4 times in one daily newspaper in Philadelphia, and in one newspaper in or nearest to the county where the lands lie. But the omission to advertise in this way, does not invalidate the sale.

98. If a sale takes place, is the deed absolute?

*A.* There is a right of redemption, reserved to the owner.

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

*A.* The right of redemption remains in the owner for 5 years, when the county becomes the purchaser, and but for 2 years, where individuals are the purchasers, *saving* to owners who are *orphans* or *insane* and within the United States, the right to recover the lands, 2 years after their disability is removed. The county becomes the purchaser, where the lands do not bring the amount of the taxes.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

*A.* The lands do not vest in the state; and where the county becomes the purchaser, the county may after the right of redemption expires, sell by publick sale, which second sale then becomes absolute.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* The county *treasurer*; desiring him to state the amount of taxes, on what tracts, and the exact situation in which the lands stand, he will give every information on furnishing him with a description of the tract, and the names of the warrantee and the owner. He may be addressed by his official title, if his name be not known.

The following is a summary of the laws relating to taxes, on which the foregoing answers are predicated.

Certain *commissioners* are chosen in each county, to assess the taxes on *unseated* lands, for county rates and levies annually.

After 12 months from the time of assessment, they are to issue a *warrant* under their hands and seals of office to the *treasurer of the county*, commanding him to make sale agreeably to law, of the whole or such parts of the tracts taxed, as is sufficient to pay the tax due and costs &c.

An act passed *Mar.* 13 1815, prescribes the mode of proceeding by the treasurer.

By this act, he is directed on the *2d monday in June* 1816 and at the *expiration* of every 2 years thereafter, to make publick *sale* of the whole or so much of any unseated lands taxed in the proper county, as will pay the *arrearages* of the taxes, any part of which shall *then* have remained due and unpaid for the space of 1 *year before*, and the costs &c. and make a *deed* therefor &c.

It is made his duty to give at least 60 days notice, in the manner specified in answer to No. 97.

The owner *paying* to the treasurer the amount of the tax for which the lands sold and the cost, together with *25 per cent* additional thereon (or tendering the same and it being refused,) at any time within 2 years from the *sale*, or having *paid* the tax *previous* to the sale, is entitled to *recover* the same by due course of law; but in no other case and on no other plea can an action be sustained, and no alleged *irregularity* in the assessment, or in the process or *otherwise*, is to affect the title of the purchaser.

But where owners at the time of

sale are *orphans*, or *insane* and residing within the U. S. 2 years after the disability removed is allowed them or their representatives, to bring the suit or action for recovery of the lands; but in such case, the value of the improvements made on the land after sale, shall be assessed by the jury trying the action, and be paid by the person recovering, before he or she shall obtain *possession* of the lands so *recovered.* (1)

Where the sum bid, is not equal to the whole of the tax and cost for which the tract was advertised, the *commissioners* of the county or one of them is to bid it off, and a deed is to be made to them and their successors by the treasurer, for the use of the county; all which sales shall be entered by the commissioners in a book: these tracts so conveyed to the commissioners, are not afterwards for 5 years and while they belong to the county, to be charged in the duplicate of the collector, but for 5 years next following the sale, the commissioners in the same book, are to charge the tract with reasonable county and road tax, not exceeding 6 dollars for every 100 acres.

The right of redemption remains in the owner in *this* case 5 years after sale, on paying the county treasurer all the taxes and costs due at the sale and interest therefor, and also the several subsequent taxes and costs, and the interest on the several taxes from the times they ought to have been paid; on the production of the treasurer's receipt, the commissioners are to re-convey on the back of the treasurers deed.

If the owner does not redeem in this case within the 5 years, the commissioners are to sell the lands and make an absolute deed to the purchaser; but no tract to be sold for less than the amount of tax, cost, and interest due.

There is a provision also, by which the treasurer may receive the tax in *advance* of the owner, for any term not exceeding 6 years, by way of composition with the owner.

These *points* have been ruled in ejectments, for lands purchased on sales for taxes.

1. To vest a title in the purchaser of lands sold for taxes, an exact and minute adherence to the *directions* of the laws is necessary. It must *appear* that every direction and requisite of the law has been punctually complied with, else the purchaser has *no title.* 2 *Yeates* 100, 312.

2. And a *variance,* between the advertisement of lands sold for taxes, the assessment and the deed, is fatal to the title of the purchaser. *Ibid* 330. 3 Yeates 284.

3. If the commissioners deed is under their common seal, it is void. 2 Yeates 330.

4. In an action of ejectment, brought by the owners of lands sold for taxes against the purchaser, the purchaser is to be allowed for the improvements he has made on the lands in all cases, as well where the lands were owned by minors or persons insane, as others. 1 Sergt. and Raw. 38.

It was probably to counteract these decisions made on common law principles, that the law of 1815 provided, that the treasurers *deed* should be *conclusive,* except in the *two* cases mentioned in the act.

## No. XI. MISCELLANEOUS. BAIL, &c.

102. May debtors *pendente lite,* be restrained from alienating &c. Is

(1) Doubtless also, they must pay or tender the tax cost and percentage, although the proviso is not in terms to that effect.

the debtor liable to be holden to bail, &c?

*A.* Before judgment, there is no restraint upon the alienation of *real* property; nor of *personal* property before execution, if the alienation be *bona fide*.

Such alienations are governed by the *stat.* 13 *&* 27 *Eliz.*

The common law governs generally in case of bail, subject to certain modifications, one of which is, that *after* judgment, bail may be entered for a *stay of execution* for a limited time, which bail cannot surrender or be relieved in any other way, than by actual payment of the debt. *(See ante* 42.*)*

LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?

*A. All* letters of attorney made *out* of the state, all and every bonds, specialties, letters of attorney and other powers in writing, being proved by *two* or more of the witnesses, or *acknowledged* by the principal, (1) before the *mayor* or *chief* magistrate or officer of the city, town, or place where made, and certified under the common or publick seal of that city, town or place, whether relating to lands or chattels, are by act of assembly made evidence, as if proved by the witnesses present in court.

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A. Aliens* (not being the subjects of an enemy power,) may purchase lands within the state to any amount not exceeding five thousand acres, as fully to all intents and purposes as citizens; and they are capable of taking lands by devise or descent to any amount; and of disposing of them, in the same manner as citizens can do.

So all purchases by *emigrants* resident in the commonwealth, previous to declaring their intention to become citizens of the U. S. and who have since been naturalized according to the laws of the U. S. are valid; and *sales* made by alien purchasers are valid, and lands held or purchased by aliens, are confirmed to their *heirs*. (2)

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* Both of these statutes, so far as they relate to the granting of administration, are in force in Penn.

106. May guardians be appointed by will: does the common law regulate &c?

*A.* They may; and where none are so appointed, the *orphan's court* has the power, (subject to certain restrictions principally relating to moral character and religious persua-

(1) The act does not make the *acknowledgment* of the party in such other place, before such officer and so certified, evidence; but it is decided to be so, in 1817. in the circuit court of U. S. pr. *Washington & Peters, Milligan's lessee v. Dixon.*

(2) The act making those wise and politick provisions, was passed *Mar.* 24*th* 1818. It is a matter of surprise, that any state should still keep in existence, the *common law* on *this* head. Ed.

sion,) of appointing guardians to children under the age of 14 years; after that age, the minor may choose his own guardian.

In the appointment of a guardian, the court may at their discretion order security to be given by him; and for that purpose always require an affirmation or oath of the amount of personal estate that may go into his hands.

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?
*A.* The order of paying debts by executors and administrators is regulated by act of assembly, and is as follows (so far as there are assets,) viz. 1st *physick, funeral expenses* and *servants wages;* 2d *rents* not exceeding *one* year; 3d *judgments;* 4th *recognisances;* 5th *bonds* and *specialties;* 6th all *other* debts without regard to their degree, *except* debts due the commonwealth, which are to be *last* paid. (1)

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?
*A.* Lands are assets for the payment of debts, and may be taken in execution and sold, on a judgment against executors or administrators.

They cannot give a preference, by confessing judgment.

All debts are to be paid in the *order* in which they stand, at the time of the testator or intestates death; that is, a debt existing at the time of the decedents death, must rank as it *then* stood, and obtains no preference, by being afterwards prosecuted to a judgment &c.

Debts of every degree, become a lien on the decedents real estate at his death, for the term of *seven* years thereafter, although they were not so before. *(See preceding answer* 55 *and note, also* 107.*)*

(1) If the estate is not sufficient to pay all the debts by specialty or simple contract, then the creditors are paid *pro rata*, first paying the bonds and specialties aforesaid. The act prescribes the *way* and manner of ascertaining a deficiency of estate, and for the sale of real estate for payment of debts.

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?
*A.* There is no survivorship between joint tenants, but the estate or thing so holden upon the death of any joint tenant, is to be considered as if such joint tenants had been tenants in common, *except*, that nothing in the act is to affect *trust* estates.

### SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?
*A.* The common law is in force.

111. Is a scroll &c. equivalent to wax &c?
*A.* An ink scroll, or printed seal, is a legal seal to every instrument. *(See* 1. *Sergt. & Rawle.* 72.*)*

### BASTARDS.

112. Are bastards subject to common law disabilities?
*A.* They *are.*

113. Are antinuptial children, legitimated by marriage of the parents?
*A.* They are *not.*

ALLUVION.

114. Does the common law in respect of alluvion prevail?
*A.* In respect of alluvions, the common law is the general rule, subject to such modifications as the customs and practice of our state have introduce, e. g. the owner of the opposite shore, would have no right to an island arising in the river, it belongs to the state.

FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?
*A.* The owner of lands, has no exclusive right to fish in the rivers of the *state* immediately in front of his lands, whether the tide flows and reflows or not.

116. Is this so by statute, or usage?
*A.* This is not so by statute, but because of the *custom* of the country modifying the principles of the common law. There are a number of statutes regulating the fisheries in all the rivers. There is no right of piscary by *usage*.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?
*A.* The *stat.* 13. *Eliz.* is in force, and so is the *stat.* 27 *Eliz*, with the exception of the sections, from the *7th to the* 12th. inclusive.
There is no act of assembly, against fraudulent conveyances.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* The statute of *frauds* is not in force. But there is an act of assembly passed 1772, which embraces the *three* first sections, and the *14th, 15th, 16th, and 25th sections* of that statute.

USES.

119. Is 27. H. viii. called the *Stat. of uses*, (or similar provisions) in force?
*A.* The first *ten* sections of 27. *Hen. viii.* (stat. of uses,) are in force.

120. Is the English law of uses and trusts, in force?
*A.* As a general rule, it is.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?
*A.* The common law doctrine is in force; the wife's chattels real and personal when reduced to possession, are vested in the husband.
No female whatever can be arrested or imprisoned for any *debt*, in Pennsylvania.
The husband is entitled to *admn.* on the effects of a deceased wife, and to recover and enjoy them to his own use.

USURY. INTEREST.

122. What is the rate of interest?
*A.* No more than 6 *per cent. per annum*, is to be taken on any bonds or contracts, upon a loan of money or other commodities.

123. What provisions against usury?
*A.* Upon *conviction* (which means on indictment,) the defendant forfeits the money and other things lent, half

to the governor for the support of government, and the other half to the person who sues.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* Original books of entries are evidence only of *goods sold and delivered*, and *work and labour done.*

If the entry is made by a *clerk*, it must be proved by him; or if dead or out of the power of the court, there must be proof of his hand writing; if made by the plaintiff, the plaintiff's own *oath* is evidence of the entry; the books must be original books of entries.

Books are only *prima facie* evidence, their truth and the prices charged &c, are all open to counter evidence.

125. Is interest recoverable on book debt?

*A.* In Pennsylvania, interest is recoverable on goods sold and delivered; and on all open accounts where, by the usual course of dealing or by express agreement, a time is fixed for payment; on money lent and advanced; on arrears of rent, (unless the landlord reverts to the land itself or distrains,) and generally wherever one person detains the money of another, against his consent.

Guardians, executors and administrators, are also liable to pay interest on all surplus monies in their hands, after their accounts are or ought to be settled. And perhaps it would now be determined (though it was formerly held otherwise,) that trustees would be governed by the same rule.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

*A.* They are, and the law merchant governs, where the note or bill is negotiable; but *see Nos.* 135, 6. *post.*

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?

*A.* The law as it is in England, altogether prevails in these respects in case of bills and notes, not within the *exceptions* to be found in *answ.* to *Nos.* 135, 6 *post. and the notes.*

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

*A.* The law, as to *protest* of foreign and inland bills of exchange and promissory notes, is precisely as in England, *except*, that where a protest is made on an *inland bill* or a *promissory note*, the protest certified under the hand and office seal of the notary, is *prima facie* evidence of the *facts* contained therein, liable to be contradicted by other evidence.—This exception is by statute.

129. Is there any peculiar practice in your state, on this subject?

*A.* The preceding provision as to the protest being evidence of facts contained therein; and *see post* 135, 6.

It is the constant practice, to protest *promissory notes.*

By statute, *damages* are given to payees on bills of exchange returned unpaid with a legal protest, against drawers or endorsers as follows; if drawn on any one of the *United States* or *territories*, (except Louisi-

ana) *five per cent.* upon the principal; on *Louisiana* or any other place in *North America or its islands*, (except the north west coast of America, and Mexico, or any of the West India or Bahama islands,) 10 *per cent*; on *Madeira*, the *Canaries*, *Azores*, *Cape de verd isles*, *Spanish main* or *Mexico*, 15 *per cent*; on *Europe or its Islands*, 20 *per cent*; on any *other part of the world*, 25 *per cent.*

These damages, to be *over and above* the principal sum, charges of protests and interest on the principal; damages and charges of protest to accrue, from the time at which notice shall have been given.

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A.* This is answered in the foregoing.

### DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?

*A.* They are, for *impotency* at the time of the marriage; a *former marriage* subsisting; *adultery*; *wilful and malicious desertion and absence for 2 years from the habitation of the other party, without reasonable cause; and where the husband by cruel and barbarous treatment has endangered* his wife's life, or *offered such indignities to her person, as to render her condition intolerable and life burdensome, and thereby forced her to withdraw from his house and family*; in every such case, the injured and innocent party may obtain a divorce from the bond of matrimony.

The application is by *petition* or libel and subpœna, before the *court of common pleas* of the proper county.

If any *fact* is desired by either party to be tried by jury, an issue is to be directed &c.

In suits of divorce for the cause of *adultery*, proof that the plaintiff has been guilty of the like crime, or admitted the defendant to conjugal society or embraces, after knowledge of the fact; or where the husband being plaintiff, has allowed the wife's prostitutions or received hire for them, or exposed his wife to lewd company, bars relief.

The parties may marry again, except, that the guilty party shall not marry the person with whom the crime was committed, during the life of the former wife or husband.

The children of the wife during coverture, are not rendered illegitimate on divorce.

Where either husband or wife has married again, upon any false rumour of the death of the other in appearance well founded (when the other has been absent 2 years,) it is in the *election* of the party at his or her return, to have his or her former husband or wife restored, *or* to have his or her own marriage dissolved and the last marriage to stand good; in which case the court is to decree accordingly: but the suit for this purpose, must be within 6 months after return.

The libellant, must be a *citizen* of the state, and have been resident there *one* year before the suit.

A woman divorced, and afterwards cohabiting with the adulterer, is rendered incapable to alienate her real estate, but on her death it is to descend as if she had died intestate.

The court may award costs to the prevailing party, or that each pay his or her own costs.

An *appeal* lies, to the *sup. court* of the proper district, after final sentence.

Where the husband either maliciously abandons his family, or turns his wife out of doors, or by cruel

treatment endangers her life, or offers indignities &c. to her person, thereby forcing her to withdraw from his house; the court of common pleas may, on suit in manner aforesaid, divorce from *bed and board* and decree *alimony*, not exceeding the $\frac{1}{3}$ of the husband's income from his estate or occupation; this to continue until reconciliation, or the husband by his petition offers to receive her back and to treat her as he ought to do &c. and the court sees proper so to decree &c.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?
*A.* Both attachments exist, regulated by acts of assembly. (1)

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A.* It is similar. The acts of assembly being for the most part copied from the *Stat.* 2 *Wm. and M. and* 11 *Geo.* ii.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A.* It is more comprehensive than the English law, extending to dealings upon bonds, bills, bargains, promises and accounts, the def't setting off any bond, bill, receipt account or bargain in evidence.

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?

136. Is the common law in respect of choses in action, adopted?
*A.* By an act of assembly made in 1797, where promissory notes bear date in the city or county of *Philadelphia*, and are made payable to the order of the payee for "value in account," or for "value received" and "without defalcation," or "without set off;" the holder is entitled to recover against the drawer or indorser the sum which, on the face of the note or by the indorsments thereon, appears to be due; but the defendant may offset or defalk, so far as the plaintiff is justly indebted to him by bond, specialty or otherwise. (1)

But the assignee of bonds and specialties, and *promissory notes not so dated and drawn*, by the terms of the act of 1715, takes them subject to all legal and equitable defalcations and demands of the obligor or promissor, against the obligee of the bond or specialty, or the original payee of the note, at the time of assignment, or indorsment, and until the obligor or promissor has *notice* of the assignment or indorsment. (2)

(1) *Foreign* attachments issue where the debtor is *non resident;* and the sum finally recovered against the garnishee to the amount of Pl'tf's demand, goes to the creditor in attachment, and the garnishee is bound to disclose on oath &c.

*Domestick* attachments issue where the debtor absconds, and *all* creditor's claims before the trustees, are admitted *pro rata.*

(1) Yet even if the holder receives a note drawn under the *act of* 1797, with *notice* that payments have been made on it, such payments shall be allowed; and so in other cases he *may* be liable even on a note under this act, to payments &c. not appearing on it. See 1 Serg. and Raw. 180.

(2) But the obligor even in such case, by his conduct may lose the benefit of discount: see 1 *Binn.* 433.—3 Yeat. 351.

A bill of *exchange* made payable without the words "or order" "or assigns," or other words of negotiability, is not assignable over so as to enable the indorsee to sue in his own name; and the same law as to *promissory notes.*

But if the *original* bill or note is negotiable on the face, it is sueable against the maker or drawer in the name of the holder, though the indorsment does not contain negotiable words.

The liability of an assignor of a bond or chose in action on a general assignment, extends only to an implied covenant, that the assignee shall recover the money to his own use, but he is not liable over, unless in case of nonpayment it is so stipulated.

By *stat.* (1715) bonds and *specialties* and promissory notes, may be assigned by the party to whom made to another, and so *toties quoties*, and the holder may sue the obligor or drawer for the money mentioned therein, or such part as may have been due at the time of assignment, in his own name; but all such assignments of *bonds and specialties*, must be under hand and seal *before* two credible witnesses.

In other respects, obligations and specialties so assigned, and promissory notes and all assignments of bonds and specialties in other form, and of all other choses in action, (except promissory notes drawn as aforesaid, under the act of 1797) stand as between the parties, on the footing of the common law. (1)

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* The same law here as in England, generally.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

*A.* There is no court of chancery in Penn. *see ante No.* 33.

After the expiration of a year and day from the time a *mortgage* becomes due, a *scire facias* issues against mortgagor, his heirs, ex'rs, or adm'rs.

And any proper defence may be made on plea; and when a judgment is obtained for the amount due, a *levari facias* issues to sell the mortgaged premises; in which case the vendee holds discharged of the equity of redemption. *(See ante No.* 53, *note.)*

No lapse of time, or any thing but payment or sale, can discharge the lien of a mortgage; but the law of presumption of payment from the lapse of 20 years or more without demand &c, would undoubtedly apply.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?

*A.* In the order mentioned in *Nos.* 197,8.

(1) It may be of some *publick* importance here, to present a further view of the law of Penn. as indicated in the preceding text and notes.

By act of assembly *May* 28, 1715. (after reciting in the preamble, that bonds and specialties, and *notes* in writing signed by the party whereby such party is obliged or promises to pay to any other person, or his order or assigns any sum of money, are not by law assignable or indorsable over to any person, so as that the *persons to whom* the said bonds, specialties, note or notes is or are assigned or indorsed, may in their *own names*, by action at law recover the same,) it is enacted, that all bonds, specialties and *notes* in writing,

PUBLICK OR PROPRIETARY LANDS.

**140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?**

**A. There are but few vacant lands.**

**The mode is by application to the land office; but no application can be received, except for such lands as have been *settled*, grain raised, and persons residing thereon.**

**Upon such application, a warrant**

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made or to be made and signed by any person or persons, whereby such person or persons are obliged or doth promise to pay any *other person or persons, his, her or their order or assigns* any sum &c, may by the person or persons to whom the same is or are made payable, *be assigned, indorsed and made over to such person or persons as shall think fit to accept thereof;* and that the person or persons *to whom* such bonds, notes &c. are assigned or indorsed, or their agents &c. ex'rs or assigns may at their pleasure *again* assign, indorse or make over the same, and so *toties quoties;* and that, the persons to whom the same are so assigned or indorsed, may in their *own names* sue for the recovery of the monies mentioned in the said bonds, *notes* &c. or *so much as shall appear to be due at the time of such assignment*, in *like manner* as the persons *to whom the same were made payable* might have done.

There is a section also in these words—"all assignments made of *bonds and specialties*, shall be under *hand and seal before two or more credible witnesses.*" And another, that assignors after assignment shall not have power to receive any of the debts or sums of money *really due by the said bonds, specialties or notes.*

As this act did not (as the *stat. of* 3 *and* 4 *Ann* does,) give an action to the indorsee of a note against the *indorsers*, but only enabled the assignee or indorsee in his own name to sue the *obligor* of the bond or *maker* of the note, and then, only to recover what was due at the assignment or indorsement, in *like manner as the original obligee or payee might*, it was provided by an act *passed* 1797 *Feb.* 27, that all notes in writing commonly called promissory notes, *bearing date in the city or county of Philadelphia*, whereby the maker or makers promise to pay to any person or persons, and to the order of the payee "*for value in account*," or "*for value received*," *and in the* body of which the words "without defalcation," or "without set off," shall be inserted, shall be held by the indorsees *discharged* from any claim of defalcation or set off, by the *drawer* or *indorsers* thereof; and the indorsees shall be entitled to recover against the *drawer and indorsers*, such sums as on the *face* of said notes or by indorsements thereon, shall appear to be due, *provided*, that in every action brought by the holder of a note against the drawer or indorsers, the defendant may set off and defalk so far as the *plaintiff* shall be justly indebted to him in account, by bond, specialty, or otherwise.

It will be perceived then that by the *positive* law of of Penn. (the *act of* 1715) though it makes promissory notes, drawn to "*any person, his, her or their order or assigns,*" assignable over from one to another, *so far*, as to enable the last holder to sue in his own name the drawer or maker of the note, yet the drawer, is not thereby to lose any defence he had against the original payee at the *time* of assignment; but the holder is to stand exactly in the place of the original payee, and can only recover in "like manner" as he might recover.

And it may also here be observed, that no action could be brought under the act of 1715, by indorsees against indorsers of promissory notes, but as between *them*, such indorsements were mere choses in action, and stood as at common law.

In 1797, by the act above recited, the legislature of Penn. gave to promissory notes *dated at a certain place* viz. in the city *or* county of Philad. and made in a certain form (in substance an engagement that drawer would pay it to any holder according to its face without defalcation or set off,) all the privileges which belong to promissory notes in England under the provisions of the *stat.* 3 *&* 4 *Ann*, (by which they are put exactly on the footing of inland bills of exchange) not subjecting the bona fide holder without notice to any condition or defence, but what arose from the face of the instrument; and giving an action to the holder against the previous indorsers for non-payment by the maker.

It occurred to me on this view of the Penn. law of *promissory notes*, that it ought to be well understood on many accounts, by persons in other states and in Penn. who make notes, receive them, or who become the indorsee of notes, which must be sued upon in the *courts* of that state.

With this impression, I suggested to a gentleman of eminence at the Philad. bar, some questions on this head; in order to ascertain if there had been any decisions there, upon the rights of holders suing in *Penn.* on negotiable notes made in *other* states, or in *Penn.* but negotiated in other states, where the holder in such other states might upon such notes, (not being *dated at* the city or county of *Philad.* and drawn in the form

is issued to survey, and on return of the survey a patent issues. (1)

There are proprietary lands arising out of the act of 1779, the purchase of which is by application to the *agent* of the proprietaries at Philadelphia; the quantity is very small.

(1) The price paid the state is $——— per acre.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation? *A.* By act of assembly, no british adjudged case made *since the 4th of Ju-*

prescribed by the act of 1797) by the law of the place where the holder is, have recovered against the drawers and indorsers on the face of the instrument, not subject to discount.

I also so suggested to him another question, "whether if in order to comply with the act of Penn. a note is *dated in the city or county of Philad.* though actually given on a contract and made in another state between the parties, the pltff. in a suit in Penn. would be limited to Penn. *interest.*"

The subjoined is the substance of his reply.

"Prior to the passage of our act of 27 *February* 1797, promissory notes were, (and if not dated and drawn according to that act still are,) of a mixed description. As between the indorsee or holder and the *drawer*, they were and are independent of that act, mere choses in action, and upon the same footing as bonds, except only as an action is given in the *name* of the indorsee or holder, by the act of 1715, against the drawer.

"They were both assignable under that act (28 *May* 1715,) but made liable in the hands of even a bona fide holder for valuable consideration, to every offset and every equity subsisting between the original parties.

"The *Stat. of* 3 *and* 4 *Ann. ch.* 9. was not held to *extend* to Penn. so far as it provided for the negotiability of notes, as between indorsee and *drawer*, because our *own* statute provided for the case, nor as giving the quality of inland bills of exchange to them between indorsee and drawer, for the act expressly provided that the drawer should be allowed to offset his demands &c. against the payee at the time of assignment.

"But as between the indorsee and prior *indorsers*, the *English* statute was held to extend. In a suit therefore by the indorsee against the *drawer*, after stating the case, we declared "that by virtue of the *act of assembly* he became liable; if by an indorsee against the *indorser* we declared "that by *virtue of the statute* he became liable." *See M'Cullough vs. Houston*, 1 *Dall.* 441.

"The act of 1797, altered this as respects notes *dated* in the *city or county of Philad.* whereby indorsers and drawers are liable on the face of the note, as on inland bills of exchange; but not so dated &c. they stand in our courts as before; *viz.* upon the express terms of the act of 1715, merely placing the holder in the shoes of the original payee at the time and until notice of assignment.

"But we have a provision in the acts incorporating the *banks* of Penn. and Philad. which puts notes *discounted* in those banks on the footing of *foreign bills of exchange*; and a similar provision exists in regard to the Farmer's and Mechanick's bank and all the new banks, not only in respect of *discounted* notes, but also to all notes *deposited for collection*; of course, all *such* notes are *negotiable*, and not liable to offset, at least such is taken to be the legal effect of that provision.

"As to the rate of *interest*, the general rule is, that the rate unless specified, is to be according to the law of the place not where dated, but where the debt is to be paid.

"A note dated in Philad. would *prima facie* bear but 6 per cent, but if it were shown by evidence that this was done merely to meet the provision in our statute, and that it was actually executed in New Jersey and to be paid there, it would without question bear 7 per cent; in truth, interest when not made part of the contract, is only recovered as *damages* for *detention*, and is always a subject of inquiry, and the legal interest of money at the place of payment, is merely resorted to as a reasonable rule of damages.

"If a note were given by me residing in Philad. to you residing in N. Jersey for a given sum *with lawful interest*, or saying nothing of interest, for the purpose of being discounted in a N. Jersey bank, it would certainly bear 7 per cent after due, even if sued for in Pennsylvania.

"If given by me to a Pennsylvanian, to be discounted in N. Jersey, I dont know what interest it would bear.

"We have no particular law or custom, it would rest on general principles.

"But I dont apprehend it would be affected by the place where sued for, the same interest would be recoverable in both states, and according to the real fact as to what interest was intended, and this by way of *damages* for detention, which are not controuled by the laws against usury.

"In regard to negotiable notes made in *other* states, or made here and negotiated in other states, and not *dated* in the city or county of

*ly* 1776, can be cited in our courts, unless it relates to *maratime* laws, or the law of *nations*.

This last exception in the act, is considered as comprehending the whole of the law merchant, (*see ante* No. 33.)

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Philad. but sued for in Penn. whether they would be liable to the equity between the *original* parties; this is more of a question; we have no decision or custom about it.

"I suppose the case of a note negotiable in the state where it is made, and in the hands of a bona fide indorsee; still I think it would be liable if sued in our *courts*, to all the conditions between the original parties.

"By common law in every state, all notes are choses in action and so liable; it is only by the *statute* of the place where the remedy is *sought*, that the indorsee can sue in his own name, and if by that same statute on which the action is founded, (also, by the common law) the maker is entitled to offset, as he might against the payee, I dont see how it is to be avoided, or how the court can go by any other statute or law, but that which gives the *action* in the place where it is brought. Mr. ——— * however is of a different opinion; he thinks the indorsee or holder in another state bona fide, would not be liable to the equity between the original parties, though suing in our courts, and upon our statute of 1715.

"He admits that the assignee of a *bond* made and assigned in Penn. where bonds are assignable, could not sue in his own name in England or elsewhere where bonds are not assignable; how then can the indorsee of a promissory note, unless under the local act, and then upon terms of the act?

"The point has never arisen that I know of in Penn. and if there be any doubt in it intrinsically, you had better not consider it as clear either way."

* A distinguished member of the Penn. bar.

# APPENDIX.

## ABRIDGMENT *of the* Rules *of the* SUPREME COURT *of Pennsylvania.*

### ATTORNIES AND COUNSELLORS.

*Terms of admission.*

1788, *Jan.*

1. *By* regular clerkship with a practising attorney or gentleman of the law in the state 4 years, and 1 year's practice in some of the county courts of com. pleas *or* 3 years clerkship and 2 years practice; and examination by 2 attornies or counsellors appointed by the court and their certificate that "*he is well grounded in the principles of the law and acquainted with practice*;" *or* 2 years *study* under the direction of some practising attorney or gentleman of the law *after* 21 years of age, and 2 years subsequent practice in a county court of com. pleas and certificate of examiners as aforesaid.

2. *From other* states, and *aliens*: 2 years residence (of persons then inhabiting in other states,) preceding application; *excepting* those practising in N. Jersey, Delaware, or Maryland. No alien or foreigner until after 4 years residence: in all cases the applicant to take the oath of allegiance to the state.

3. *Not* to be special bail, without leave of court.

4. *Privilege* to cease, after 1 year's non-attendance in courts.

### AFFIDAVIT OF DEFENCE.

1795, *Sep.*

5. *Judgment* in all actions to be confessed by the defendant's attorney, at the 3d court, with *stay of execution for* 60 *days* from the first day of the term if instituted in *Sep.* term of any year; if in *December* term, then with stay &c. 30 days from the first day of the 3d term, (Sept.) following; if in *March*, then judgment to be confessed at September term following, with stay of execution 60 days from 1st day of term; *unless* affidavit is made by or for defendant, "that to the best of his knowledge and belief, there is a just defence in whole or part in the same cause."

If defence is to part only, defendant's attorney shall confess judgment for

so much as is acknowledged to be due, if plaintiffs attorney will accept the same in full satisfaction of his demand." (1)

AGREEMENT TO ENTER ACTION.

1806, *Mar.*

6. *No* cause to be entered by agreement on the docket of a preceding term, unless agreement signed before the last return day of the term to which the same is intended to be brought.

ATTACHMENT IN REM.

1788, *Jan.*

7. Common informers, to enter into stipulation or recognizance at suing out attachment; and so likewise claimants of goods &c. seized or attached on any act of assembly at filing claim, to secure costs and damages that may accrue by reason of the claim on condemnation. Excepting from this rule persons who seize by virtue of office.

BAIL.

8. *Not* to be tendered or put in until hab. corpus returned, and then to be duly taken and filed with the *hab. corp.*

9. *On* return of hab. corp. rule may be for good bail in 6 weeks from 1st day of the term, or procedendo to issue.

10. *Commissioners* of bail to take a recognizance or bail piece, in their respective counties, in following or like form.

"COUNTY *ss.*

"A. B. is delivered on bail upon a *capi corpus* (or upon "an *habeas corpus*) to C. D. of the township of Eastown in "the county of Chester, yeoman, and E. F. of Marlborough "township in the same county, blacksmith.

at the suit of G. H.

"J. K. attorney for the defendant.

"Taken and acknowledged the "12th day of April, 1787, *de bene* "*esse*; before me

"L. M. commissioner of bail for "said county."

*And* at the taking the recognizance shall express the conditions to the bail as follows:

(1) This practice is founded on an agreement of the bar and generally signed by them, Sep. 11, 1795, which has uniformly been enforced by the court since.

" *You* do jointly and severally undertake, that if the defendant A. B. shall " be condemned in this action at the suit of the plaintiff G. H. he shall satisfy " the costs and condemnation, or render himself into the custody of the sheriff " of the county of Chester; or you will pay the costs and condemnation for " him."

*If* on a writ of error, as follows:

" *You* severally acknowledge to owe (the plaintiff in the action below) the " sum of —— (double the sum recovered) upon condition that A. B. prose- " cute his writ of error with effect; and if judgment be affirmed, shall satisfy " and pay the debt, damages, and costs recovered, together with such costs " as shall be awarded by occasion of the delay of execution; or else you will " do it for him."

11. *Recognizances* taken within 100 miles of Philad. to be returned to the prothonotary's office in 30 days, and above 100 miles in 60 days after caption; or be considered as no bail, and the party may proceed on the bail bond; no plea to be allowed to the original action, unless costs of suit on the bond be paid by defendant, and he plead as of the time when bail should have been entered.

12. *Commissioners* of bail to keep a book, and enter the names of plaintiffs and defendants, and of the bail; time of taking, and the name of the person by whom the bail is transmitted.

13. *Exception* to bail may be within 20 days after recognizance or bail piece transmitted, and notice to plaintiffs attorney of the taking thereof; and then defendant must put in better bail, or the cognizors must justify in open court, either by affidavit taken before the commissioner who took the bail, or by oath in court, or before a judge of the court.

14. *On* exception to special bail put in by the defendant, or bail by plaintiff, on writ of error, the party to perfect it within 10 days after, or the bail bond may be proceeded on in the first instance, and the prothonotary, to non pross, the writ of error in the latter.

15. *Bail* to the sheriff put in above, may be excepted against.

16. *Special* bail, may be required in all causes, removed by hab. corpus; unless against ex'rs or adm'rs, or for words; or small trespasses.

17. *Exception* to bail must be entered with the prothonotary or on the bail piece, and notice thereof in writing be given to defendant or his attorney.

18. *No* special bail to be taken to dissolve foreign attachments, without notice to the plaintiff, or his attorney, of time and place, that he may except &c.

1792, *January.*

19. *On* suits commenced in the sup. court, bail to be taken in specified sums, as practised in the court of com. pleas; but if removed by hab. corpus from the com. pleas, then indefinitely, according to the former course of the court; unless defendant applies to have the quantum ascertained, which may then be directed by the court; or a single judge out of court, and special bail be taken accordingly.

20. *Prothonotaries* of the courts of com. pleas (except of Philad. county,) to be commissioners of bail in their respective counties.

1797, *December.*

21. *Where* judgment has been entered without bail, and plaintiff will not accept the appearance, judgment may be taken off.

CERTIORARI.

22. *Writs* of *certiorari*, and of *hab. corp.* to be returned within the first 4 days of the term, or *procedendo*, or attachment may issue, and until returned, no other rule to be taken.

23. *On* removal of a cause by *certiorari* from the com. pleas by the plaintiff, notice to be given to defendant or his attorney, of such writ, and if no appearance is entered in the first 4 days of the term to which it is returnable on affidavit of notice, a *capias* may issue against defendant, returnable on the 8th day afterwards, or on the first day of the next term, to compel appearance, and special bail where by law it may be required.

24. *Causes* removed by *certiorari*, to stand in the same situation as in the court below at delivery of the writ, and proceedings to begin upon the last rule there.

25. *On* certiorari to the county courts of quarter sessions and gaol delivery, to remove proceedings relating to laying out or confirming roads, the merits not to be examined, nor order reversed, but for irregularity apparent in the record, excess of jurisdiction, error in law, or corruption or partiality in the justices, or fraud or undue practice in the viewers, or parties, which the complaining party, had not neglected to make appear to the court below.

26. *On certiorari* to a justice of the peace, he or his ex'rs or adm'rs, to return the cause of action, with all his proceedings, that the court may judge of his jurisdiction, as well as the legality and regularity, of his process and decision.

27. *Certiorari* not to be a supersedeas, unless the party gives good bail for the amount of the judgment and costs to the opposite party, to prosecute with effect; nor then, if execution executed, or goods levied on.

1789, *April.*

28. *If* the judgment of a justice is affirmed, execution to issue for the debt and costs.

1791, *April.*

29. *Indictments*, or inquisitions of forcible entry and detainer, removed here, disputes about possession between landlords and tenants, *certioraris* to justices of the peace, and other causes requiring *festinum remedium*, to have priority in the list of arguments.

1794, *September.*

30. *Certioraris*, to justices of the peace, upon judgments not exceeding 10*l.* depending longer than 3 years, to be struck from the docket, and marked "*not to be brought forward*," unless by special order of the court.

DEMURRER.(1)

31. *On* arguments upon demurrer, points reserved, special verdicts or cases stated, two paper books or states of the points to be furnished, one by the plaintiff to the ch. justice, and senior puisne judge, and the other by defendant, to the 2 other judges, at least two days before argument, to be charged in the costs; a party neglecting not to be heard at the time of argument.

32. *Law* arguments, to be heard on monday and saturday in each week.

33. *On* points reserved. pltffs. council to begin the argument.

DEPOSITIONS.

1804, *December.*

34 *Letters* rogatory may issue on application, in the following *form*.

"The supreme court of the Eastern district of Pennsylvania,

"To any judge or tribunal having jurisdiction of civil cases, at———

"Whereas a certain suit is pending before us, in which A B is plaintiff and "C D is defendant, and it has been suggested to us that there are witnesses "residing within your jurisdiction, without whose testimony justice cannot

(1) For *Commission* see tit. "Witness." . . . Rule 80.
*Commonwealth* . Trial. . . . . do. 70, 1.
*Costs* see . Attachment *in rem*. . . . do. 7.
——— Judgment. . . . do. 53.
——— Payment into court. . . do. 54.
——— Demurrer, . . . do. 31.
——— Trial. . . . . do. 69.
——— Witness. . . . . do. 80.

" completely be done between the said parties, we therefore request you that " in furtherance of justice you will by the proper and usual process of your " court, cause such witness or witnesses as shall be named or pointed out to " you by the said parties, or either of them, to appear before you or some " competent person by you for that purpose to be appointed and authorized, " at a precise time and place by you to be fixed, and there to answer on their " oaths and affirmations to the several interrogatories hereunto annexed, and " that you will cause their depositions to be commited to writing and return- " ed to us under cover duly closed and sealed up; together with these pre- " sents: and we shall be ready and willing to do the same for you in a similar " case when required." " Witness, &c." (1)

HABEAS CORPUS.

1794, *September.*

35. *Causes* removed by *hab. corpus*, proceedings in to be *de novo*, and bail *de novo*, the person and not the pleadings being removed.

36. *Not* to be brought to remove a cause, after interlocutory judgment.

37. *The* record itself being removable by *hab. corp. cum causa*, in all causes so removed, the proceedings to begin upon the last rule in the court below; but the parties may alter or amend their pleadings of course, as they would be intitled to do on application to the court; but if by this, the nature of the demand or defence is changed, the party must give *reasonable notice* thereof to the adverse party before trial, or the cause to be tried on the pleadings as they were at the removal.

JURY.

38. *No* trial to be put off on account of a view not being had by 6 of the first 12 of the jury, as they stand in the pannel, if any 6 have viewed and some appear to try the cause; such as have viewed and appear to be first sworn or affirmed on the trial; and the form of the *venire facias* and *distringas*, to be altered accordingly.

39. *On venires* &c. to summon jurors, the sheriff to cause *personal* notice to be served on each juror, to attend 10 days at least before the appearance day mentioned in the process; specifying in the notice also, that the juror is summoned to serve on the general jury, or special jury, (naming the parties,) as the case is.

40. *If* the *same* juror is summoned on *different venires* &c. on the same day, the sheriff to serve him with distinct notices, naming the parties in the margin of the notices, as they are indorsed on the *venires*.

(1) *Divorce causes.* See tit. " Trial." rule 70.

41 *The* person who serves process on jurors, to attend the court at the return thereof, to prove defaults if occasion be.

42. *And* the person summoning any jury, to make a minute on the pannel, of the day of the month and year of summoning each juror, and subscribe the same.

1794, *December.*

43. *No* special jury to be, on the application of a defdt. unless an affidavit of defence is filed in the office according to the act, on or before the term in which issue is joined, nor unless a certificate of counsel is subjoined to the affidavit to the following effect:

"I do certify that I verily believe the application for a special jury in this case, is not made for the purpose of delay, but for the better investigation of the merits of the cause."

1805, *December* 28.

44 *The* prothonotary's notice of striking a jury at a certain time and place, for trial of issues at *bar* or *nisi prius*, to entitle parties to strike exparte without further notice; and no venire to issue unless jury struck 10 days before the return day of the venire; striking a jury not to entitle party to a trial, if not otherwise entitled. This rule to be published at the bottom of each jury list.

JUDGE'S ORDER.

45. *Any* judge of the court in vacation, under special circumstances, by his order may enlarge the time for putting in, perfecting or justifying bail, or for filing any of the pleadings in a cause; and may hear objections against any rule taken or offered to be taken, and make order thereon.

46. *On* a judgment entered in the clerk's office, a judge in vacation on application (and affidavit of a just and legal defence and certificate of counsel subjoined, that in his belief the grounds of defence are sufficient to obtain a decision in favour of his client, and are not made for the purpose of delay,) may suspend proceedings on reasonable terms, until the next circuit court.

And where circumstances will not admit of that delay, the application may be made to the *supreme court in bank*, on reasonable notice given thereof.

47 *No* judge to make an order, unless 6 days previous notice of the intended application is given to the adverse party, where he resides within 30 miles from the judge's abode, and 1 day additional, for every 30 miles greater distance.

48. *A* judge's order may in all cases be impeached, by application to the next sup. or circuit court.

JUDGMENT. (1)

49. *No* motion to be for a new trial, after mot. in arrest of judgment.

50. *No* motion to be for arrest of judgment on the last day of the term, unless notice of the mot. is given.

51. *In* causes tried at *nisi prius*, motions in arrest of judgment, or for N. trial, to be made within the first 4 days of the succeeding term, and not then, unless on at least 10 days' notice of the motion before the term commences.

52. *Judgment* on warrant of attorney above 10 and under 20 years old, leave must be moved for in term before the court, or before a judge in vacation, and on affidavit of due execution of the warrant, that the money is paid and party living; if more than 20 years old, there must be a rule to show cause served on the party, if to be found in the state.

1812, *December* 14.

53. *No* judgment to be entered in any civil cause on verdict, until 4 dolls. is paid to the sheriff according to the act of *Mar.*29, 1803, unless by order of the court. (2)

PAYMENT OF MONEY INTO COURT.

1788, *October* 7.

54 *For* money paid into court, the prothonotary to receive from the party paying, at the rate of 1 *per cent.* on sums not exceeding 100*l*, and 10*s* in the 100*l* exceeding that sum.

1809, *April* 1.

55. *The stat. of 4th and 5th of Ann, ch.* 16, is to regulate the practice of bringing money into court, according to the construction of it by the K. B. at Westminster, at the time of the late revolution.

PLEA AND PLEADING.

1805, *December* 28.

56 *No* dilatory plea to be recd. unless on affidavit of its truth, or probable matter of its truth, shown to the court.

(1) Where judgment to be entered for want of an affidavit of defence, See title affidavit of defence, rule 5.

Judgments entered without bail being entered, see title "bail" rule 21.

Application to a judge in vacation for an order to suspend a judgment, see title "judge's order," rules 46, 47, 48.

(2) New Trial. *See tit. judgment, rules* 49, 51.

57. *On* the general issue pleaded, party to be confined to evidence strictly admissible under that plea at common law, or under settled adjudications of this court, unless 10 days notice in writing is given before the trial, of the special matters of defence to be relied on under such plea.

58. *Where* on mutual dealings, the defendant intends on the general issue to defalk his account against the pltff's demand or any part of it, 10 days notice thereof to be given before trial, and at the same time a copy of his account to be furnished to pltff. and if pltff's demand is not on a specialty or writing, on request of defendant at the same time, or on reasonable notice, he shall give the defendant a copy of his account or demand, otherwise the defdt. shall not be compelled to a trial, or *vice versa.*

59. *It* having been adjudged in the sup. court, that on a plea of "*payment*" to a bond or specialty, evidence that it was given without any or a good consideration, or by suggestion of a falsehood or suppression of the truth, may be given on the trial in avoidance of the deed; for the future in such cases, defendant shall give 30 days notice in writing to pltff before trial, of the matter intended to be objected in avoidance of the same, or be precluded therefrom.

60. *If* declaration is filed, in or before any term, a rule may be taken to plead on or before the first day of the next term, and in default of a plea, a 2d rule to plead in 8 days after, or judgment, which may be entered on the next day after without application to the court, if no plea put in.

1794, *September* 13.

61. *In* actions returnable to April term, rules may be taken to declare in 6 weeks, plead in 6 weeks after declaration filed, and try the issue at the next Sep. term, and that a *venire facias* issue accordingly.

62. *Unless* declaration filed in 12 months from the first day of the term to which the action is brought, a *non pros* to be entered of course by the prothonotary, unless otherwise agreed by the parties in writing filed.

68. *Rules* to declare and plead, and for other pleadings, may be entered from 6 weeks to 6 weeks in the prothonotary's office, and on 6 weeks notice therof to the adverse atty. on record; and on failure to declare, plead &c. accordingly judgment *nisi* may be entered.

SHERIFF.

1805, *December* 28.

64. *Wilful* delay, by any sheriff, under sheriff, deputy, or bailiff, in the execution of any process, or taking or requiring undue fees for the same, or giving notice to the defdt. thereby to frustrate the same, or detaining money in

his hands levied thereon, after return of the writ, such offender to be liable to attachment, information, commitment or fine, as the case requires.

65. *The* before mentioned officers, on reasonable notice and request to deliver a true copy of the inventory of goods &c. taken upon a *fi fa. elegit*, or attachment, being paid for the same, not exceeding one penny for every 12 words.

## TRIAL (1)

66. *A* cause being at issue for 1 year, a term's notice of trial to be given.

67. *Motions* for N. trials and in arrest of judgment in causes tried at bar, to be in 4 days after verdict, unless tried within the last 4 days of the term, and then before the term ends.

68. *Causes* to be tried in the order they stand on the issue docket; the 1st, on the first day of the term, the next on the 2d day, the third on the 3d day, and so until the end of the term; and after one cause is thus assigned for trial first on the several days, the next causes in order to be set down for trial in the second place one for each day, and the other causes at issue in like manner. Causes thus set down and not tried for want of time upon the day allotted, to be continued to the next term, unless they can in the course of the term be brought on at another day, and then only by consent of parties.

69. *Notice* of trial to be 14 days, if deft. resides out of the county or above 40 miles from the place of trial; and 10 days if deft. resides within the county or within 40 miles of the place of trial, either in *bank* or at *nisi prius*; if deft. or his attorney is unknown or not to be found, such notice to be on the bail if known or to be found; if not, then to be stuck up in the prothonotary's office 14 days before trial for that space of time. The expences of notice to be taxed in the bill of costs.

1789, *January* 7.

70. *Divorce* causes to be tried next in order to those where the commonwealth is a party, which are always to have precedence.

1789, *April* 9.

71. *No* precedence to the commonwealth, where the name only is used, having no interest in the event.

1791, *September* 17.

72. *Affidavit* of defence, not to prevent pltff. from trial by a common jury, unless the affidavit is filed 6 weeks previous to the day assigned for trial.

(1) For "N. Trial," *see tit.* "*Judgment.*" *rules* 49, 51.

1796, *December* 26.

73. *Arguments* to be placed on the list according to seniority; but trials by jury set down or transferred from one period to another after commencement of the term, to go to the foot of the list.

1801, *April* 24.

74. *No* causes to be transferred from the 1st to the 2d period of special jury trials, without order.

1801, *September* 15.

75. *Issues* in fact or law, left off the trial or argument list for 1 year afterwards, to be marked by prothonotary "not to be brought forward."

1804, *September* 15.

76. *On* trials by jury where 3 or more counsel are on each side, one on the affirmative side to open the case, state the facts, and if necessary the principles of law on which the case is founded; call and examine the witnesses, and read the papers: one of the opposite counsel shall then open his case in like manner: when the evidence is closed, one of the affirmative counsel to sum up, going fully into the points in controversy, reading all the authorities he and his colleagues mean to produce; the two opposite counsel then to speak in succession; the remaining counsel on the affirmative side then to be heard in reply, confined to the points made by the opposite counsel, and enforcing those of his colleague: all the counsel endeavouring to avoid going over the same ground with any preceding colleague.

When 2 counsel only are concerned on each side, the same course to be observed as nearly as may be.

Alternative speaking to be abolished.

1807, *March* 20.

77. *No* cause to be put on the list of trials where issue is not actually joined.

78. *On* trials at bar and nisi prius, not more than 2 counsel on each side, to sum up the evidence to the jury. (1)

WITNESS.

79. *Depositions* of witnesses taken under rule of court to be read in evidence in case of death, absence or inability to attend; not to be admitted if the witnesses are resident in the state and within 40 miles of the place of trial, unless the party satisfies the court they are duly *subpœnaed*, or not to be found, after due diligence for that purpose.

(1) View. *See tit.* "*Jury*" *rule* 38.

80. *The* expenses on commissions for examining witnesses out of the jurisdiction of the court, to be allowed in the costs, provided it appears to the court that the persons examined were material; but not more than 5*l.* to be allowed in any case on one commission.

1809, *April* 1.

81. *A* rule to take the depositions of ancient, infirm, and going witnesses to be read in evidence on the usual terms, may be entered of course, the party stipulating a reasonable notice to the adversary; so of a commission to any of the U. States or to foreign parts: but interrogatories must be filed in the clerk's office at the time, and written notice of this last rule and the names of the commissioners, must be served on the adverse party at least 15 days before the commission issues, in order that he may if he will nominate commissioners, or file interrogatories on his own part.

# Abridgment of the Rules of the District Court of the city and county of *Philadelphia.*

## Affidavit of Defence.

1. *In* actions of debt or contract, plaintiff may direct judgment by default to be entered in the prothonotary's office, after the 3d monday of the term next succeeding the return of process; unless an affidavit is previously made and filed in the office by defendant, or some other for him, that to the best of his knowledge and belief there is a just defence in whole or part in the cause; and if to part, what sum he admits, for which judgment may be entered for the plaintiff: but no judgment to be entered under this rule unless declaration filed, on or before the 3d day of the term to which the process is returnable.

2. *Where* special bail is required and the declaration is filed within the first 3 days of the next term after special bail entered, and such affidavit as aforesaid is not made on or before the 3d monday of such term, judgment may be entered by default for plaintiff; but if in either case defendant shall make affidavit as aforesaid, and plaintiff will not take judgment for the sum admitted in full satisfaction, and proceeds to arbitrate or try the cause by jury and does not recover a greater sum, he is to pay all costs accrued after affidavit filed.

## Appeals from awards of arbitrators.

3. *If* within the 20 days allowed by the act of Mar. 20, 1810, sureties be entered, the appellee may within 4 days after the 20 expired, give notice of exception for insufficiency to the appellant or his attorney, who within 8 days shall justify in court, or before the prothonotary or a judge thereof, giving 2 days notice of the time and place to the appellee or his attorney; in default whereof the appeal to be dismissed.

## Arbitration.

4. *If* the party entering a rule for arbitration under the act, does not proceed to have the arbitrators appointed pursuant thereto, the prothonotary (unless otherwise agreed by the parties) to strike off the rule, that the cause may be restored to the trial list, be arbitrated by the other party, or otherwise proceeded in.

Exceptions to be filed within 20 days after award entered in the office, accompanied with affidavits as to facts not appearing on the face of the proceedings.

## Arguments.

5. *In* law arguments on demurrers, points reserved, special verdicts, mo-

tions in arrest of judgment, or cases stated, the counsel for the plaintiff and the counsel for defendant each to deliver 1 paper book or state of the points in controversy to the court, 2 days before argument.

*On* rules to show cause of action, or to dissolve foreign attachments, the party who is to show cause is to begin and conclude; in all other cases, the party who *obtains the rule to show cause.*

ATTACHMENT.

6. *No* order of sale to be made in foreign attachment, unless upon affidavit of plaintiff or other person acquainted with it, that the demand is just.

ATTORNEY.

7. *Persons* not to be admitted attorney in this court, unless on full examination of 3 gentlemen of the law appointed by the court, and their unanimous certificate that he is well qualified.

8. *Nor* be admitted to practise as attorney or counsellor unless 21 years of age, and have served a regular clerkship of 3 years with some practising attorney or gentleman of the law within the state, or served such clerkship, partly in either of the states of New Jersey, Delaware, or Maryland, and partly in this state, and the last year of which to be in this state; *provided* that a person who has studied the law with assiduity in this state under the direction of an attorney &c. as aforesaid for 2 years after 21 years of age, or partly in one of said neighbouring states, and partly in this (the last year being in this state;) and being a person of integrity, and certified in manner aforesaid to be well qualified, shall be admitted.

Attornies at law residing and originally admitted and practising in one of the states of N. Jersey, Delaware or Maryland of good character and known abilities, to be admitted at the discretion of the court; but citizens or inhabitants of other states, not to be admitted until after 2 years residence in the state next preceding the application.

9. *Persons* studying law in some other county than Philad. to be admitted in such other county before admission here, unless a sufficient reason is shown for such non admission, and notwithstanding such admission, to undergo the usual examination here, unless they have been likewise admitted in the sup. court.

10. *All* agreements of attornies to be in writing, or considered of no validity.

11. *No* attorney of this or any other court, or officer, concerned in the execution of process, to be special bail unless by leave of court.

12, 13. *Order* of speaking by counsel. *The same as by rule* No. 76, *sup. court, see p.* 281 *ante.*

## Bail.

14. Where a *capias* is issued and no bail required, the precept is to be marked "no bail required," which the prothonotary is to indorse on the writ; and the officer in this case is to serve the defendant with a copy of the writ, as in case of summonses; and on such service the defendant is to subscribe a note to this effect: "I hereby empower the prothonotary to enter my appearance to this action," which is to be attested by the officer; and the like note and subscription, where common bail is ordered by a judge.

15. *The* manner of giving notice to plaintiff to show cause before a single judge to be on application to the judge himself, who is to issue a citation for that purpose, appointing the time and place for hearing.

16. *A* rule to show cause of action and to be discharged on common bail, must be moved before the end of the week to which the process is returnable.

17. *Where* there is a positive affidavit of a subsisting debt by the party, or a third person whose knowledge and situation enables him to make it, no counter affidavit to be admitted; but the judge at his discretion will ask questions of the deponent to satisfy his conscience, as well to the cause of action as the quantum of bail.

18. *When* the affidavit is not positive, but sufficient to convince the judge of a good cause of action, especially if founded on bond, note, letters, or other papers signed by defendant, he may hold to bail; and where satisfaction cannot otherwise be obtained, counter affidavits may be admitted; so always as to avoid entering into the merits further than is absolutely necessary to decide the question of bail.

19. *Where* the plaintiff is not present, and the evidence of the debt is brought from a foreign country, founded on bond, note, bill of exchange or papers executed or acknowledged by the defendant, before a lawful magistrate or publick officer of that country according to the forms there, and certified under some known and publick seal of that country, the judge being satisfied of a good cause of action, may at his discretion hold defendant to bail; but no affidavit of the plaintiff himself or other person when in such country, to prove any demand unaccompanied with such writings executed, acknowledged or signed by defendant, and proved as aforesaid to be sufficient, though the affidavit be certified under any publick seal &c. unless it appear in evidence to the judge, that defendant has acknowledged such demand or account to be just.

20. *Where* the plaintiff resides in some other of the *U. States* (1) and is not present at showing cause of action, a positive affidavit of a subsisting debt made before any judge, mayor, or chief magistrate of the place where plaintiff resides, and certified under the publick seal of the city, town or place, shall be admitted to show the cause of action, and have the same effect as if made in this state before a judge of the court. The court at their discretion will hear supplemental affidavits.

21. *The* defendant to have 4 weeks from the first day of the term to which the writ is returnable to enter special bail, and if not entered then, bail bond may be sued.

*If* within the 4 weeks special bail *de bene esse* is entered, plaintiff may within 10 days after the 4 weeks expired, give notice to the defendant or his attorney that he excepts to the bail, and within 8 days after defendant shall justify the bail before a judge of the court, giving 24 hours notice of time and place. If special bail is not entered in the 4 weeks, but is entered before the commencement of the succeeding term, the plaintiff is to except within the first 4 days of that term, or it is to stand: but if bail is not entered before the succeeding term, it is not to be taken afterwards, without notice of the time and place of taking, or obtaining the consent in writing of the plaintiff or his attorney to the sufficiency of the bail.

22. *After* taking an assignment of the bail bond, no rule to be taken to bring in the body; but the plaintiff may except to the persons as bail above, who were bail to sheriff.

23. *In* cases of foreign attachment, no special bail to be taken to dissolve attachment or discharge from bail, without notice of time and place of taking such bail, to afford an opportunity of excepting to its sufficiency. (2)

24. *No* bail in actions of trespass *vi et arm.* libel, slanderous words, conspiracy or false imprisonment, without affidavit of cause of action filed before writ issued.

25. Exception to bail to be entered with the prothonotary, and notice to be given to defendant or his attorney.

## Costs.

26. *When* pltff. resides *out* of the state; in *qui tam* actions; in suits on admn. and office bonds; or when after suit brought the pltff. takes the benefit

(1) District of Columbia, and Territories, are omitted, but are doubtless within the reason of the rule. Ed.

(2) In abridging these rules I have omitted frequently the repetition of the words "party or his attorney" where a rule or notice is to be served; or that it is to be in "writing," this always to be understood. Ed.

of the insolvent laws; the def't on motion and affidavit of a just defence against the whole demand, may rule the pltff. to give security for costs, at or before a time to be appointed by the court, and in default of security, on motion a judgment of nonsuit may be entered.

### Insolvents.

27. *Debtors* in actual confinement under process of this court, on petition to give at least 15 days personal notice of the application to creditors within the city and county of Philad. or so many of them as can be served therewith, and publish notice of the application in 2 or more publick newspapers at least twice in every week, the first notice at least 15 days before the day appointed for hearing.

28. *Petitions* or applications to be filed in the court, within the first 4 days after the commencement of each court.

29. *Their* occupation and last place of residence, to be mentioned in the notice of insolvents.

### Judgments.

30. *Judgment* on warrant of atty. *The same rule as in the sup. court. See rule* No. 52, *ante p.* 262.

### Bringing money into court.

31. *The same rule, as in sup. court. See rule* No. 55, *ante, p.* 262.
Prothonotary to receive from the party paying, at the rate of 1 *per cent.* on sums not exceeding $300, and ½ *per cent.* on sums exceeding $300.

### New trial. Arrest of judgment.

32. *Motions* for new trials and reasons in arrest of judgment, to be made and offered within 4 days after verdict, unless tried within the last 4 days of the term and then before the term ends, and so notwithstanding the points are reserved; and on a nonsuit ordered with leave to move to take it off, the motion must be made in the times aforesaid.

No motion to be for a new trial, after a motion in arrest of judgment.

*On* the hearing of any motion or application after a rule to show cause granted, no affidavit to be read but on notice to the opposite party, that an opportunity may be afforded to cross examine.

### Pleading.

33. *In* all cases where defendant's appearance is recorded and special bail

entered, (if it is a suit where required,) rules to declare and plead and for other pleadings, may be entered in the prothonotary's office after the first day of the term to which the process is returnable, and 4 weeks notice thereof to the adverse party, and in default to declare, plead &c. accordingly, judgment by default, or *non prosa*; subject to be opened, set aside, or taken off, at discretion of the court, for the purposes of justice.

*Provided* this rule is not to preclude parties from applying to the court, or a single judge in special cases for enlarging the time to declare or plead, giving reasonable notice to the opposite party of the intended application.

34. *On* a plea or pleading entered, the prothonotary of course to put the cause to issue, and enter the proper replications and other pleadings for that purpose; but without prejudice to either party. Each party may enter other pleadings or demur; giving reasonable notice to the adverse party: the time of filing all pleadings and papers, to be marked in the prothonotary's docket.

35. *Dilatory* plea. *The same rule as in sup. court, see rule* No. 56, *ante p.* 262.

36. *General* issue. *The same rule as in sup. court, see rule* No. 57, *ante p.* 262.

37. *Mutual* dealing (off-set.) *The same rule as in sup. court, see rule* No. 58, *ante p.* 263.

38. *Plea* of payment to bond or specialty, and fraud set up. *The same rule as in sup. court, see rule* No. 59, *ante p.* 263.

## Reports of Referees.

39. *Reports* of referees, to be read in open court on the first saturday of the term; reasons to set aside such reports to be filed within 4 days after, (*sundays excluded,*) with affidavits of facts not apparent on the face of the proceeding: reports not read on that day, whether brought into court or not, filed in the office in term or vacation, no execution to issue until notice to the adverse party, after which such party to have 4 days to file reasons.

40. *In* all arguments on reports of referees, the party taking exceptions to furnish the court with the copy thereof.

41. *All* causes at issue, to be put on the issue list by prothonotary, unless otherwise directed by the parties; but no cause in which issue is not actually joined to be put on the list.

## Seal.

42. The seal now used in the prothonotary's office by Timothy Matlack, to be the seal of the court.

## Special Jury.

43. *A* list of the special jurors in each cause set down for trial by special jury, to be delivered by the prothonotary to the attorney on each side, 8 days before the time of striking the same, subjoining a notice of the time and place of striking.

*The* prothonotary's notice aforesaid, to entitle either party to strike *exparte* at the time appointed; and no *venire* to issue (but by consent of parties,) unless jury struck 10 days before return of venire; but striking of a jury not to entitle a party to trial, if not otherwise entitled.

## Trial List.

44. *Causes* on the trial list, which have been pending 6 terms (including the term to which the writ or process was returnable, and excluding the term of trial,) to be tried, or disposed of by the parties or the court, unless continued on reasons assigned to the court: and no causes non prossed, discontinued or disposed of by this rule to be restored to the trial list, without order of the court.

45. *All* actions at issue in fact or law, and left off the trial or argument list 1 year afterwards, to be marked of course by the prothonotary "discontinued."

46. *A* cause regularly set down on the general jury trial list, not to be transferred to the special jury trial list, unless on notice to the opposite party, and the transfer made 1 month previous to the succeeding term. But if the cause is not reached on the general jury trial list and tried at the succeeding term, then if a transfer had been made and notice thereof, although within a month previous to the term, the cause is to be considered as transferred to the special jury trial list.

## Witnesses and Depositions.

47. *Depositions* of witnesses taken under rule of court &c. *The same as in the sup. court, see rule* No. 79, *ante p.* 281.

48. *Rule* for taking depositions of ancient, infirm or going witnesses. *The same as in sup. court, see rule* No. 81, *ante p.* 282.

## Attornies.

1819, *June* 1.

49. Three gentlemen of the bar to be appointed in each term as examiners for that term; and applicants for admission as attornies of this court, to apply to them and submit to their examination, and if found qualified, the applicant to be admitted, on the motion and report of such examiners.

## ABRIDGMENT *of the* Rules *of the* court *of* COMMON PLEAS for the *city* and *county of Philadelphia.*

### AFFIDAVIT.

1809, *March* 11.

1. *Affidavits* on hearing after rule to show cause. *The same as in the district court, see the last clause of rule* No. 32, *ante p.* 287.

### AFFIDAVIT OF DEFENCE. (1)

1809, *April* 17.

2. In actions of debt or contract, the plaintiff may direct judgment of course to be entered the 3d term, unless defendant or some person for him shall previously make and file an affidavit in the clerk's office "that to the best of his knowledge and belief there is a just defence in *whole or in part* in the said cause;" and if defence be to part only, defendant to specify the sum in dispute, and judgment to be entered for so much as is acknowledged to be due to plaintiff, and the trial proceed for the residue. *(The rest of the rule obsolete.)*

1809, *July* 13.

3. *Obsolete.*

4. *A* judgment for default of an affidavit of defence entered the 3d term, irregular, if declaration not filed at the 2d term.

1810, *October* 13.

5. *The* words "whole or in part," to be in the affidavit of defence, *see ante rule* No. 2, *inserted in italick.*

### AGREEMENT. (2)

1804, *December* 24.

6. *Agreement* of attornies to be in writing. *The same as in district courts, see rule* No. 10. *ante p.* 284.

(1) *See tit.* "*commission and rule to take depositions,*" 29, "*witnesses*" 48. *for* "*bail*" *see rules* 19, 20, 21, 22, 23.

(2) *Appeal;* see tit. "arbitration," 7, 8. "continuance of appeals" 30.

## ARBITRATION. (1)

1809, *December* 16.

7. *Repealed.*

1810, *June* 16.

8. Repealing rule No. 7.

1809, *December* 16.

9. *Not* proceeding on a rule of arbitration, the same to be struck off. *The same rule in this respect as in the district court, see rule* No. 4 *ante p.* 283.

## ATTORNIES. (2)

*July* 1.

10, 11, 12, 13. *Rules* for the admission of attornies and counsellors. *The same in all respects with those adopted in the district court, see rules* Nos. 7, 8, 9, *ante p.* 284 with these further regulations: 1st That the examination shall be in the presence of the president, or in his absence of 2 other judges of the court: 2d. That besides being qualified, the certificate of the examiners shall state that the applicant "is a person of integrity and good moral character." 3d. That no alien or foreigner shall be admitted until after 4 years previous residence in the state, next before his application. (3)

1811, *July* 1.

14. On appeal from a justice of the peace, or an alderman, but one attorney to speak either on the part of plaintiff or defendant.

## BAIL.

1784, *December.*

15. *Defendant* to have 6 weeks from the 1st day of the term to which writ is returnable, to enter special bail, after which if not entered, bail bond may be sued.

16, 17. *Relate* to proceedings on *special bail de bene esse* entered within the 6 weeks; on which the same proceedings are to be as prescribed in the district court, *see rule* No. 21 *ante p.* 286 except that plaintiff in this court has

(1) *Reports of Referees*; see tit. Reports, 41, 42, 43.
(2) "Arrest of Judgment;" *see tit.* "Judgment." 39. "Attachment;" see tit. "Bail," 18.
(3) *See rules* 6, 38, 40, 43, for other matters respecting attornies.

20 *days* after the expiration of the 6 weeks to except, instead of 10 days allowed in the district court.

18. *Relates* to notice of bail in order to dissolve *foreign attachment*. *The same as adopted in the district court, see rule* No. 23, *ante p.* 286.

1785, ——.

19, 20, (21,) 22, 23 *The* 19th, 20th, 22d, and 23d, rules prescribe regulations concerning the manner of *proving a subsisting debt* or cause of action, to hold to bail. *The same manner as adopted in the district court, by rules* Nos. 17, 18, 19, 20; excepting the last clause of rule 20, in the district court, allowing the court in their discretion to hear supplemental affidavits, *see those rules ante p.* 285, 6.

*Rule* 21, directs that whether bail is of course or discretionary, shall be regulated by the books of practice.

24. *Relates* to the manner of giving notice to show cause of action before a single judge. *The same as adopted in the district court, see rule* No. 15, *ante p.* 285.

1790, *September*.

25. *Relates* to *capias's* issued where no bail required, how to be marked. *The same as in the district court, see rule* No. 14, *ante p.* 285.

CERTIORARI.

1803.

26. *On* judgments of justices &c. removed by certiorari, particular exceptions to be filed on the first argument day, or judgment affirmed of course; assignment of general errors void.

1804, *December* 1.

27. *Motion* to affirm the judgment for want of exceptions, not to be until the 2d argument day.

1815, *January* 21.

28. *Exceptions* in certiorari cases, to be filed *before* the first argument day.

COMMISSION AND RULE TO TAKE DEPOSITIONS.

1810, *July* 9.

29. *Rule* to take depositions of ancient &c. witnesses; or for commission,

interrogatories &c. *The same as in the sup. court, see rule* No. 81, *ante p.* 282.

### Continuance of Appeals.

1811, *September.*

30. *No* appeal from a justice or alderman to be continued more than 4 terms, unless for a legal reason or the cause not reached; and if reached at the fourth or any subsequent term, (having been continued at any former term without legal ground, by either or both parties, or by the court in their absence,) and a legal reason is not then assigned for putting off trial, a *non prosse* to be entered if plaintiff below appealed; and against the defendant below if he is appellant, for the amount of the judgment.

### Declaring and Pleading.

1793, *August.*

31. *If* declaration filed within 2 months after return day of the writ, plt'ff entitled to a rule to plead; and if no plea before or at settling the docket, plaintiff may sign judgment; which defendant may take off on filing an issuable plea, and giving notice thereof to the plaintiff's attorney within 4 days after judgment, but not afterwards, without motion and affidavit of defence.

32. *If* declaration not filed within 2 months after return day of the writ, judgment not to be taken at the succeeding term for want of a plea, unless demanded in writing at least 4 days before the day of settling the continuance docket. If declaration not filed until after commencement of 2d term, there shall be a 6 weeks rule to plead, of which defendant or his attorney (unless the rule is entered at the settling the continuance docket,) shall have 4 days notice before the judgment be entered.

33. *These* rules not to preclude defendant in special cases, from applying to the court or to a single judge, for enlarging the time of pleading.

34. *Prothonotary*, to indorse on the declaration the day it is filed.

1804, *April* 12.

35. *On* plea of "payment" prothonotary to enter the replication "*non solvit*" unless otherwise directed by plaintiff's attorney.

1813, *November* 15.

36. *Unless* declaration filed in 12 months from 1st day of term to which

action brought, or appeal entered, a *non prose* to be entered as of course by prothonotary, unless otherwise agreed by the parties in writing filed. (1)

INSOLVENT DEBTORS.

1814, *September* 19.

37. *Petitioner* at his option, to give publick or personal notice to creditors; if the former, to be in 2 daily newspapers of the city, at least 3 times a week for 2 weeks.

1816, *October* 16.

38. *When* the list of insolvents is called, the name of every opposing attorney to be inserted in the list, without which done at the time, there shall be no opposition to the discharge.

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1780, *December* 6.

39. *On* motions in arrest of judgment, reasons to be filed. (3)

1817, *December*.

40. *Prothonotary* not to permit any paper filed of record to be taken from office, unless by consent in writing of the opposite counsel, and taking a receipt for the paper &c.

REPORTS OF REFEREES.

1789, *February*.

41. *To* be read &c. and reasons filed. *The same rule as in the district court, see rule* No. 39 *ante p.* 288.

1806, *January* 28.

42. *On* arguments on reports of referees, a copy of the exceptions to be furnished to the court, by the party excepting.

1806, *May* 23.

43. *The* notice of filing a report of referees, required by a rule of *Feb.* 19*th* 1789, to be in writing.

(1) Depositions; see tit. "Affidavit" 1. "Commission and rule to take depositions" 29.
(2) "Jury;" *see tit.* "Special Jury," 45.
(3) "Non Pross;" *see tit.* "Continuance of appeals" 30.

1809, *May* 6.

44. The party excepting to a report of referees, to furnish each judge with a copy of the report and exceptions, 6 days before argument, otherwise exceptions to be dismissed. (1)

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1802, *January* 6.

47. *No* cause marked for trial, to be put on the trial list unless fully at issue.

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(1) "Special Bail; *see tit.* "Bail" 15, 16, 18.
(2) See *tit.* "Commissioners and rule to take depositions" 29.

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NOTE.—*The foregoing* abstract *of the* RULES *in the* "supreme court *of Pennsylvania*," *the* "district court *for the city and county of Philadelphia*," *and for the* "court *of* common pleas *of Philadelphia county*," *will it is hoped contribute somewhat to the convenience of gentlemen, practising in those courts.*

*This compendium, is made from a printed compilation of the rules at large in a duodecimo* vol. *entitled* "RULES for regulating the practice of the several courts of Pennsylvania; collected by a member of the profession, (1) and revised by the judges;" printed, Philadelphia, 1819.

*The whole of these rules being comprised under a few leading titles, each of them nevertheless frequently embracing many particulars, not indicated by the title; to remedy this inconvenience, an "alphabetical and synoptical index" has been constructed for the rules of each court.*

*A recurrence to this, will hardly fail to direct the inquirer or student immediately, to all the particular regulations which fall under any general head of practice.*

*In attempting a very concise abridgment, notwithstanding all possible care, something even of substance may be omitted; but for common use and purposes of reference, the editor hopes these compends will be found sufficiently accurate, and in no small degree useful.*

(1) Peter A. Browne esq. counsellor at law.

## Corrections.

*Page* 246. *Answ.* 12. *Strike out the* "seal" *at the beginning of the* form *of acknowledgment; and insert b, for k, in* "husband."

262. *The reference at the end of* answer No. 108 *should read* "see answer, No. 107, also No. 53 and notes."

*Bills of Exchange.*

265. *In the answer to* No. 129, *on the subject of damages upon bills of exchange, the 2d* parenthesis *should terminate at the word* "*Mexico,*" *and not at* "*Islands:*" *As it now reads,* 25 per cent *would appear to be the damages on bills drawn upon the West India Islands, whereas* 10 per cent *is that fixed by the stat.*

*At the end of the same answer after the word* "*given,*" *should be* added, "*and payment of the principal sum, damages, and charges of protest demanded.*

287. *At* Nos. 30, 31, *the* reference *should be to* "*p. ante* 278."

288. *At* No. 35, *to* "*p. ante* 278." *At* Nos. 36, 37, 38, *to* "*p. ante* 279."

296. *4th line from the bottom for* "22 *to* 30," read "22."

*It is proper to remind the reader, that the* pages *referred to in the* Indexes, *are the preceding pages of* this *vol. For example, when the rule of another court is referred to as adopted, the* abridged *rule (at the page mentioned) in this volume is intended, and not the rule at large in* Mr. Browne's edition.

*I observe by Ingersoll's* Dig. *of the laws of the U. S. that the western district court of Penn. by act of May 15th* 1820, *is to be held at Pittsburgh on the* 1st monday in May and 2nd monday in October *in each year; which are probably the true times:* See ante p. 235.

# VIRGINIA.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# VIRGINIA.



## No. 1. STATE OFFICERS.

1. Who is Governor of your state &c.?

*A. Thomas Mann Randolph*, Richmond; (1) style, simply "governor or chief magistrate;" chosen by joint ballot of both houses of the general assembly (composed of the senate and the house of delegates;) term of office 1 year; but is eligible 3 years successively, and then not again eligible until the expiration of 4 years after he shall have been out of that office; (2) salary $3333, 34, and has been the same from the foundation of the government. (3)

2. —— Secretary of state &c.?

*A.* There is no secretary of state. The officer that comes nearest to one *(sed longo intervallo,)* is the *clerk* of the council; app. by the board, and holds during its pleasure. He is *ex officio* keeper of the publick seal of the state. *Const. Va. art.* 11—1 *New Rev. Code, c.* 46 § 5.

He resides at the seat of government; his salary is $1320. *Wm. H. Richardson* is the present clerk.

3. —— Chief justice of the supreme court of law, &c.?

(1) He resides constantly at the seat of government, though obliged to do so by no positive requisition, but only by the nature of his duties. *Const. Virg. art* 9.

(2) Though our governor has sometimes resigned, and sometimes declined a re-election, there is no instance in which the assembly has failed to continue in the office for 3 years a governor willing to serve out the term.

(3) The executive of Virginia is singularly constituted; it is vested not so much in the governor as in "the *privy council*," or "council of state" (this last is its constitutional style.)

This council consists of 8 members chosen by joint ballot of both houses: two members are removed by joint ballot at the end of every 3 years, and are ineligible again for the next three years: all vacancies are supplied by new elections in the same manner.

The governor can do no official act without the advice and consent of this council, in which he does not preside, nor has any, even a casting voice; only he is not bound to do what the council advises, against his own judgment. The council chooses one of its own members president of the board, annually; and he is the lieutenant governor. His style is simply "lieutenant governor."

The members of the council are not required to reside at the seat of government, but from the nature of their duties, they must reside generally there, or in the immediate neighbourhood. Const. Va. art. 11.

Their salaries are $8000, divided between them according to their attendance. 1 *New Rev. Code, c.* 29.

The present lieutenant-governor is "*Peter V. Daniel.*"

The executive of Virginia has no powers but what are conferred by *statute*, except that of granting pardons and reprieves, which is given with some limitations, by the constitution, *art.* 9.

*A. See note* below for the answer. (1)

4. —— Clerk of the superiour or supreme court, &c.?

*A. Harrison Dance,* is clerk of the court of appeals, and *Peyton Drew,* of the general court; and reside at the seat of government (Richmond.) They and all other clerks of courts hold during good behaviour; and are appointed by their respective courts. Const. Va. art. 15.

5. —— Attorney General: &c.?

*A. John Robertson,* Richmond; chosen by joint ballot of both houses; holds during good behaviour; vacancies supplied as in the office of judge. Const. Va. art. 14.

6. When, and where, is the annual meeting of the legislature?

*A. Richmond,* Henrico co. The legislature meets annually on the 1st *monday in December.*

UNITED STATES OFFICERS.

7. Who is District judge, &c.?

*A. St. George Tucker,* of the eastern district; resides at the city of Williamsburg; *John G. Jackson,* of the western district; resides at or near Clarksburg. (2)

8. —— Clerk of the District court &c.?

*A. Richard Jeffries,* of the district court held at Richmond, and resides there.

*Seth Foster,* for the district court held at Norfolk, and resides there.

(1) There is properly no chief justice of Virginia; the eldest judge in commission *actually present in court* (if consisting of more than one judge,) presides. The *senior* judge in commission of the court of *appeals,* is from courtesy styled "the president."

The president of the court of appeals at this time is *William Fleming*; who from age and infirmity, has not sat for some two or three years. The judges of that court are not required by law to reside in any particular place.

As to the mode of appointment of judges, I. The *justices of the peace* who are the judges of the county courts, are appointed and commissioned by the governor with the advice and consent of the privy council, on recommendation of the respective county courts, a majority of all the acting justices being present, or the justices having been summoned according to previous order, to attend for the purpose of making such recommendation.

II. The *mayor,* recorder and aldermen, who are the judges of the respective corporation courts, are chosen and appointed in the manner prescribed by the charters of the several towns: there is a little variety in this respect; but they are in general chosen annually out of the common council of the corporation, which is elected by the citizens or burghers.

III. All the *judges of the superiour courts of law and equity,* are chosen by joint ballot of both houses of assembly, and commissioned by the executive: vacancies occurring during the recess of the legislature, are supplied by the executive, subject to be confirmed or superseded by the assembly at its next annual session.

The justices of the peace hold during good behaviour, *and* the continuance of their residence in their respective counties.

The judges of the superiour courts of law and equity (they are the only judicial officers who are called *judges,* either by the law or in common parlance,) all hold during good behaviour.

The court of appeals which is the supreme *civil,* and the general court which is the supreme *criminal* tribunal, are held at the seat of government.

The justices of the peace have no salaries or emolument; the judges have fixed salaries. *Const. Va. art.* 14, 15.

(2) There are *two* districts in Va one composed of the territory east, and the other west of the Alleghany mountains. The western district courts have more extensive jurisdiction than the eastern; the latter have the jurisdiction given by the laws of congress to the district courts of districts that are *within,* and the former that which is given to the district courts of districts that are *without,* the jurisdiction of a circuit court of the U. States.

* * * * * * for the district court held at Wythe court-house; resides ———.

* * * * * * for the district court held at Lewisburg; resides ———. (1)

*Edward B. Jackson*, for the district court held at Clarksburg, and resides there.

9. —— District Attorney, &c.?

*A. Robert Stanard*, for the eastern district; resides at Richmond.

*Jacob Beeson*, for the western district; resides at —— Wood county on the Ohio.

10. —— Marshal, &c.?

*A. John Pegram*, for the eastern district; resides in Dinwiddie co. his deputies in Richmond and Norfolk respectively; where the marshal's offices are kept.

*Benjamin Reeder*, for the western district; resides at Clarksburg, Harrison co.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?

*A.* Ch. justice *John Marshall*, Richmond.

The eastern district of Virginia and the state of North Carolina, compose the 5th judicial circuit of the U. States.

12. At what times and places, are District courts of the U. S. held, &c.?

*A.* For the *eastern* district, at Richmond, *2d April and 15th October:* Norfolk, *1st May and 1st November.*

For the *western* district, at Wythe Co. c. house, 1st *mondays in April and September:* Lewisburg (2) on the fridays succeeding the 1st *mondays in April and September:* Clarksburg (3) 4th *mondays in May and October.*

13. —— Circuit courts &c.?

(1) I do not know the names of the gentlemen who are the clerks in these districts.

(2) Greenbrier co. (3) Harrison co.

*A.* At Richmond, 22d *May* and 22d *November: Richard Jeffries*, clerk.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?

*A.* In 1817 an act was passed appointing revisors to make another revision of the laws, (being the ninth revision of the laws of Virginia.) The revisors made their report to the assembly of 1817, 18. And at the two sessions of 1817, 18, and 1818, 19, the revision was completed by the legislature.

This edition (in 2 *vols.*) was published in 1819, and is a complete compilation of all the statute laws in force in Virginia on the 1st *monday in Dec.* 1819.

It contains also a copious index, and the constitutions of the U. S. and Virginia: it is generally cited, "1 or 2 *New Rev. code.*" (4)

15. Can the publick laws in pamphlets, be procured, &c.

(4) The following *editions* of the laws of *Virginia* are now extant.

1632. *Revised* by the assembly. This edition is in M. S.

1642, 3. *Another* general revision, by the assembly, M. S.

1657, 8. *Another*, during the protectorship of Cromwell, prepared by a committee of revisors, appointed in 1756, M. S.

1661, 2. *After* the restoration of *Ch. II.* prepared by a committee of revisors, M. S.

1684, 7. *Purvis's* edit. (so called,) printed at *London* between these years.

1705. *Edition*, prepared by a committee of Revisors, M. S.

1733. *Park's* edit. printed at *Williamsburg* under an order of the general assembly held in 1727; quoted "*Virginia laws edit.* 1733."

1748. *Another* revision; commenced in 1745.

1752. *Revised* edition, printed by *Wm. Hunter* at Williamsburg, by authority of the assembly, quoted "*edit.* of 1752."

*A.* The *pamphlet* copies of the sessions acts of assembly, for a few years back, may be procured of *Thomas Richie*, the publick printer at Richmond; but it is difficult to procure those of an old date. Very few of the profession have them. (1)

16. Is there any Digest of the state laws &c?

*A. No*; unless the "*New Revised Code*" may be called a digest.

It contains all the statute law which was in force in Virginia, of a general and publick nature, on the 1st monday in *December* 1819; omitting all that had expired or been repealed; and repealing, in terms, all publick laws omitted in that edition.

The plan of the edition is novel and peculiar: the statutes are printed entire as they were enacted, but are *classed* according to their subject matter, without regard to their dates.

"An *abridgment of all the publick laws of Virginia, to January*, 1758, *by John Mercer, gent.*" *Glasgow*, 1759. (2)

17. Are there any Reports of cases in your state courts, &c.?

*A.* Wythe's Reports; being "*decisions of cases between* 1790 *and* 1794, *by the high court of chancery of Virginia, with remarks upon decrees of the court of appeals, reversing some of those decisions; by the late George Wythe, chancellor.*" 1 *vol. fol.*

Washington's Reports; being "*reports of cases argued and determined in the court of appeals of Virginia, from fall term* 1790, *to fall term* 1796; *by Bushrod Washington.*" 2 *vols.*

Call's Reports; being "*reports of cases argued and determined in the same court, from spring term* 1797, *to spring term* 1803; *by Daniel Call.*" 3 *vols.*

At the end of the 3*d* vol. are print-

(1) I know of only one complete collection of Virginia statutes, and that belongs to *Wm. Waller Hening*, clerk of the superiour court of chancery of Richmond: the collection in the office of the keeper of the rolls, is not complete beyond the revolution; thenceforth it is perfect.

1769. *Edition*; printed by *W. Rind, A. Purdie and J. Dixon*, at *Williamsburg*, by order of the general assembly. quoted "*ed.* 1769," or "*old body of the laws.*"

1785. *Edition*; printed by *Thomas Nicholson* and *Wm. Prentis* at *Richmond*; called, "*ed.* of 1785." or the "Chancellor's revisal."

1794. *Edition*; printed by *Augustine Davis*, at *Richmond*, by authority of an act of assembly. This contains all the general laws then in force, including those of the session of 1794, 5, quoted "*Rev. code.*"

1803. *Edition*; printed by *Samuel Pleasants jun. and Henry Pace*, at *Richmond*, by authority of an act of assembly in 1802. It contains all the laws in that of 1794, and the general laws subsequent thereto, to the session of 1801, 2, inclusive, called, "1 *Rev. code.*"

(2) I have added this, finding it in *M. Carey's* catalogue of 1821. Ed.

1808. *Another vol.* published by *Samuel Pleasants*, by authority of an act in 1807, containing the laws of a general nature from the session of 1802, 3, to 1807, 8, inclusive, with 13 appendices, and a table of statutory fines, forfeitures, penalties and amercements; called "the 2*d vol. of the Rev. code*"

1812. *Another vol.* called "the supplement to the Revised code," by *Samuel Pleasants*, published by authority of an act in 1812. This contains all the acts of a general nature passed at the sessions of 1808, 9, 10, 11. This act of 1812, authorised a new edition of the *Rev. code.*

1814. *This* was printed by the same *publisher*, being a copy of the edition of 1803, with many additional notes and references; quoted "1 *Rev. code.*"

A *collection* of the statutes at large, from the very foundation of the colony, made by *Wm. Waller Hening*, is now publishing, (6 *vols.* containing the statutes to the year 1755, being published:) quoted.—"*Hen. stat. at large.*"

ed, "*reports of a few cases of June term* 1790." These are by *Mr. Marshall*, the present ch. justice of the U. S.

Hening and Munford's Reports; being "*reports of cases argued and determined in the same court, from October term* 1806, *to October term* 1809; *by William Waller Hening and William Munford.*" 4 *vols.*

Munford's Reports; being "*reports of cases argued and determined in the same court, from October term* 1809, *to* 1820; *by William Munford.*" 6 *vols.*

Brockenbrough & Holme's cases; being "*cases decided by the general court of Virginia, chiefly relating to the penal laws, from* 1789, *to* 1814, *with explanatory notes; by judges Brockenbrough and Holmes.*" 1 *vol.* 1815.

State Reporter, *Francis Walker Gilmer;* appointed by the court of appeals, under authority of an act of the legislature, passed in the session of 1819, 20; none of his reports are yet published.

18. Is there any Digest of cases in your state courts, &c.?

*A.* Munford's Index; being "*a general index to the Virginia law authorities reported by Washington, Call, Hening and Munford, and by Munford, with notes; by Wm. Munford.*" 1 *vol.* 1819.

19. Are there any Treatises on the law, in your state &c.?

*A.* The list is very short.

"*Blackstone's Commentaries, with notes of reference to the constitution and laws of the U. States and of Virginia; with an appendix to each volume, containing short tracts on such subjects as appeared necessary to form a connected view of the laws of Virginia, as a member of the federal union; by St. George Tucker.*" 5 *vols.* 1803. (1)

"*The* Virginia Justice; *by Wm. Waller Hening.*" 1 *vol.*

"American Pleader and Lawyer's Guide, *in commencing, prosecuting, and defending actions of common law and suits in equity; by the same.*" 2 *vols.* 1811. (2)

Rules "*of the superior courts of chancery at Richmond and Lynchburg; together with instructions for commissioners in chancery, founded on the decisions of the supreme court of appeals, the late high court of chancery, and the present superior courts of chancery for the Richmond and Lynchburg districts, illustrated by examples.*" *By the hon. Creed Taylor Esq. judge of the superior courts of chancery, for the Richmond and Lynchburg districts. Printed Richmond,* 1820. (3)

(1) The *editor* of this scarce and valuable work, was at the time professor of law in the university of William and Mary, and one of the judges of the general court of Virginia; and is now district judge of the U. States, for the eastern district of Virginia. It is inserted for sale in *M. Careys* catalogue, of 1821. Ed.

(2)I have added this, supposing it to be by the *same* Mr. Hening. It is advertised by this title, in M. Carey's catalogue of 1818, as printed in N. York, 1811, 2 *vols.* In his catalogue of 1821 it is said to be 1 vol. Ed.

(3) This is a small quarto pamphlet, and beside the rules which I have extracted from it, contains much other and very useful matter indicated in the title. Especially in regard to taking *accounts* of ex'rs and trustees &c. before commissioners of the court; prescribing the *forms* of accounts, the methods of computing interest on balances; the general duties of commissioners &c.

They appear to be drawn up and compiled with great care, accurate discernment and ability: commissioners in chancery (or as denominated in our courts "masters") would in all places derive from these instructions, much useful information and assistance in

Perhaps under this question might be included "*Manual of parliamentary practice,*" *by Tho. Jefferson.*(1)

20. —— Foreign law books republished in your state, &c.?

*A.* None which I recollect, unless it be Mr. Tucker's "Blackstone," before mentioned; this was published or printed, in *Philadelphia.*

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?

*A.* None; except the "*Trial of Aaron Burr for High Treason against the U. S. before the circuit court of the U. S. held at Richmond May term* 1807, *taken in short hand, by T. Carpenter.*" 3 *vols.* 1807.

(There is also a report of this trial by *Daniel Robinson.* 2 vols. 1808.)

22. Is there any Digest of cases in those courts, &c.?

*A.* There is no digest. As to the *practice* of those courts, it conforms, on the law and equity sides, to the practice of the superiour or state courts of law and equity respectively. The admiralty practice conforms, to the general practice of the federal courts in admiralty cases throughout the union.

23. Have any books been composed, in your State, &c.?

*A.* "*Debates, on the constitution of the U. States, in the convention of Virginia which ratified it, in* 1788."

"*Constructions construed; by John Taylor of Caroline.*"

This is an examination of the doctrine of the supreme court of the U. States, in the case of *Mc Cullock vs. Maryland*; concerning the constitutionality of the charter of the bank of the U. States. I have mentioned these, as supposing them to fall under the very general description of this question.

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

*A.* None.

25. By whom are attornies or counsellors admitted, &c.?

*A.* No person can practice as counsel or attorney, without a license from some 3 of the judges of the court of *appeals*, courts of *chancery*, or *general* court. Any 3 judges, upon certificate being produced to them by the candidate, from the court of the *county* or *corporation*, where he hath usually resided for the preceding 12 months, that he is a person of honest demeanor and upwards of 21 years of age, and finding him on examination duly qualified, may grant him a license, under their hands and seals, to practice the law in the inferiour and superiour courts of the commonwealth.

The license extends to all courts.(2)

(1) A very handsome and improved edition, and containing "the rules and orders of the senate and house of representatives of the U. S." "and joint rules of the two houses," is lately printed (1820,) by *Davis and Force*, Washington. Ed.

framing their reports in a clear and succinct method. I regret that my plan does not admit of their insertion: Gentlemen who may wish to possess the pamphlet, may doubtless obtain it by mail. It is printed at Richmond by *I. and G. Cochran.* Ed.

(2) We qualify in every court we practice in, with leave of court, by taking the oath of fidelity to the commonwealth and an oath of office. Conviction of *felony*, incapacitates the convict to obtain a license; or if before licensed, *ipso facto* vacates it.

I believe not a single instance of the kind ever occurred. Upon information of *malpractice* in the profession, and conviction thereupon too, the court may suspend or vacate the license according to the degree of misconduct: I never heard of any case of this kind either.

26. On what conditions, &c. from other states, &c.?

*A.* Counsel and attornies licensed and qualified to practice in Pennsylvania, Ohio, Kentucky, Tennessee, N. Carolina, Maryland and the district of Columbia, may be allowed to practice in the courts of Virginia, upon producing certificates of their licenses and qualifications at home, and taking the oath of office only. Counsel and attornies of the other states, must be licensed and qualified as counsel and attornies of Virginia according to our laws, in order to practice here.

COURTS.

27. What are the names of the several courts in your state, &c.?

28. Their style, &c.?

29. The extent of their several territorial jurisdictions, &c.?

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

33. Which are courts of equity, and which of law, &c.?

34. What methods are used to carry up judgments &c.?

*A.* In answer to these inquiries, the following concise account is given, of our judicial system.

I. The "COURTS OF THE SEVERAL JUSTICES OF THE PEACE IN THE COUNTIES, AND MAYORS, RECORDERS, AND ALDERMEN OF TOWNS."

Each of these officers singly have cognizance in cases of *debt* or penalty, *trover*, and *detinue*, where the subject or sum in controversy, exclusive of interest, exceeds not $20 or 400lb. of tobacco, *except* that they can entertain cognizance of *attachments* against absconding debtors, when the debt exceeds not $10.

The justice or alderman issues his warrant, directed to the constable, to summon the debtor to appear before himself or any other justice at a given day and place of appearance, to answer to the complaint. They proceed summarily, without pleading, and without jury, according to the principles of law and equity (so the statute prescribes;) in practice, their rule of justice is, the *arbitrium boni viri.*

If the debt or penalty, or subject of trover or detinue, exceeds $10, or 200lbs. of tobacco, an *appeal* lies from the judgment, to the county or corporation court, as to law and fact: and there the proceeding is also *summary*, without pleading and without jury; and the court is required to govern itself by the principles of law and equity; *attornies* are heard; and much less latitude of arbitrium is indulged, than by the single magistrate out of court.

These magistrates in their judicial proceedings, are not courts of record. The constables are their executive officers.

The *territorial* jurisdiction of all and each of the justices of the peace of the counties, extends over the whole of their *counties* respectively; of the mayors, recorders, and aldermen of towns, over the whole *corporations* respectively.

Their *criminal* jurisdiction, out of their county or corporation courts, may be summed up in a few words: they are conservators of the peace; commit for felonies; recognize persons guilty of misdemeanors affecting the peace, to appear before their *county* court for judgment; and are charged with all the main duties of the police.

They have *no fees or emoluments*

of office of any kind; yet they administer oaths to affiants; take depositions in chancery, and *de bene esse* at law; also acknowledgments of deeds, and privy examinations of femes covert; and perform a thousand other offices, light taken singly, but burdensome and highly important in the aggregate. 1. *New Rev. Code, ch.* 71.

II. The "COUNTY COURTS;" held every month in each county.

The justices of the peace are the *judges* in this court; the manner of their appointment has been stated, in answer to No. 3.

Their jurisdiction is civil and criminal.

1st. Their *civil* jurisdiction is very extensive.

They have cognizance of *all* causes at *common law* or in *chancery* within their respective counties, where the value in controversy exceeds $20. or 400lbs. tobacco, *except* only, that they cannot proceed to outlawry.

Their common law cognizance, in actions real, personal and mixed, if the defendant or the land be within their territorial jurisdiction, that is, their respective counties, is as general (with this exception that they cannot proceed to outlawry,) as that of the court of the King's bench and common pleas in England united.

Their *equitable* cognizance, if any one defendant reside or if the subject be within their territorial jurisdiction, is almost as general (the limitation is very trivial,) as that of the high court of chancery in England; but they have none of the legal and ordinary, or personal jurisdiction of the lord chancellor.

They have all the jurisdiction of the *ecclesiastical* courts in England, in causes touching the probate of wills, and granting of administration.

They have power to open new, and discontinue or alter old roads, and to grant permission for the erection of mills and mill dams: proceeding by writ of *ad quod damnum* to compensate individuals for damages arising from the opening of new, or altering or discontinuing old roads, and from the erection of mills and dams.

They have the custody of idiots and lunaticks, and the appointment of committees to take care of them and their estates. They appoint guardians of infants, call them to account, supersede and control them.

They build court houses, clerks' offices, and bridges; and keep them in repair: to defray the expenses of all which, they have power to levy an annual tax on the people and personal property of their counties.

These are the *general* heads of their jurisdiction and powers: so extensive and various are the cognizance and authority of these tribunals, in matters of government and police, as well as in judicial causes, that it were impossible to give an account of the minute particulars in a note like this: add to which, it is the usage of the legislature in special cases to make the county courts, *commissioners* for the transaction of any kind of business.

In all causes at *common law*, where the debt or damages are $100 or 3000lbs of tobacco and upwards, or concerning the title or bounds of land, or mills, roads, the probate of wills, or grant of administration; an arbitrary *appeal* (1) lies from the final judgment of the county court, to the *superiour court of law* of the county; and where the debt or damages

(1) Meaning an appeal of *right*. Ed.

are $33, 33 cents and upwards, the superiour court, or any judge of the general court in vacation, may, for error assigned, allow a writ of error or supersedeas.

From final decrees of the county courts in *chancery*, where the debt or subject is $33,33 and more, arbitrary *appeals* are allowed to the *superiour court of chancery* of the district to which the county belongs; which court of chancery, or any chancellor, for error assigned, may allow appeals and writs of supersedeas to and from decrees interlocutory as well as final.

2d. The *criminal* jurisdiction of the county courts, is different in respect of *free* persons and in respect to slaves.

As to *free* persons, when one has been committed for *felony*, the county court, within the jurisdiction of which the offence has been committed, holds what is called a "*court of examination*," and determines whether the prisoner ought to be discharged from further prosecution, or tried for the offence. If they discharge him it is a *final* acquittal: if their judgment be, that he ought to be tried; then, in cases of petty larceny (that is of goods under the value of $4,) they direct the trial at their own bar; and the proceeding is according to the course of the common law; the accused is indicted by their grand jury, and tried by a petty jury, with all the privileges of counsel, challenges of the jurors &c. (1) In all cases of felony, other than petty larceny, the county court sends the accused to be tried by the *superiour court of law* of the county.

Over all criminal cases affecting free persons (*excepting* impeachments, treason, felony, informations against officers for misbehaviour in office,) they have *original* and final cognizance, concurrent for the most part with the superiour courts of law, and proceed according to the course of the common law.

As to *slaves*, the county courts are courts of *oyer and terminer* in *all* cases of crimes committed by them.

The court is bound to assign the prisoner counsel; and the justices must be *unanimous* on the question of guilty or not guilty; a single dissentient acquits, (1)

There remain some other points to be noticed.

The *terms* of the county courts are divided into *monthly* sessions and *quarter* sessions; the terms of four months of the year, (various months in different counties) are quarter sessions; the terms of the other months of the year are monthly sessions.

For the trial of all presentments and criminal prosecutions in which their cognizance is final, and all civil suits at common law, the *quarter sessions* have jurisdiction, and the jurisdiction in such cases is exclusive of the monthly sessions. In all suits in chancery, cases relating to probate of wills, grant of administration, and attachments against absconding debtors, the quarter sessions and monthly sessions have concurrent jurisdiction; all other business of the court of whatever kind, be-

(1) In Virginia, parties are allowed counsel in all cases, in all their stages, civil and criminal.

(1) My correspondent adds "Crimes are always defended by their counsel with infinitely more zeal, than they are prosecuted by the commonwealth's attorney; and the courts are in general, just, dispassionate, and most merciful tribunals. From their sentence there is no appeal, but to the mercy of the executive; which I think, is rather too ready to interpose."

longs to the monthly sessions exclusively.

In ordinary cases, any 4 of the justices constitute a quorum.

In courts for the examination of free persons charged with crimes, and in courts of oyer and terminer for the trial of slaves, any 5 *justices* make a quorum.

In various matters, relating to county *government*, a majority of the justices must be present, or at least the justices, must be specially summoned to attend for the purpose. (1)

III. The "CORPORATION COURTS." These are co-ordinate tribunals, with the county courts.

Their powers and jurisdiction, civil and criminal, are in general the same: only, the cognizance of the corporation courts is limited, to suits between the inhabitants of the respective *corporations*, or between them and persons not inhabitants of the *commonwealth*; and in both cases, to suits in which the cause of action *arises* in the corporation.

The mayor, recorder and aldermen, are the judges.

Their constitution, in every other respect, is the same as that of the county courts; and their powers coextensive.

The *appellate* jurisdiction over them, is also the same.

IV. The "CIRCUIT COURTS, OR SUPERIOUR COURTS OF LAW;" (they are called in the statute book and in common parlance, indifferently by both appellations.) These, are held in and for *every* county of the commonwealth.

The counties are laid off in 15 circuits, about 7 in each circuit, and *one* judge of the *general court* (who must reside within his circuit,) is assigned to each; and he holds 2 terms, spring and fall, in each of the counties within his circuit.

The jurisdiction of these circuit courts, is civil and criminal.

1*st*. Their *civil* jurisdiction is appellate and original; their appellate jurisdiction over the county and corporation courts, has been already described.

Their civil *original* jurisdiction, extends to all cases at common law, where the sum or subject amounts to $100, or 3000*lb*. of tobacco; to trover and detinue above $20; to all land causes; cases of habeas corpus; mandamus; probate of wills, and letters testamentary or of administration; and universally, to all causes not reserved to the exclusive jurisdiction of the *general court*, of

(1) This county court system let me observe, is the oldest institution of Virginia. It passed through the revolution without any material change. It strikes strangers with wonder, that such important and extensive judicial powers should be committed to justices of the peace (very few of whom are men of the law,) and that they should execute such various and extensive powers in police, in judicature, and even in government, *without fee, emolument or reward*, to the general satisfaction of the people.

Habit, which assimilates all institutions and makes them salutary to the body politick, has made this wholsome and almost necessary to the publick weal, and grateful to publick feeling; and the experience of two centuries has gradually improved and adapted it to the genius, the wants, and condition of the people.

From long and intimate knowledge of these county courts, I can bear testimony to the general justice and regularity of their proceedings; but it is the purity, the easy, unassuming, unconscious dignity, and (above all,) the impress of parental and neighbourly kindness (I can devise no other apt epithet,) seen and felt in the administration of all their powers, which chiefly endears these tribunals, and procures for them universal respect.

which these circuit courts are branches.

2*nd.* They are the courts of *oyer and terminer*, in all cases of treason and felony committed by *free* persons, (the accused being *first* sent to them for trial in the manner above stated, by the county or corporation courts;) and they have *concurrent* jurisdiction with the county and corporation courts, in all other causes of a criminal nature, *saving* some petty penalties belonging exclusively to the jurisdiction of those inferiour courts, and some few crimes of which the cognizance is given by the constitution or reserved by statute, to the general court.

Their *territorial* jurisdiction is limited to the counties, in and for which they are held respectively.

These circuit courts may *adjourn* any question, civil or criminal, arising before them, to the *general court*, on account of novelty and difficulty; in which case, the general court certifies its opinion back to the circuit court from which the case is adjourned.

The *appellate* jurisdiction exercised over them, is two fold, civil and criminal; the *civil* is vested in the court of appeals, which is the supreme civil tribunal; and the *criminal* is vested in the general court, which is the supreme criminal tribunal of the state.

From final sentence of conviction in any *criminal* case, in a circuit court, the general court may award a writ of error, for error apparent on the record, the accused having the right to except to any opinion, or charge on points of law given by the circuit court, on his trial; and from all final judgments of the circuit courts in *civil* causes, if the matter in controversy be equal in value to $100, or 3900*lb.* of tobacco, or more, or be a freehold or franchise, or the title or bounds of land be in question, an arbitrary *appeal* lies to the court of appeals; or the court of appeals, or any judge thereof in vacation, may allow writs of error or supersedeas to such judgments.

In controversies concerning mills, roads, probates of wills, and grants of administration, the appeal brings all questions, both of law and fact, before the appellate tribunal; and in such cases the evidence adduced in the circuit courts, is there spread at large on the record.

The circuit court of each county may change the venue, from the county or corporation court, to the circuit court; and from the circuit court of one county, to that of an other county within the same circuit.

V. The "GENERAL COURT;" which consists of 15 judges, a majority of whom is necessary to make a quorum.

It is held at the seat of government (Richmond;) and there are two terms annually, commencing on the 15th June and 15th November.

Its jurisdiction extends to all causes, except those, of which the cognizance is vested by the constitution and laws of the U. States or of this commonwealth, in some other court.

Its cognizance in cases adjourned to it from the circuit courts, and in writs of error to judgments of the circuit courts in *criminal* cases, has been already mentioned.

It is the court of *exchequer*, to hear and determine all motions and suits of the commonwealth, against publick debtors and defaulters.

It is the court for the trial of all *impeachments* exhibited by the house of delegates, except impeachments of members of its own body (court,)

which are to be tried before the court of appeals.

It has *original* jurisdiction of probates of wills and grants of letters of administration: and may change the *venue* in any criminal cause, from circuit court to circuit court; and in any civil cause, to its *own* bar; or from one circuit court to another, in the same or in a different circuit.

It has *exclusive* cognizance of all prosecutions of a criminal nature (except impeachments,) against a member of its own body, unless the offence be of a nature cognizable before some court other than a circuit court:

And has power to grant writs of habeas corpus in all cases; and writs of mandamus to the circuit courts.

It has exclusive coguizance of *crimes* committed within the territorial jurisdiction of the commonwealth, but not within the body of any county; as in *havens*, bays, &c.

From the judgments of this court, in cases of a *criminal* nature, there is no appeal.

From all its final judgments in *civil* cases, an *appeal* lies to the court of appeals, as from the judgments of the circuit courts; or, the court of appeals may allow writs of error or supersedeas to such judgments.

VI. The "SUPERIOUR COURTS OF CHANCERY."

The state is divided into 9 chancery districts, in each of which a *superiour court of chancery* is held. There are 4 chancellors.

The superiour court of chancery for the *Richmond* district, is held at Richmond twice annually, on the *1st of January and 1st of June.*

For the *Lynchburg* district, at Lynchburg in the county of Campbell, on the *10th of May and 10th of October*; to these districts one chancellor is assigned, who is required by law to reside at Richmond.

For the *Williamsburg* district, at Williamsburg in the county of James city, on the *1st of June and 15th October.*

For the *Fredericksburg* district, at Fredericksburg in the county of Spotsylvania, on the *15th April and 15th September*: to these two, one chancellor is assigned, who is required to reside at Fredericksburg.

For the *Greenbrier* district, at *Lewisburg* (Greenbrier county court house,) on the *1st June and 1st November.*

For the *Staunton* district, at Staunton in the county of Augusta, on the *15th June and 15th November.*

For the *Wythe* district, at Wythe county court house, on the *mondays* succeeding the commencement of the spring and fall terms of the superiour courts of law for the county, in *May and October*; to these three districts, one chancellor is assigned, who is required by law to reside at Staunton.

For the *Winchester* district, at Winchester in the county of Frederick, on the *1st monday in April and 21st November.*

For the *Clarksburg* district, in the county of Harrison, on the *3d mondays* after the 4th mondays in April and September: and to these two, another chancellor is assigned, who is required by law to reside at Winchester.

The *appellate* jurisdiction of these courts over the final decrees of the *county* courts in chancery, has been already mentioned.

They have general *original* jurisdiction over all persons and all causes in chancery, within their respective districts, if the matter in controversy be of the value of $33. 33 cts. or more.

They are always open, to allow writs of habeas corpus, ne exeat, and injunctions; to direct accounts in causes pending in their courts; and to allow appeals, from the final decrees of the county courts in chancery to their own courts, and from their own decrees to the court of appeals.

An *appeal* lies from the superiour courts of chancery to the *court of appeals*, in all causes, in which the matter in controversy is equal to $100, or 3000*lbs.* of tobacco, or is land, slaves or other specifick property; and that, both from interlocutory and final decrees.

From *interlocutory* decrees, the court of chancery pronouncing them, or the chancellor in vacation, may allow an appeal, if money be decreed thereby to be paid; or the title or possession of property to be changed; or if the court think the appeal proper to settle the principles of the cause, and to avoid expense and delay; and if the chancellor refuse an appeal in such case, the court of appeals or any judge thereof in vacation may, for error assigned, allow the appeal.

From *final* decrees, the appeal is arbitrary at any time during the term, and during the vacation next after the term at which the decree is pronounced; and after that time has elapsed, an appeal may be obtained on petition, for errors assigned, at any time within 3 years; and such appeals may be allowed by the respective courts of chancery, or the chancellors in *vacation*, or by the court of appeals, or any judge thereof in vacation.

The *practice* of the county and corporation courts, on their law and equity sides, is directed by law to be conformed to the practice of the superiour courts of law and chancery, respectively.

The practice of the superiour courts of law, is modelled on that of the court of king's bench in England, with such modifications (not very important,) as are necessary to adapt it to our system and situation.

The practice of the superiour courts of chancery is modelled, on that of the high court of chancery of England, with some similar modifications.

I know of only three material points of difference, between our chancery system and that of England:

1st. The division of the jurisdiction between 9 courts and 4 chancellors, instead of investing all in one:

2d. Our courts of chancery are courts of record, which the English is not:

3d. And may issue common law execution, to enforce their decrees, as well as the process of sequestration, attachment &c. used in England.

VII. The "COURT OF APPEALS."

The jurisdiction of the court of appeals has been explained in the accounts given already, of the general court, circuit courts, and superiour courts of chancery.

It has no *criminal* jurisdiction; *except*,

1st. The power of punishing for contempts of court, incident to all our courts of justice:

2d. The power to direct informations against counsel, for malpractices in that court, and to try such informations at its own bar; and,

3d. It is the court designated by the constitution, for the trial of impeachments of *judges* of the general court. (1)

(1) There has never been an impeachment in Virginia.

The court of appeals consists of 5 judges: any 3 make a quorum. This court is at present required to sit 250 days in the year, unless the business can be sooner dispatched. It generally sits, from the 1*st October to the* 15*th April*, with 3 short intervals.

VIII. A "SPECIAL COURT OF APPEALS."

Whenever from permanent infirmity of a judge of the court of appeals, and from one or more of the remaining judges being interested in any suit there pending, a quorum of the court of appeals cannot be formed to try the suit; a *special* court of appeals is formed of the judges of the court of appeals capable of attending and disinterested, and as many of chancellors and judges of the general court (who did not pronounce the judgment or decree to be reviewed,) as will make the number at least 5; and if all the judges of the court of appeals are so disqualified, the special court of appeals is in like manner constituted, of chancellors and judges of the general court.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A. Thomas Richie*, who resides at the seat of government, *(Richmond.)*

36. Who is the principal *Bookseller* at the seat of Government?

*A.* There are some 3 or 4 book-sellers here; I am unable to say which, is the principal.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

2. Does the legal possession pass without livery, &c.?

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

5. Are attesting witnesses &c. required to conveyances?

6. Must the deed be sealed?

7. Is a scroll sufficient?

8. Are the common law requisites for the perfection of Deeds &c. altered in any particulars, in your state?

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

12. Is this done by joining with him in the conveyance, &c.?

13. Is a private examination of the feme necessary, &c.?

14. What officers may take this examination, &c.?

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c?

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

17. Generally, is there any thing peculiar in respect to dower in your state?

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

22. Is the certificate to be under the seal, as well as the hand of the officer?

23. If a quaker is witness, what is the form of affirmation by your law?

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

29. In what order, do mortgages take preference of each other?

30. Is any time allowed after execution, within which the mortgage

being recorded, a subsequent mortgage gains no priority by first registering?

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* In the following account of the law of Virginia touching *conveyances*, *wills* and *testaments*, *executors* and *administators*, *dower* and *courtesy*; no attempt will be made to state the common law doctrines on those subjects, or to give a history of former statutory provisions, and the various alterations that have been made from time to time: it is only intended to exhibit the *local* laws on these several heads in their *existing* state.

Instead of presenting the information desired, in the order and manner the questions would prescribe, I have endeavoured to attain their object by combining under certain general heads, all the particulars which they seem to include. This enables me to give a more connected view of the laws and regulations which regard the transfer and condition of real estate in Virginia, in the cases referred to, than could otherwise have been effected. (1)

I. *Forms of conveyances.*

The *common law* deeds of conveyance—the original or primary, *feoffment*, *gift*, *grant*, *lease*, *exchange*, and *partition*; and the derivative or secondary—*release*, *confirmation*, *surrender*, *assignment* and *defeasance*; all are legal and proper forms of conveyance, and all are occasionally used.

Alienations by matter of record—*private acts of assembly*, and *grants from the commonwealth*, are of course regular.

*Private acts*, are founded always on very special circumstances, set forth by petition, and strictly proved.

*Grants from the commonwealth*, though they pass regularly through the proper offices, are yet of no effect, unless made under express authority of some law, general or special: they are chiefly confined to waste and unappropriated lands, and are regulated by a distinct system of statutory provisions, called *the land law*. 1 *Rev. Code.* 1819. c. 99.

The other alienations by matter of record, *fines and common recoveries*, so common in England, were never (it is believed) usual, perhaps never legal in Virginia; and if ever legal, are not so now.

The statute of uses, 27 *Hen.* viii. *c.* 10. has been always in force in Virginia.

Our ancestors brought with them all the English statutes that had been made in aid of the common law, of a general nature, prior to the 4*th year of James* i. (1606) when they migrated: and though at the general revision in 1792, all the English stat-

(1) The gentleman who sent me this account relative to "*Conveyance* by deed &c. *No.* II," is also the contributor of the articles "*No.* V. Wills;" "*No.* VI. Descents;" "*No.* VII Distribution;" "*No.* VIII. Dower and Curtesy." *post.*

It will be observed that he has pursued the same method in each case, certainly with much more trouble to himself, but in doing so, has given a higher value as well as a more finished character to the performance.

For reasons however before mentioned, and merely to preserve the *same* set of questions in relation to every state, they are prefixed to my correspondent's reply. Ed.

utes as such were repealed, the legislature at the same time, specially enacted and inserted in its own statute book, such of them as appeared worthy of adoption; and among those, the statute of uses. 1 *Rev. Code* c. 99. § 29.

All the *statutory* conveyances, therefore, (meaning those which have their force and operation by the statute of uses) *covenant to stand seized to uses, bargain and sale, declarations of uses,* and *revocations of uses*; are proper and legal assurances.

*Declarations of uses,* are usually inserted in the original deed creating the trust: Deeds of *lease and release* are very rare. *Covenants to stand seized to uses,* are yet more uncommon: indeed, no instance is remembered of a conveyance in this form, *so designed*; but other assurances, which owing to some technical imperfection cannot operate in the form intended, are, when made to kinsmen, held to enure as covenants to stand seized, in Virginia as in England. 2 *Wms. Saund.* 97, *n.* 1. 4 Munf. 473.

Far the most usual method of conveyance, is the deed of *bargain and sale,* in the very simplest form.

Even *gifts* and *exchanges* are generally thrown into that form, by the insertion of a nominal pecuniary consideration, and in *exchanges* making *two* deeds of *bargain and sale,* instead of *one* deed of *exchange* and a *counterpart.* (1)

II. *Legal requisites of deeds.*

With respect to the *legal requisites* for the *formal* perfection of deeds, and the *causes* for which they may be *avoided,* the rules of the common law, and of equity, as understood and practised in England, prevail in Virginia, with one or two very trivial exceptions.

1. Deeds of *Indenture* need not be *actually indented,* for the statute of conveyances does not require it: 1 *Rev. Code,* 361. c. 99. § 1.

2. Though deeds are required to be *sealed,* yet a *scroll* put to any instrument for a seal, is tantamount to an actual seal: *Id.* 510. c. 128. §, 94.

Indeed, the law has been held to be the same, independently of the statutes: 1 *Wash.* 43. 2 *Id.* 63.

III. *Construction and operation of deeds.*

The technical rules of the common law for the *construction* of deeds and other instruments (as laid down 2 *Bl. Com.* 379, 382,) are universally respected in Virginia; and in general, the common law doctrines concerning the *operation* of deeds, also prevail.

But there are several statutory provisions, some adopted from English statutes, and some original and perhaps peculiar to Virginia, which may be referred to this head.

1. *Alienations greater than the estate of grantor—effect of.*

It is provided, that alienations and warranties of realty, purporting to

(1) It may be proper at this place to notice certain *special* conveyances, authorised by statute, as:

*I. Conveyances of infant's estates.*

*Testamentary* guardians may lease the real estate of their wards, for any term ending when their wards shall attain to full age, or longer as the ward shall elect: and guardians *appointed by the court,* may make leases for any term ending when the ward shall attain to 14 years of age. *Ibid.* c. 108. *Guardians.* § 15.

Where an infant is seized of an estate as *trustee* or *mortgagee,* his guardian, on petition of any party interested to the proper superiour court of chancery, by order of such court on a hearing, may execute any deed or perform

convey a greater estate than the alienor may lawfully convey, shall operate as alienations and warranties of such estate as he may lawfully convey, but shall not pass or bar the residue of the estate purported to be conveyed. 1 *Rev. Code.* 368. *c.* 99, § 20.

The only effect of this provision is supposed to be, that a conveyance of a fee by the tenant of a particular estate, shall be as effectual to pass his own interest, as if it purported to convey that interest: it does not affect the grantee's remedy against the grantor upon the warranty; it only protects the remainder.

2. *Remainder, destruction of the particular estate—effect of.*

Neither the alienation of a particular estate on which a remainder depends, whether by deed or will, nor the union of the particular estate with the inheritance, by purchase or descent, shall so operate, by merger or otherwise, as to defeat, impair, or otherwise affect the remainder. *Ibid.*

The reason and effect of this provision, will be apparent on examination of the common law doctrines concerning the destruction of remainders: *Fear. (5th ed.)* 340. *Cont. Rem. c.* 5.

3. *Warranty of the ancestor, bars the heir, to the value of assets descending.*

If the *alienor* bind himself and his heirs to warranty, and any heritage descend to the demandant from the side of the alienor, the demandant shall be barred for the value of the estate descended; and if the heritage descend to the demandant after his recovery, remedy is given to the tenant to recover against him, of the seisin warranted, to the value of the estate descended. 1 *Rev. Cod. c.* 99. § 21. *(adopted from stat. of Glo.* 4 *Ed.* i. *stat.* 2. *c.* 6. 4 *Ann. c.* 16. § 21.*)*

4. *Entails abolished.*

*Entails,* were abolished in Virginia very soon after the commencement of the revolution.

By an act, *Oct.* 7, 1776, all estates tail previously created and then existing, were converted into estates in fee simple; and it was enacted, that every estate afterwards limited, so that, as the law aforetime was, such estate would have been an estate tail, should be deemed and

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any act, which the trustee or mortgagee, if of full age, might execute or perform, and such deeds shall be as valid; only, the infant shall not be bound by any warranty, or other covenant therein contained. *Ibid.* § 13. (*adopted from* 7 *Ann c.* 19. § 12.)

The court may, in like manner, empower a guardian to make or take surrenders of former leases, or to make or take new leases, charging the wards estate with the fines and other expenses. *Ibid.* § 14, (29 *Geo.* ii, *c.* 31.)

The superiour courts of chancery may, moreover, order an infants estate to be sold, if his interest require such a sale; and direct the proceeds of sale to be invested in other real estate, or otherwise, as shall be most beneficial to the infant; But the mode of proceeding is very precisely and cautiously prescribed; and if the proceeds be invested in a personal fund, and the infant die before attaining to full age, it shall be deemed and descend as real estate. *Ibid.* § 16. 17, 18, 19, 20, 21, 22, 23.

This last is a very recent provision: formerly, infants real estates could only be sold under authority of a special act of assembly.

11. *Conveyances under decree in chancery.*

The courts of chancery may also, when they decree the sale of any property, appoint a *commissioner* to make a conveyance to the purchaser under the decree; and such conveyance shall be as valid to pass and extinguish the right of the party on whose behalf it is executed, as if executed, by such party in person: with the usual saving in favour of infants, absentees &c. *Ibid c.* 66. § 41. (*adopted from* 7 *Ann. c.* 19. § 1. 2.)

continue an estate in fee simple: and with respect both to existing estates tail, and such estates subsequently limited, thus made estates in fee simple, the same were discharged of all conditions restraining alienation before the donee shall have issue, so that the donees or persons in whom such estate had vested or should vest, *should have the same power over them, as if they were pure and absolute fees.*

In the construction of this act, it was held, that it embraced *implied* as well as *express* estates tail; and that if a contingent remainder were limited on an *implied* estate tail, the conversion of such implied estate tail into a fee simple, did not convert the contingent remainder into an executory devise, but such contingent remainder was forever barred by force of the statute: 1 *Call* 165, which was followed in many subsequent cases.

In consequence of these decisions, the legislature at the revision of 1819 enacted, that every estate in lands, limited by deed or will, after the 1*st Jan.* 1820, so that as the law was before the 7*th Oct.* 1776, such estate would have been an estate tail, should be deemed an estate in fee simple, as if limited by technical words appropriate at commom law to create a fee simple; and that every *limitation* on such an estate should be held valid, if the same would be valid when limited upon an estate in fee simple created by technical language. 1 *Rev. Cod.* 368, 9. *c.* 99. § 22, 25.

5. *Executory limitations.*

*Executory* devises, are very common and very favourite limitations in Virginia; but they have often failed in consequence of their being limited, by testators ignorant of the law, on the too remote contingency of a general failure of heirs or issue, instead of a failure of issue restrained within the allowed limits of executory devises, as established by the common law. *Fear.* (5 *ed.*) 444. *Ex. Dev. c.* 3.

Therefore, the legislature enacted at the late revision, that every contingent limitation by deed or will, made to depend on the dying of any person without heirs, or heirs of the body, or issue, or issue of the body, or children, or offspring, or descendant, or other relative, shall be held and interpreted a limitation to take effect when such person shall die, not having such heir &c. living at the time of his death, or born to him within ten months thereafter, unless the intention of such limitation be otherwise and plainly declared on the face of the deed or will creating it. *Ibid.* 369. § 26.

9. *Remainder, to a child to be begotten, vests in a posthumous child.*

Where an estate is limited in remainder to a child of any person to be begotten, such child though born after the parent's death, shall take the estate in the same manner as if born in the parent's life time, although no estate has been created to support the contingent remainder after his death. *Ibid.* § 28. *(adopted from* 10 *&* 11 *Will.* iii. *c.* 16. § 1.*)*

7. *Limitations of estates in futuro.*

By the common law (as ably expounded by *Fear. Ex. Dev. c.* 1.) limitations of estates to take effect *in futuro*, were indulged only to wills and testaments, or deeds declaring trusts, and not to common law conveyances strictly so called.

The court of appeals of Virginia, exploded this distinction in regard to executory limitations of *personalty*; 2 *Call* 313. 3 *Call* 50. and the legislature at the late revision, enacted, that thenceforth, an estate of *freehold* or of inheritance, may be made to

commence *in futuro*, by *deed*, in like manner as by *will*. 1 *Rev. Cod.* c. 99. 369, 370. § 28.

8. *Trust estates, liable to the debts of the cestui que trust.*

Trust estates of every kind, are subject to the debts of the *cestuis que trust*, as if they owned the like interest in the *thing*, which they own in the use or *trust*. *Ibid.* § 30. *(adopted from* 29 *Car.* ii. c. 3. § 10.*)*

9. *Attornment to reversioners or remaindermen, not necessary.*

Grants of rents, or of reversions, or remainders, are good and effectual without attornments of the tenants; but no tenant, who, before notice of the grant, shall have paid the rent to the grantor, shall be damaged thereby. *Ibid.* § 32. *(adopted from* 4 *Ann.* c. 16. § 9. 10.*)*

10. *Attornment to strangers, void &c.*

The attornment of a tenant to any stranger, shall be void, unless it be with consent of such tenant's landlord, or pursuant to, or in consequence of, the judgment of a court of law, or the order or decree of a court of equity. *Ibid.* § 34. *(adopted from* 11 *Geo.* ii. c. 19. § 11.*)*

11. *Words of inheritance not necessary, where intent appears &c.*

By an act of 1785 (which took effect on the 1st of *Jan.* 1787,) every estate in lands, thereafter granted, conveyed or devised to one, although words deemed necessary at common law to pass an estate of inheritance be not added, shall be deemed a fee simple, if a less estate be not limited by express words, or do not appear to have been given by construction or operation of law. *Ibid.* 369. § 27.

12. *Gift of slaves to be proved and recorded, except &c.*

*Gifts* of *slaves* are invalid, unless made by will duly proved and recorded, or by deed in writing, proved by two witnesses at least, or acknowledged by the donor, and recorded according to law: but the provision extends only to cases in which possession remains with the donor, and not to gifts of slaves whereof actual possession has been at any time given to the donee, and remained with him or some person claiming under him. *Ibid.* c. 111. § 51.

IV. *Registry of deeds.*

1. *All deeds* (except *gifts* of slaves not accompanied with possession in the donee, just above mentioned,) are by the law of Virginia, good and effectual, *as between the parties*, except married women, whether or not attested by subscribing witnesses, or proved and registered: *(recorded* in the language of the Virginia law.*)*

But no estate of inheritance, or freehold, or for a term of more than five years in *lands* or tenements, shall be conveyed from one to another, unless the conveyance be declared by *writing, sealed and delivered*:

And all such conveyances; all covenants and agreements, in consideration of marriage, touching either real or personal estate; all deeds of bargain and sale or other conveyances whatsoever, of lands, tenements, and hereditaments, whether passing a freehold or inheritance, or term of years, and deeds of settlement upon marriage whether of real or personal estate, wherein property shall be settled, or covenanted to be left or paid at the death of the party or otherwise; and all deeds of trust and mortgages whatsoever; shall be *void* as against purchasers *for valuable consideration, without notice*, and *all* creditors; *unless proved* by *three* witnesses at least, or acknowledged by the parties sealing and delivering the same, and *lodged* with the *clerk* of the proper court to be recorded, in the manner hereafter explained. 1 *Rev. Cod. (Conveyances,)* c. 99. § 1. 2. 4.

And when conveyances on which the law requires livery of seisin, *(feoffments,)* are proved or acknowledged in order to be recorded, the livery of seisin shall in like manner be proved, or acknowledged, and recorded with the deed on which it shall be made. *Ibid.* § 3.

2. *Place of registry &c.*

Deeds of real estate must be *recorded* in the county or corporation *court*, of the county or corporation, (they may not be recorded in a circuit court) in which the estate or some part thereof lies.

Deeds respecting the title of *personal* chattels, *which by law ought to be recorded*, must be recorded in the county or corporation court, of the county or corporation in which such property shall remain; and if the party claiming title under such deed, permit the chattels or any part of them to be removed to another county or corporation, and do not within *twelve* months after such removal, cause the deed to be certified to the court of such other county or corporation, and lodged with the clerk thereof to be recorded, such deed for such time as it shall not be so recorded anew, and for so much of the property as shall be so removed, will be void as to purchasers for valuable consideration without notice, and as to all creditors. *Ibid.* § 1, 2, 3, 4, 6, 11, 17.

Absolute sales or gifts of chattels, accompanied with possession, in the vendee or donee, need not be recorded; *they* stand on the common law.

3. *Effect of registry as notice &c.*

The due registry of deeds is thus made *legal* notice to subsequent purchasers, whether they have notice in fact or not.

As to notice in *fact*, actual or constructive, the doctrines of the court of chancery in England, are understood to prevail in Virginia.

And it is provided by the statute, that title bonds, or other written contracts relating to *lands*, may be proved or acknowledged and recorded like conveyances of land; which shall be legal notice to subsequent purchasers, of the existence of such bond or contract. *Ibid.* § 13.

4. *Manner of proof.*

Deeds may be proved by the witnesses, or acknowledged by the parties, before the county or corporation *court*, of the county or corporation in which the property *lies*, in open court; *or*, before the respective *clerks* of the several county and corporation courts, or their deputies in the clerks offices; or, they may be acknowledged (though they may not be *proved by witnesses*) before any *two justices of the peace* for any county or corporation, within the *United States*, or any territory thereof, or the district of Columbia, and by them certified under seal, to the clerk of the proper court, in the form, or *to the effect* of the form, prescribed by the statute. (1)

(1) The statutory form of the certificate is, this:

"—— *county* [or corporation,] *sct. We A. B. and C. D. justices of the peace in the county* [or corporation] *aforesaid, in the state* [territory or district] *of* —— *do hereby certify, that E. F. a party* [or E. F. and G. H. parties] *to a certain deed bearing date the* —— *day of* —— *and hereto annexed, personally appeared before us, in our county* [or corporation] *aforesaid, and acknowledged the same to be his* [or their] *act and deed, and desired us to certify the said acknowledgment to the clerk of the county* [or corporation] *court of* —— *in order that the said deed may be recorded. Given under our hands and seals, this* —— *day of* ——

*A. B. (seal.)*
*C. D. (seal.)*

Or if the *party* who shall sign and seal the deed, *reside* not in the U. States or in any territory thereof, the acknowledgment of such party, or the proof by the number of witnesses requisite, of the sealing and delivery of the writing, before any *court of law*, or the *mayor* or other chief magistrate of any city, town or corporation, of the country in which the party shall dwell, certified by such court, mayor, or chief magistrate, in the manner such acts are usually authenticated by them, shall be effectual for the admission thereof to record. *Ibid.* § 5, 6, 7.

When the party interested in the due registry, has in this manner procured his deed to be proved or acknowledged, he has only to lodge it with the clerk to be by him recorded; he has then done all that the law requires of him to give him the benefit of a due registry; it is the clerk's duty to record it; after being recorded, the grantee is entitled to the original.

If the deed convey different parcels of property, in different counties or corporations, it must be recorded in the county or corporation courts of each; to which end, it is certified from the clerk of one, to the clerk of the other, or by the justices in the first instance, to the clerks of all.

5. *Time of registry, and time from which the registry operates.*

1. All deeds of *trust* and *mortgages*, whensoever they may be proved, acknowledged, or certified, and delivered to the clerk of the proper court to be recorded, take effect and are valid as to all subsequent *purchasers* for valuable consideration, without notice, from the time when they shall be so proved, acknowledged or certified, *and* delivered to the clerk of the proper court to be recorded, and from that time only.

2. And as to all *other* conveyances, covenants, agreements and deeds whatsoever, if they be proved, acknowledged or certified, and delivered to the clerk of the proper court to be recorded, within *eight months* after the sealing and delivery thereof, they take effect and are valid, as to all persons, from the time of sealing and *delivery*; if not within eight months, then from the time when acknowledged, proved or certified, and delivered to the clerk of the proper court to be recorded, and from that time only.

If two or more deeds embracing the same property, be delivered to the clerk to be recorded on the same day, that which was first executed has the preference. *Ibid.* § 12.

6. *Conveyances by femes covert.*

When *husband and wife* have executed any deed, conveying any estate or interest, if she appear *in court*, and being examined privily and apart from her husband by *one* of the judges thereof, shall declare to him, that she freely and willingly sealed and delivered the said writing, to be then shown and explained to her, and wishes not to retract it, and shall before such court acknowledge the said writing, so again shown to her, to be her act and deed; such privy examination, acknowledgment and declaration, shall be entered of record in such court.

*Or*, if before any *two justices of the peace*, for any county or corporation in any state, or territory of the *U. States*, or for the district of Columbia, such named woman being examined privily and apart from her husband, and having the instrument fully explained to her, shall acknowledge the same to be her act and deed, and shall declare that she willingly signed, sealed and delivered the same, and that she wishes not to

retract it; and such privy examination, acknowledgment and declaration, shall be certified by such justices under their hands and seals, by certificate annexed to the said writing, in the form, or to the effect of the form, prescribed by the statute; (1) and such certificate shall be offered for record to the clerk of the court in which it ought to be recorded; it shall be the duty of the clerk to record the certificate along with the deed to which it is annexed.

And when such privy examination, acknowledgment and declaration, of a married woman, shall have been so taken in court and entered of record, or so certified by two magistrates and delivered to the clerk to be recorded; and the deed also shall have been duly acknowledged or proved as to the husband and delivered to the clerk to be recorded as to him; such deed shall be as effectual in law, to pass all the right, title and interest of the wife, as if she had been an unmarried woman: *saving*, that no covenant or warranty in the deed, shall bind the wife or her heirs, further than to convey effectually from her and her heirs, her dower or other interest in real estate which she may have, at the date of the deed.

If the wife be not in the U. States, or in the territories thereof, or in the district of Columbia, a *commission* (it is exactly the English *dedimus potestatem*) shall be issued by the *clerk* of the court in which the deed ought to be recorded, and directed to any *two* judges or justices of any court of law, or to the *mayor* or other chief magistrate of any city, town or corporation of the *country* in which the wife shall be; and in the execution of such commission, the person or persons to whom it is directed, shall take and certify the privy examination, acknowledgment and declaration of the wife, in the same manner as justices of the peace in the U. States; and such certificate, certified in the form and with the solemnity usual in other acts, and delivered together with the commission to the clerk of the proper court to be recorded, shall with the commission be recorded by him together with the deed to which they are annexed; and shall be as effectual in law as a certificate, in like case, by two justices of the peace within the U. States. *Ibid.* § 15, 16.

It is obvious that the recording of the privy examination, acknowledgment and declaration of the wife, (or which is equivalent, lodging them with the clerk to be recorded) is essential to make the deed binding on her.

Such is the present state of the law of registry in Virginia; but very many of the provisions above mentioned, especially those that relate to the place and manner of proving and registering deeds, are either of recent origin, or recently modified into the present form.

(1) The statutory form of the certificate is this:

"——— *county* [or corporation] *sct. We A. B. and C D. justices of the peace in the county* (or corporation) *aforesaid, in the state* (territory or district) *of* ——— *do hereby certify that E H wife of G. H. parties to a certain deed, bearing date on the* ——*day of*——*and hereunto annexed, personally appeared before us, in the county* (or corporation) *aforesaid; and being examined by us privily and apart from her husband, and having the deed aforesaid fully explained to her, she the said E. H. acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same, and that she wished not to retract it. Given under our hands and seals this*———*day of* ——

*A B.* (SEAL)
*C. D.* (SEAL)"

V. *Miscellaneous provisions.*

1. It has been very lately held by the court of appeals, that an *office copy* of a deed duly recorded, is primary evidence, as good as the original: there had been great diversity of opinion and of practice in this particular.

2. By express provision of the statute, every *partition* of land, every *assignment* of dower of land, under any order or decree of court, and every *judgment* or *decree*, by which land shall be recovered, shall be duly recorded in the county or corporation court, of the county or corporation in which the land or part thereof shall lie; and *until so recorded*, such partition, assignment, judgment, or decree, shall not be received in *evidence* in support of any right claimed by virtue thereof. *Ibid.* § 14.

3. The certificate of the due proof or acknowledgment, and recording of deeds, by the clerks charged with the duty of recording them, is the simplest imaginable: he states *on* the deed, the fact of proof or acknowledgment in open court, or before him in his office, or he refers to the certificate of proof or acknowledgment, by magistrates, annexed to the instrument; and certifies, that it is accordingly duly recorded.

He records the probate as well as the instrument; and if a copy be called for, he gives a copy of the whole deed and probate, and certifies it "a true copy."

If the paper is to be used out of the state, he authenticates it with the seal of his court.

4. In all cases, where Quakers or others, who have religious scruples against taking an oath, are witnesses, their solemn affirmation is taken instead of an oath. No particular form is prescribed by law. They only say they "solemnly affirm," instead of *swearing;* and the words, "so help me God," at the end, are omitted: in every other respect, the form of affirmation is the same with that of an oath.

5. There is no mode prescribed for taking the *depositions* (in the common acceptation of the word) of witnesses in a different state or foreign country, nor of adducing secondary evidence, when the witnesses are dead or absent, *for the purpose of recording the deed:* all the various modes of proof for that purpose, have been already mentioned.

If a deed is to be used as evidence *in a pending suit*, and has never been recorded, and the subscribing witness or witnesses reside out of the commonwealth, a commission may be obtained to take their depositions, on this, as on other matters in controversy; and secondary evidence is admissible in such cases, under the like circumstances which would make it admissible in other cases.

The due and full proof of a deed, upon which the law authorises the *recording* of it, and on which it is in fact registered, dispenses with the production of the subscribing witnesses at any trial in which it is offered in evidence.

In all trials, where the parties to the deed only are concerned, proof of execution by a single witness is sufficient, as at common law: so too, as against subsequent purchasers *not* for valuable consideration, or *with* notice in fact: but as against purchasers *for* valuable consideration and *without* notice, and *all* creditors, nothing but a due *registration* will give the deed effect.

6. The peculiar provision touching mortgages and deeds of trust, that they shall take effect from the time they are delivered to the clerk

to be recorded "*as to all persons*," is understood to give priority to a *subsequent* deed of trust or mortgage duly recorded, over a prior one not duly recorded, *though the second mortgagee or cestui que trust, have notice in fact, of the first.*

It was not so formerly: the provision was introduced into the code at the late revision, and took effect on the 1st *Jan.* 1820.

Nor is the law so *now*, in respect to any other deeds.

7. When the acknowledgment of a deed to be recorded in Virginia, is taken before two justices of any of the *United States* (other than justices of Virginia,) the character of the justices must be verified *in the manner usual in the state, or territory, where the act is done.*

It is usual, that the character of the magistrates, should be certified by a notary publick under his notarial seal, or by the clerk of the court to which the magistrates belong, under his official seal; sometimes, a certificate of the chief justice of the land under his seal, accrediting the notary or the clerk, is added; sometimes the certificate of the secretary of state, under his official seal; and sometimes, even the certificate of the governor under the great seal.

So, when the acknowledgment or proof of the deed is made in a *foreign* country, the character of the officers who take such proof or acknowledgment must be verified in the manner usual there; to which the certificate of the American consul (if there be one there) under the consular seal, accrediting all the foreign officers, is *invariably* added.

As for example: if the proof be before the lord mayor of London, he certifies the fact under his official seal; a notary publick certifies, that he is lord mayor, and that full faith and credit are due to his official acts, under his notarial seal; and the American consul certifies under his consular seal, the official character both of the mayor and notary, and that full faith and credit are due to their official acts.

8. As to the authentication of *foreign instruments* to be used in Virginia, there are two sets of provisions in force, though not co-extensive—state and federal. *Const. U S. art.* 4. § 1. *Laws U. S.* 1 *Cong.* 2 *Sep. c.* 11. 8 *Cong.* 1 *Sep. c.* 56. 1 *Rev. Cod. of Va. c.* 100.

The laws of the *U. States* prescribe the method of authenticating *publick acts, records* and *judicial proceedings*, and of exemplifications, from the office books of the courts of justice, and publick offices, of each *state* and territory of the union; and the effect of such authentications and exemplifications in every other state and territory; and in the cases to which they apply, it is sufficient in Virginia, if the federal laws be complied with.

The statute of *Virginia* is in some respects more extensive: it applies not only to documents from other states of the union, but from all foreign nations.

It provides, that deeds acknowledged by the party making the same, or proved by the requisite number of witnesses, before any court of law, or the mayor or other chief magistrate of any city, town or corporation, of the *country* in which the party shall dwell, and certified by such court, mayor or chief magistrate, in the manner such acts are usually authenticated by them; and all *policies* of assurance, *charter parties, powers of attorney, foreign judgments, specialties on record, registers of births and marriages*, as have been or shall be made &c. in due form, according

to the laws of such state, kingdom &c. and attested by a *notary publick* with a testimonial from the proper officer of the city, county, corporation or borough, where such notary shall reside; or the great seal of such state, kingdom &c. shall be *evidence* in all the courts of record in Virginia, as if the same had been proved in those courts: *saving*, that these provisions shall not be construed in any manner, to alter the method of taking and certifying the privy examination of any *feme covert*, or in any other respect to alter or repeal the laws re-regulating *conveyances*.

9. The statute *against conveying or taking pretensed titles*, (32 *Hen.* viii. *c.* 9. § 2, 3.) was always in force in Virginia, and is now part of her own code. 1 *Rev. Cod. c.* 102.

It prohibits the conveying or taking, or bargaining to convey or take, any pretensed title to any lands or tenements, *unless* the vendor or those under whom he claims, shall have been in possession of the same, or of the reversion or remainder thereof, one whole year next before, on pain of forfeiting the whole value, one moiety to the commonwealth, and the other to the *qui tam* relator; but any person in lawful possession, may buy a pretensed title, so far, and so far only, as it may confirm his former estate.

10. With respect to the statutes *for preventing frauds and perjuries*, it is sufficient to say here, (1) that the statutes of 13 *Eliz. c.* 5. § 2, 3, 6—27 *Eliz. c.* 4. § 2, 3, 4, 6.—29 *Car.* ii. *c.* 3. § 1, 2, 4. are part of the statutory code of Virginia; 1 *Rev. Cod. c.* 101. and that all the doctrines of the courts of law and equity in England, touching the construction and application of those statutes (though amounting in some instances, almost to the abrogation of the statute of *Car.* ii.) are recognized by the courts of justice.

(1) See miscellaneous head, No. XI.

## No. III. JUDGMENT, (EXECUTION) &c.

38. Do judgments bind real property, and may it be sold on execution in your state?

*A.* In Virginia, judgments bind a *moiety* of the real estate of the debtor; but in general such estate cannot be sold on execution. Our law on this subject resembles that of England.

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* The lien operates against the alienation of the *debtor*, from the *date* of the judgment, (or decree in equity) that is, from the day when it is rendered or made final: but the creditor, to preserve his *lien* on the lands of the debtor against *bona fide* purchasers, must issue his *elegit* within a year, *or* enter in the record book, that he elects to charge the goods and half the lands; which, for this purpose, is equal to issuing the *elegit*: if he do neither within the year, he may, on motion, be allowed to enter such election *nunc pro tunc*, as against the *debtor*, but not against an intervening purchaser.

If, after the expiration of the year, he sue out a *scire facias*, whereupon the judgment be revived, the lien is thereby revived also; but to operate prospectively, and not to have a retrospective effect, so as to avoid mesne alienations. (2 *Call.* 186, 187.)

It is also provided (*act Feb. 25th*, 1819,) "that every sale, conveyance and transfer of any lands or tenements, made by any person charged in execution for any debt or damages, shall be absolutely null and void,

as to the creditor or creditors at whose suit he is so charged in execution; *unless* such sale, transfer or conveyance, be absolute and *bona fide*, and be made for the payment of the debt and damages due to such creditor or creditors, and the proceeds of such sale, conveyance or transfer, be paid, or be secured to be paid within a reasonable time, to such creditor or creditors: and that all executions of *capias ad satisfaciendum* levied after the commencement of that act, (*Jan.* 1. 1820,) shall bind the real estate of the defendant from the time when they shall be levied."

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* The order of priority among judgment creditors, as to lands, is determined by the priority of *judgment. (See Gilb. on execut.* 55,56.)

36. Does a judgment bind, after acquired land?

*A.* A judgment does not bind *after acquired* land.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* In respect of chattels, as between creditors, the property of the goods is bound generally, from the time of *delivery* of the execution to the sheriff or other officer; and if two or more writs of execution be delivered against the same person in the same day, that first delivered is to be first satisfied. 1. *Rev. cod.* 529.

By a late law, the *capias ad satisfaciendum* binds the property of the goods of the debtor, from the time of *levying* such writ.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* Yes; provided such alienation be not fraudulent.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* Before the *act of* 1772, *c.* 5, (authorizing the issuing of *any* writ of execution from the court of one county, into any other county,) the judgment of a county court could only bind the lands in the *same* county.

In 2. *Call.* 186 it is said, that "that act is *supposed* at present, though *not decided*, to extend the lien to all the lands in the country;" but in my opinion, this position is very questionable in relation to the rights of *bona fide* purchasers of lands, or creditors obtaining judgments, in other counties.

It appears to me, that a judgment in an inferiour court, cannot give a lien on lands without its jurisdiction, as against alienation of the debtor, or against a subsequent judgment creditor, in a different court, and lands within a different jurisdiction.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* A judgment obtained in the *general court*, will certainly bind the lands of the defendant in every county, against other creditors obtaining subsequent judgments.

41. Can execution be taken out at once, in every county, &c.?

*A.* Execution cannot be taken out *at once*, in every county; but it may issue from one county to another: for it is provided that, "where judgment shall be obtained in *any court* of record within this commonwealth, for any debt or damages, and the person against whom such judgment shall be obtained, shall remove himself or his effects, or shall reside out of the limits of the jurisdiction of such court, it shall be lawful for the clerk of the court where judgment was given, at the request of the

party for whom the same was rendered, to issue a writ of *fieri facias* or *capias ad satisfaciendum, or any other legal or proper writ of execution*, or attachment for the non-performance of a decree in chancery, (as the case may require,) in the form and under the *teste* herein before prescribed, and to direct the same to the sheriff of any county, or serjeant of any corporation within this commonwealth, where the defendant or debtor, or his *goods* shall be found; which said sheriff or other officer, to whom the same shall be directed, is hereby empowered and required to serve and execute the same, and shall make return thereof to the court where the judgment was given." 1 *Rev. Cod.* 529. *See answer to No.* 39.

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* A writ of *elegit* may issue immediately after judgment, but in general, no writ can issue to *sell* the *real* estate of the debtor; *except*, in cases of receivers of publick money indebted to the commonwealth, or debtors and their sureties in recognizances, binding the lands as well as the goods and chattels of the recognizors.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* In the last mentioned cases, the land sold is conveyed to the purchaser, at his costs, by the sheriff or other officer, by deed in writing sealed and recorded as the laws direct for *other* conveyances of land; which deed must recite the execution, purchase and consideration, and is effectual for passing all the estate and interest which the debtor or commonwealth had, and might lawfully part with, in the land.

No previous confirmation of the sale by the court, is necessary to give validity to the deed. If there be fraud, or irregularity, there is no *summary* remedy.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* In such cases, the land must be valued by sworn valuers, and if, in their opinion, or in the opinion of such other person as may be by law directed, the estate cannot be sold for three fourths of its value, the sale is to be upon three months credit; the sheriff or other officer taking bond of the purchaser with sufficient surety or sureties for the payment, to the chief magistrate of this commonwealth for the time being.

No sale of lands under an execution on behalf of the commonwealth to take place, but in the presence of at least two of the six valuers directed to be appointed, by each county or corporation court.

Where it appears by their opinion, that three fourths of its value can be obtained for the land, the sale is to be for ready money.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* The writ of *levari facias* is obsolete in Virginia; but the *extent* upon a recognizance, or upon a judgment against an heir upon the bond of his ancestor, is yet in full force. (*See* 3. *Tuck. Bl.* 421.)

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment,

and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A.* No such laws are in force in Virginia; *except*, that a *forthcoming bond* may be given for delivery of the property taken in execution, at the day and place of sale; whereupon the sheriff is to return the property to the defendant.

When such bond is given, the creditors' lien upon the property of the debtor by virtue of the writ of fieri facias, is not thereby released, but continues until such bond is forfeited. *See* 3. *Munf.* 417.

Judgments on forfeited forthcoming bonds are to be obtained, by motion to the court in a summary way, on ten days previous notice, until the 1st day of April 1822; after which day, the *clerk* of the court where any such bond shall be lodged, is to award execution thereupon, when requested by the plaintiff or his attorney.

No arbitrary appeal, or appeal as of right, is allowed to be taken from a judgment on a forthcoming bond; but a writ of error or supersedeas may be obtained for good cause shown.

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* Good security is required to be taken in the forthcoming bond; and, for the purpose of exonerating himself, the *surety* has the right to deliver the property at the day appointed for the sale, if he can on that day, peaceably obtain possession thereof. (3. *Munf.* 417.)

48. May the debtor redeem land sold on execution, &c.?

*A.* In the cases where lands are lawfully sold by *execution*, the debtor cannot redeem.

49. May judgments on warrant of attorney, be entered in vacation?

*A.* In general, the defendant to any action (in the courts of Virginia) cannot confess a judgment in vacation, so as to be obligatory upon him, and final; but by act (*Feb. 25th*, 1819) it is provided, that any person (1) in any civil action, on any original or mesne process, and desirous of availing himself of the privileges given to insolvent debtors, may confess a judgment in the clerk's office at any time during vacation, for the whole amount of the plaintiff's demand in his writ or declaration set forth, and costs, or such part thereof as the plaintiff may be willing to accept a judgment for.

Such judgment, to be entered of record by the clerk, and be final, and have the same validity as if entered in open court; and the defendant may thereupon discharge himself from confinement in the same manner, as if the judgment had been rendered in court.

50. Can judgments be entered on warrant of atty. before the debt is payable?

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* All powers of attorney for confessing or suffering judgment to pass by default, or otherwise, and all general releases of error, made or to be made, by any person or persons whatsoever within the commonwealth, *before action brought*, are declared absolutely null and void, by act of assembly. 1. *Rev. Cod.* 512.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* A purchaser under a judgment and execution, shall not have his title impeached, upon the judgments'

(1) "*in custody*"—probably. Ed.

being afterwards reversed; but the injured party shall be restored to the money arising from the sale. (1. *Wash.* 313.)

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* The judgment creditor, may immediately take out a *ca. sa.* if he thinks proper.

Bail to the action (with us called special bail,) are exonerated by surrender of the principal.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* The *ca. sa.* against the body of a debtor, may be issued on *any* judgment in a suit in court.

Upon a judgment for a small debt not exceeding *twenty* dollars, rendered by a justice of the peace, *he* cannot issue a *ca. sa.* but if the constable find no effects to satisfy the *fi. fa.* he may return it to the clerk's office, from which a *ca. sa.* may then be obtained.

A *feme covert*, cannot be imprisoned upon a *ca. sa.* but if judgment be obtained against the husband in the wife's lifetime for *her* debt, a *ca. sa.* may be served on *him*.

There is no other exemption, except in favour of witnesses, and some other privileged persons.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* Where judgment is obtained in the court of the county in which the defendant resides, a *ca. sa.* cannot be served upon him in another county, whither he has gone at the time such *ca. sa.* is levied; it not being proved that he has removed his property, or the bulk of it, out of his own county. (2. *Wash.* 72.)

If the debtor be able to pay his own prison fees, the jailor cannot demand them of the creditor. (1. *Call.* 540.)

It is a general principle, running through our code of laws, that an imprisoned debtor shall himself bear the charges of his maintenance.

To this principle there are exceptions: but it is incumbent on a party claiming an exemption from the general principle, to be able to sustain it by a fair construction of the laws. *per Judge Roane. Ibid.*

But where an *insolvent* prisoner is not able to pay his ordinary prison fees, the creditor *is bound to pay them*, until he agree to release him; and if the creditor, upon notice given him or his attorney, refuse to give security to the sheriff or jailor, for the payment of such fees, or shall fail to pay the same when demanded, the debtor shall be discharged out of prison. 1 *Rev. Cod.* 540.

Where the creditor pays the prison fees, he may afterwards have his action to recover them of the prisoner, and notwithstanding his consent to release him from jail, he may at any time afterwards, sue out a *scire facias* to have a new execution against his *lands and tenements, goods and chattels. Ibid.* 541.

Where a *ca. sa.* is served, the debtor may tender to the officer, slaves or other personal property to the value of the debt and costs; which property the officer is bound to receive and sell as upon a writ of *fi. fa.* and thereupon to discharge him from custody: but if the property tendered, is not sufficient to satisfy the debt and costs, or be under any lien or incumbrance, so as that the whole cannot be sold, a new *ca. sa.* or *fi. fa.* at the plaintiff's option, may issue; but, thereupon, if a second *ca. sa.* be served, the debtor is not at liberty again to tender slaves or personal estate. *Ibid.* 534.

Any person taken or charged in execution, may enter into bond with good and sufficient securities, conditioned that he will not depart from

the rules or prison bounds, and will render his body to prison, in satisfaction of the execution, at or before the expiration of one year from the date of such bond; after which, he must return into close custody, or be treated as in case of escape, and, when again in close custody, must so remain, until he pays the debt or takes the oath of insolvency. *Ibid* 535.

A debtor within the prison bounds, is still a true prisoner in the eye of the law, and, as such should be transferred by the sheriff to his successor in office. (1 *Munf.* 76.)

The creditor of an *insolvent* prisoner, who has the liberty of the bounds, cannot detain him within the bounds, without giving security for the prison fees; but the sheriff cannot legally discharge him unless he be actually insolvent, and being so, the creditor (having notice thereof,, refuse to pay his fees, or to give bond for the payment thereof. *Ibid.*

If the prisoner departs from the rules, by an illegal discharge from the sheriff, the creditor, having the assignment of the prison bounds bond, has his election to bring suit upon it, or to sue the sheriff. *Ibid.*

In an action on such bond, the plaintiff is only required to show a departure from the bounds, the burden of proof then devolves on the defendant, to show that the prisoner was discharged by *due course of law. Ibid.*

If any person, being in prison charged in execution, happen to die in execution, the creditor may sue out new execution against his *lands and tenements*, goods and chattels, or any of them; but not against such lands as, at any time after the judgment, have been by him *bona fide* sold for the payment of any of his creditors at whose suit he was in execution; the purchase money being paid, or secured to be paid, to any such creditors, with their privity, in discharge of his debts, or some part thereof. 1. *Rev. Cod.* 528.

The form of the *ca. sa.* and of the returns which may be made upon it, as well as of the *elegit* and *fi. fa.* are regulated by act of assembly.

56. Are any kinds of personal estate exempt from execution?

*A.* All arms, ammunition and equipments of the militia are exempted from executions and distresses, at all times. 1. *Rev. Cod.* 530.

No slave or slaves to be taken in execution, where the debt and costs amount to less than *thirty three* dollars or two thousand pounds of tobacco; *provided* there be shown to the officer, by the defendant or any other person, sufficient other goods or chattels of such defendant. *Ibid.* 532.

There does not appear to be any other exemption of any description of personal property from sale on a *fi. fa*; but when an insolvent debtor is discharged from custody on giving in a schedule of his property, his necessary apparel and utensils of trade are saved to him. *Ibid.* 538.

### No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?

*A.* There is a standing *insolvent* law in Virginia, under which debtors may be released from imprisonment, on surrender of their property; and this law extends to *all* debtors in execution.

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?

*A.* No particular length of time is-

required to effect the discharge; but *reasonable* notice must be given to the party or parties, his or their executors, administrators or agents, at whose suit the prisoner is in execution.

The claim of the debtor for a discharge is to be determined by the court, if in session, or by any two justices of the county or corporation, if the court be not in session.

The mode of proceeding is particularly prescribed in the act of assembly. 1. *Rev. Cod.* 536—541.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

*A.* The debtor must be actually in jail, or within the prison bounds, when his petition is made, and while it is pending. *See answer to No.* 49.

60. Is there any thing peculiar in your insolvent law?

*A.* I am not sufficiently acquainted with the laws of *other* states, to know whether there is any thing *peculiar* in the insolvent law of this state.

The debtor gives up all his estate real and personal, (except his necessary apparel and utensils of trade,) in possession, reversion or remainder, including money, goods, stock, debts due him, securities, contracts, and trusts for his benefit, all which he transfers and conveys (after delivering in a schedule thereof on oath,) to the sheriff of the county where they lie or shall be found: all the estate contained in such schedule, together with any other estate which may be discovered to belong to the prisoner, for such interest therein as such prisoner hath and may lawfully part with, is thereby vested in such sheriff, who, within sixty days after the taking the said oath, ten days previous notice of the time and place of sale being given, is to sell the same for the best price that can be got, for the purpose of satisfying the creditors at whose suit he was imprisoned.

Where the schedule contains debts or property of the prisoner, in the hands of other persons, the law points out particularly the mode of proceeding against the garnishees, that is, the persons owing those debts, &c.

After the debtor is discharged, any creditor by judgment at any time afterwards, may sue out a writ of *scire facias*, to have execution against any *lands* or *tenements*, goods or chattels, which such insolvent person shall thereafter acquire or be possessed of: but no person delivering in such schedule, and having taken the said oath, shall again be *imprisoned* on account of any judgment which shall have been obtained against him previous to the time of taking such oath; unless by virtue of a *capias ad satisfaciendum* directed to issue by the court in which the said judgment shall have been rendered: and it shall moreover be lawful for the court, from which any execution shall issue, under which such oath of insolvency shall be taken by any debtor, on motion upon ten days previous notice, to award execution against the *goods and chattels* by him or her acquired after taking such oath.

Where the real estate contained in the schedule of the insolvent debtor, does not lie within the state, the conveyance thereof shall be made to the sheriff of the county within which he is imprisoned, who shall dispose of the same as is directed by law in relation to real estate lying in the said county. *Acts of* 1820, 34. *ch.* 34. § 3.

No. v. WILLS, &c.

61. Are lands and freehold inter-

ests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?

62. What formalities of execution, are essential to a will of lands &c?

63. What formalities are required, in the revocation of wills of land?

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

67. In what office is the will and inventory registered: are office copies evidence?

68. What formalities are required, to wills of chattels?

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

70. May executors, or administrators having letters in another state, sue in your state?

71. If not, what is to be done to enable them to sue?

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

73. How are foreign wills and testaments proved in your state, &c?

I. *Persons capable to make wills and testaments, and legal requisites to the due execution thereof.*

1. *Wills of realty.*

All persons *of full age* and *sound mind*, except *married women*, may, at their *will* and *pleasure*, by last will and testament *in writing*, devise all the estate, right, title and interest, in possession, reversion or remainder, which they *have*, or *at the time of death shall have*, in *real* property; so as such last will and testament be *signed* by the testator, or by some other person *in his or her presence, and by his or her direction*; and, moreover, *if not wholly written by the testator, be attested by two or more credible witnesses in his or her presence:* saving to widows of testators, their rights of dower. 1 *Rev. Cod.* c. 104. § 1. 2. *(adopted, with some alteration, from the provisions of* 32 *Hen.* viii. c 1. § 1—34 and 35 *Hen.* viii. *c.* 5. § 4. 14—29 *Car.* ii. *c.* 3. § 5.

*Revocations, general and express; partial and implied.*

No devise so made, or any clause thereof, is *revocable*, but by the testator destroying, cancelling or obliterating it, or causing it to be done in his presence, or by subsequent will, codicil or declaration in writing, made in like manner. Ibid. § 3. *(adopted from Stat.* 29. *Car.* ii. *c.* 3. § 6.)

But every will and testament, made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at his death he leave a child, or his wife enseint of a child which shall be afterwards born, shall have no effect during the life of such after-born child, and shall be void, unless the child die without being married and before full age.

If a testator shall leave children born, and his wife enseint, the posthumous child or children—or if a testator, having a child or children born when his will is executed, shall at his death leave other child or children born after execution of the will, the after-born child or children, if unprovided for by settlement, and neither provided for nor disinherited but only pretermitted by the will,

shall succeed to the same portion of the fathers estate, as if he had died intestate; towards raising which, the devisees and legatees shall contribute proportionably, out of the parts devised and bequeathed to them. *Ibid.*

2. *When devises and legacies shall not lapse.*

And if any estate of any kind be given by last will and testament, to any child or descendant of the testator, and the devisee or legatee die, testate or intestate, in the testator's life time, leaving a child or children or other descendant who shall survive the testator; in such case, the devise or legacy shall not lapse, but shall vest in the child or children, descendant or descendants, of such devisee or legatee, as if such devisee or legatee had survived the testator, and died unmarried and intestate. *Ibid.* § 3. 4. 5.

3. *Testaments or bequests of chattels.*

Testaments, or testamentary dispositions of *chattels*, require not the same solemnities as wills of *real estate*, but stand on the common law, with only the following statutory provisions.

No person under the age of *eighteen*, shall be capable of disposing of chattels by testament.

No *nuncupative* will shall be established, unless it be made during the last sickness of the deceased at his own habitation or where he hath resided ten days next preceding, except where the deceased is taken sick from home, and dies before his return to such habitation; nor, where the value exceeds $30, unless it be proved by two witnesses, that the testator called on some person present, to take notice, or bear testimony, that such is his will, or words of the like import.

After six months from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony, or the substance thereof, shall have been committed to writing within six days after making the will.

No will in *writing*, or any devise therein, of chattels, shall be *revoked* by a subsequent will, codicil or declaration, unless the same be in writing.

But any soldier in actual military service, or any mariner or seamen being at sea, may dispose of chattels, as he might before these statutory provisions. *Ibid.* § 6. 7. 8. 9. 10. *(adopted from stat.* 29 *Car.* ii. § 19. 20. 22. 23, *with some alteration.)*

4. *Peculiarities of Virginia law, touching wills of real estate.*

With respect to wills of *real estate*, it will be observed, that there are one or two provisions peculiar to the law of Virginia, or at least not to be found in the law of England.

1. If the will be *wholly written* by the testator, there need be no attestation of the execution of it: in such case, the will is proved by proving the hand writing of the testator by two or more credible witnesses.

2. The testator may devise, not only the lands which *he hath*, but *such as at the time of his death he shall have:* the effect of which is, not that after-purchased lands shall pass by will, in like manner as after-purchased chattels; the statute only gives the testator *power* to devise after-purchased lands, which he may exercise or not as he pleases, a plain intent to devise them, must appear in the will; it must evidently contemplate the after-purchased lands; they will not pass under a general residuary clause. *Wyth.* 22.—1 *Wash.* 75.—3 *Call.* 289.

5. *Exposition of the statute of wills.*

It is to be observed, as a general principle, that in the construction and exposition of the statutes of Virginia, the courts of justice respect the decisions of the English courts, and the courts of other states in the union, on *their* statutes in *pari materia.*

All the doctrines of the English judges, touching the question what shall be a sufficient signing, the manner and formality of publication and republication, the manner and formality of attestation (where *formal* publication and attestation are necessary, that is, where the will is not wholly written by the testator,) revocations express and implied, and the like, are understood to prevail in Virginia.

II. *Construction and operation of wills.*

The technical rules of the common law for the *construction* of *wills*, are universally respected: and, in general, the common law doctrines concerning the *operation* of *wills* also prevail, but there are several statutory provisions respecting their operation. Some of them, being common both to *deeds* and *wills*, have been already stated under the head of *conveyances.* The following are peculiar to wills.

1. If a bequest be given by a will to an attesting witness, and if the will may not be otherwise proved, the bequest shall be void, and the witness shall be allowed and compellable to appear and give testimony on the residue of the will, as if no such bequest had been made. But if the witness would be entitled to a share of the testators estate, in case the will were not established, so much of his share shall be saved to him, as exceeds not the value of his legacy. 1 *Rev. Cod. c.* 104. § 11. *(adopted from* 25 *Geo.* ii. *c.* 6.*)*

2. The sale and conveyance of lands devised to be sold, shall be made by the executors or such of them as undertake the execution of the will, or by the administrator with the will annexed, if no other person be appointed by the will for the purpose, or if the person so appointed refuse to perform the trust, or die before he shall have completed it. *Ibid.* § 52. *(adopted with much alteration from* 21 *Hen.* viii. *c.* 4. § 1. *vid. Harg. Co. Litt.* 113. *a. n.* 2—236. *b. n.* 1.*)*

3. The statute of 3 *Will. and Mar. c.* 4. (perpetuated 6 *Will.* iii. *c.* 14.) *for the relief of creditors against fraudulent devises,* has been adopted into the code of Virginia. 1 *Rev. Cod. c.* 105.

III. *Courts of probat &c.*

The several county, corporation, and circuit *courts*, have cognizance to hear and determine all testamentary causes arising *within* their respective jurisdictions, and to examine and take proof of wills, and grant certificates thereof.

If the testator had a mansion house or known place of residence, the courts of the county or corporation in which such house or residence is; if no such house or residence and lands be devised, then the courts of the county or corporation where the lands lie, or of any one of them where the lands lie in several counties; if no such house or residence, and no lands be devised, then the courts of the county or corporation where the testator died, or that wherein his estate or the greater thereof shall be; have cognizance of the probate of the will: or, a will may, in any case, be proved in the *general court. Ibid.* § 12.

*Appeals* lie, in testamentary causes, from the county and corporation courts to the circuit courts; and

from the circuit courts and the general court, to the court of appeals.

*Probat of nuncupative wills.*

No nuncupative will shall be proved within fourteen days after the death of the testator, nor until the widow, if any, of the testator, and next of kin shall have been summoned to contest the same, if they please. *Ibid.* § 18. *(adopted from 29 Car. ii. c.* 3. § 21.

*Manner of compelling production of wills.*

If the general court, or the circuit, county or corporation court, having jurisdiction as above explained, be informed, that any person hath a testator's will in his possession; such court may summon and compel him to produce it. *Ibid.* § 19.

*Manner of taking attestation of absent witnesses.*

When any will is produced before any of the courts for probat, and an attesting witness reside out of the commonwealth, the court may issue a *commission*, annexed to the will, and directed to the *presiding judge* of any court of law, or to any *notary public, mayor* or other chief magistrate, of any city, town, corporation or county, where the witness may be found, authorizing him to take and certify the attestation: and if the officer so authorized, certify, that the witness appeared before him, and made oath or solemn affirmation, that the testator signed and published the writing annexed to the commission as his last will and testament, or that some other person signed it by his direction, and that he was of disposing mind and memory, and that the witness subscribed his name thereto in the testators presence and at his request; such oath or affirmation shall be respected as if made in open court. *Ibid.* § 15.

*Authenticated foreign wills.*

Authenticated *copies* of wills, proved according to the laws of any of the U. states, or of any foreign country, relative to any estate in Virginia, may be offered for probat in the *general* court, or if the estate lie *altogether in any one* county or corporation, in the circuit, county or corporation *court*, of *such* county or corporation. *Ibid.* § 16.

*Mode of contesting validity of wills after probat.*

When wills shall be exhibited to be proved before the court of probat, the court may take probat immediately, and grant a certificate thereof: But if any person interested, shall, *within seven years*, exhibit his bill in chancery contesting the will, the court shall direct an issue of *devisavit vel non*, to try the validity of the will by a jury; but if no party appear to contest the will within that time, the probat shall be for ever binding; saving to *infants, femes covert*, persons *absent from the state*, or *non compos mentis*, the like period after the removal of their several disabilities. *Ibid.* § 13.

The verdict on the issue of *devisavit vel non*, is final between the parties; saving to the court, the power of granting new trials for good cause, as in other cases. *Ibid.*

These issues may be sued at the bar of the court of chancery which orders them: but they are usually ordered to be sued at the bar of some convenient court of law; in which case, the court of law certifies the verdict to the court of chancery, and also whether it is satisfied with the verdict or not, as agreeable or contrary to evidence, and all such directions and instructions given to the jury at the trial, and rejections or admissions of testimony, as the

parties choose to spread on the record by bills of exceptions.

If the court of law have been dissatisfied with the verdict; or if the court of chancery think, that any error in point of law occurred at the trial; the court of chancery orders a new trial of the issue; otherwise, decrees for or against the will, according to the verdict.

In all trials of issues of *devisavit vel non*; the certificate of the oath of the witnesses at the time of probat, is admissible evidence.

*Preservation of wills after probat.*

No will is of any force whatever, to pass *any* estate or right in Virginia, until it has been *proved* before some proper court of probat in the state.

Wills are recorded in the court where they are proved; and the originals remain in the clerk's offices respectively, *except* when removed for inspection, by *certiorari* or otherwise, (in cases of appeal from the judgment of probat or in trials of issues of *devisavit vel non,)* and when the end is answered, they are returned to the proper clerk's office.

*Copies primary evidence.*

In all trials of title claimed under a will, an *office copy* is consequently primary evidence; for the original cannot be had.

IV. *Qualification of ex'rs.*

Before any *executor* named in a will, can obtain certificate of the probat, in other words, in order to the due qualification of an ex'r to his trust; he is required to take an oath before the court of probat, that the *will proved* is his testator's will, as far as he knows and believes, and that he will faithfully perform the same, and execute the legal duties of his trust, and render a just account when required; and to give *bond*, in such penalty as the court shall order, with such *surety* as it shall approve, with condition for the faithful discharge of his duty. *Ibid.* § 21.

If the testator direct, that no security be required of his executors, and leave visible estate more than sufficient to pay all his debts, the court may, if it think fit, dispense with the security; but it is in practice very rarely dispensed with. *Ibid.* § 22.

The power of executors over their testator's estate before probat, is not restrained by the statute, but continues as at common law. *Ibid.* § 23.

V. *Administrations with the will annexed.*

If no executor be named in a will; or, if the executors named all refuse the executorship; or, if the executors, after due qualification, all die before the administration is complete; or, if the executors, being required to give new security (as they may be at any time at the instance of any of their original sureties who become alarmed,) refuse to give security accordingly; the court of probat may grant administration with the will annexed, or administration *de bonis non* with the will annexed, (as the case may be,) to such person to whom administration would have been granted had there been no will. *Ibid.* § 20.

The official oath and bond of such an administrator, is changed from that of an executor, so as to fit the case.

VI. *Administrations durante minore ætate &c.*

During any contest about a will; or during the infancy or absence of the executor; or until a will, which once existed but has been destroyed, shall be established; or whenever the court from any other cause shall judge it convenient; the court may

appoint a fit person to preserve the decedent's estate, until a probat of his will, or *durante minore ætate*, or until administration of his estate be granted. Such an administrator also takes an official oath, and gives an official bond, varied, according to the court's directions, so as to fit his trust; which is, to collect the estate, to make an inventory thereof, and safe keep and deliver it up, when required, to the executors or administrators. *Ibid.* § 24.

VII. *Administration of intestate's estates.*

The general court, and the several circuit, county and corporation *courts*, respectively, have the like jurisdiction to hear and determine the right of *administration* of intestate's estates, as to take probat of wills, in respect to the intestate's place of residence, or death, or the situation of the estate; and shall grant certificates for obtaining letters of administration, to the representatives who apply for the same: preferring first the *husband or wife*, and then such others as are next entitled to *distribution:* or one or more of them, as the court shall judge will best manage and improve the estate. *Ibid.* § 32. (*altered from* 31 *Edw.* iii. *c.* 11. 21 *Hen.* viii. *c.* 5. § 3. 4. and *vid.* 1 *Call.* 1.)

If no person apply for administration within *thirty* days from the intestates death, or at the next succeeding court after the expiration thereof, the court may grant administration to any *creditor* or creditors, who may apply for the same, *or* to such other person as it shall in its discretion think fit; but such letters of administration will be revoked, if the wife or other distributee who shall not before have refused, afterwards apply.

And all letters of administration are of course revoked, if a will be afterwards produced, and proved by the executors. *Ibid.* § 33. 34.

It is hardly necessary to mention, that in case of the death of an administrator before the administration is completed, the same courts have power to grant administration, *de bonis non.*

Administrators (like executors) are required to take an official oath, and give an official bond, with approved security. *Ibid.* § 35. (*see* 22 and 23 *Car.* ii. *c.* 10. § 1.

VIII. *Power to require counter security or new security of ex'rs and adm'rs, and to revoke their powers, and appoint curators.*

When the *sureties* of any executor or administrator, apprehend danger of suffering by their suretyship, the court, on their petition, has power to order the executor or administrator, to give his sureties *counter security*, or to execute a *new bond*, with condition for the faithful performance of his duties, having relation back to the commencement of his trust or office: and in case such *new bond* be ordered and *given*, the original sureties are discharged from their obligation, *except* for such matters for which actions may have been already brought and may be prosecuted to judgment.

If the executor or administrator refuse to comply with such order, the court may revoke his authority; and appoint an administrator *de bonis non;* or take the estate from him, and place it in the hands of his surety or sureties; or commit it to some other curator.

So, upon complaint of any creditor, legatee, distributee, or other person *interested*, either of the misconduct of the executor or administrator, or of the insufficiency of his sureties, the court may require him

to give *other good* security, or revoke his authority, and appoint an adm'r *de bonis non*, or commit the estate to the sheriff.

But no revocation of the authority of an executor or administrator invalidates his previous acts, or abates any pending suit: in such suits, the administrator *de bonis non*, or the curator, is substituted, by proper process, plaintiff or defendant, and the suit proceeds.

And when the estate is so taken out of the hands of an executor or administrator, and committed to his surety, or any other curator, such curator has power to collect and pay the decedent's debts, and may sue and be sued, as an ex'r or adm'r. *Ibid.* § 38, 39, 40, 41, 42.

IX. *Power to grant administration to the sheriff.*

Whenever there is a defect of a personal representative of any decedent, testate or intestate, and no person will apply for administration, the court may, after *three* months from the decedents death, commit administration, or administration with the will annexed, original or *de bonis non*, (as the case may be,) to the *sheriff* of the county or *sergeant* of the corporation: and afterwards, at any time, revoke such order, and grant administration to any person entitled thereto. *Ibid.* § 67.

X. *Miscellaneous.*

1. Executors and administrators *bonds* are always made payable to the sitting judge or justices, his or their successors, of the original court, which takes probat of the will, or grants the administration; and if such judge or justices take surety apparently insufficient at the time, he or they are personally liable for all loss sustained in consequence of such insufficiency.

The bonds may be put in suit at the relation and costs of any party injured by a breach thereof, till the whole penalty is recovered.

But no executor or administrator, or his surety, is chargeable beyond the decedents assets, by reason of any omission or mistake in pleading or false pleading of the ex'r or adm'r. *Ibid.* § 21. 35. 36. 37.

2. *Certificates* of probat or of administration attested by the clerk of the court granting them, are sufficient to enable the ex'r or adm'r to act, and may be given in evidence, and are as effectual as formal letters testamentary or of administration; yet these shall be made out by the clerk, if required, in the name of the first justice or of the judge of the court, to be signed by him, and if it be a circuit, county or corporation court, sealed with the seal of such court, and if the general court, sealed with the seal of the commonwealth. *Ibid.* § 43.

3. It is understood to be the settled law of Virginia, though there is no statutory provision on the subject, that no probat of a will or grant of administration in *another* state of the union, or in a foreign country, and no qualification of an ex'r or adm'r, elsewhere than in Virginia, give such ex'r or adm'r any right to demand the effects or debts of the decedent, which may happen to be within the jurisdiction of this commonwealth:

There must be a regular probat, or grant of administration, and qualification of the ex'r or adm'r in Virginia, according to her laws. And the doctrine prevails in the federal courts held in Virginia, as well as in the state courts.

4. So too, a will devising land in Virginia, though duly proved in another state or country; must also be *proved* in Virginia to entitle the de-

visee to the lands, or to an action for them.

Executors of executors are executors of the first testator. *Ibid.* § 65. *(adopted from 25 Ed. iii. stat.* 5. c. 5.)

There are a great variety of statutory provisions touching the course of administration, the liabilities of executors and administrators, their powers and duties, the remedies for and against them, and the like; which it would be foreign to the present purpose to detail, and indeed impossible within any moderate compass. Most of them may be seen in the statute (so often above cited) 1 *Rev. Cod. c.* 104.

### No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

*A. The following statute of March* 10, 1819. *(1 Rev. Cod. of* 1819, c. 96.) *regulates descents in Virginia.* (1).

*"An act to reduce into one, the several acts directing the course of descents.*

1. *Be it enacted by the general assembly,* that henceforth when any person having title to any real estate of inheritance, shall die intestate as to such estate, it shall descend and pass in parcenary to his kindred, male and female, in the following course; that is to say:

2. To his children or their descendants, if any there be:

3. If there be no children, nor their descendants, then to his father:

4. If there be no father, then to his mother, brothers and sisters, and their descendants, or such of them as there be.

5. If there be no mother, nor brother, nor sister, nor their descendants, then the inheritance shall be divided into two moieties, one of which shall go to the paternal, the other to the maternal kindred, in the following course; that is to say—

6. First, to the grand-father.

7. If there be no grand-father, then to the grand-mother, uncles, and aunts on the same side, and their descendants, or such of them as there be:

8. If there be no grand-mother, uncle nor aunt, nor their descendants, then to the great grand-fathers, or great grand-father, if there be but one:

9. If there be no great grand-father, then to the great grand-mothers, or great grand-mother, if there be but one, and the brothers and sisters of the grand-fathers and grand-mothers, and their descendants, or such of them as there be:

10. And so on in other cases without end; passing to the nearest lineal male ancestors, and for the want of them to the lineal female ancestors

(1) "The law of descents in Virginia," (observes my correspondent,) "is, and has been ever since the first of Jan. 1787, altogether statutory: before that date, the common law prevailed. The original statute of descents underwent several amendments at different times.

The existing statute enacted at the late revision is so plain, and withal so admirably concise, that it is impossible to abridge it, and the attempt might produce obscurity, confusion and mistake, an exact copy should be printed"

*In compliance with this suggestion, the act is printed entire. Ed.*

in the same degree, and the descendants of such male and female ancestors, or to such of them as there be.

11. PROVIDED, *however*, and be it further enacted, that where an infant shall die without issue, having title to any real estate of inheritance, derived by gift, devise or descent from the father, and there be living at the death of such infant his father or any brother or sister of such infant on the part of the father, or the paternal grand-father or grand-mother of the infant, or any brother or sister of the father, or any descendant of any of them, then such estate shall descend and pass to the paternal kindred without regard to the mother or other maternal kindred of such infant, in the same manner as if there had been no such mother or other maternal kindred living at the death of the infant: saving, however, to such mother, any right of dower which she may have in such real estate of inheritance.

12. AND where an infant shall die without issue, having title to any real estate of inheritance derived by gift devise or descent from the mother, and there be living at the death of such infant his mother, or any brother or sister of such infant on the part of the mother, or the maternal grand-father or grand-mother of the infant, or any brother or sister of the mother, or any descendant of any of them, then such estate shall descend and pass to the maternal kindred, without regard to the father or other paternal kindred of such infant, in the same manner as if there had been no such father or other paternal kindred living at the death of the infant: saving, however, to such father, the right which he may have as tenant by the curtesy in the said estate of inheritance.

13. But no right in the inheritance shall accrue to any persons whatever, other than to children of the intestate, unless they be in being, and capable in law to take as heirs, at the time of the intestate's death.

14. And where, for want of issue of the intestate, and of father, mother, brothers and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred; if there should be no such kindred on the one part, the whole shall go to the other part: and if there be no kindred either on the one part or the other, the whole shall go to the wife or husband of the intestate. And if the wife or husband be dead, it shall go to her or his kindred in the like course, as if such wife or husband had survived the intestate, and then died entitled to the estate.

15. And in the cases beforementioned, where the inheritance is directed to pass to the ascending and collateral kindred of the intestate, if part of such collaterals be of the whole blood to the intestate, and other part of the half blood only, those of the half blood, shall inherit only half so much as those of the whole blood: but if all be of the half blood, they shall have whole portions, only giving to the ascendants (if any there be) double portions.

16. And where the children of the intestate, or his mother, brothers and sisters, or his grand-mother, uncles and aunts, or any of his female lineal ancestors living, with the children of his deceased lineal ancestors, male and female in the same degree, come into the partition, they shall take *per capita*, that is to say, by persons; and where a part of them being dead, and a part living, the issue of those dead have right to partition, such issue shall take *per stirpes*, or

by stocks, that is to say, the shares of their deceased parent.

17. When any of the children of a person dying intestate, shall have received from such intestate in his lifetime, any real or personal estate by way of advancement, and shall choose to come into partition of the estate with the other parceners, such advancement both of real and personal estate shall be brought into hotchpot with the whole estate, real and personal descended; and such party bringing into hotchpot such advancement as aforesaid, shall thereupon be entitled to his or their proper portion of the whole estate so descended, both real and personal.

18. In making title by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is, or hath been an alien. Bastards also shall be capable of inheriting or of *transmitting* inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

19. Where a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, if recognized by him, shall be thereby legitimated. The issue also in marriages deemed null in law, shall nevertheless be legitimate.

20. Whensoever any lands shall descend from any person dying intestate to two or more heirs, any one of whom shall be an infant, *feme covert, non compos mentis*, or beyond sea, and the dividend of each heir shall not exceed the value of three hundred dollars, in the opinion of any court herein after mentioned, it shall be lawful for the superiour court of chancery of that district, or the court of the county or corporation in which such lands, or the greater quantity of them lie, to direct the sale of the said lands, and the distribution of the money arising therefrom, according to the rights of each claimant: *Provided always*, that each heir residing within this commonwealth, shall be first duly summoned, to show cause if any he can against such sale: and where any heir shall reside without this commonwealth, the court shall make an order for publication, which order being inserted in any public newspaper to be designated by the court in such order, for eight weeks successively, shall be considered as a summons.

21. One parcener may maintain an action of waste against another, but no parcener shall have or possess any privilege over another in any election, division or matter to be made or done, concerning lands which shall have descended to them.

22. All and every act and acts, clauses and parts of acts heretofore made, containing any thing within the purview of this act, shall be, and the same are hereby repealed. *Provided always*, that nothing herein contained, shall be construed in any wise to affect any right, title, interest or claim to, or in any estate in lands or tenements whatsoever, accrued before the commencement of this act, but the same shall be, and remain in the same condition, as if this act had never been made.

23. This act shall commence in force, from the *first day of January eighteen hundred and twenty.*"

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* When any person shall die intestate as to his *personal* estate, or any part thereof, (after funeral debts and just expenses paid,) if there be no child, one moiety, if there be a child or children, one third, of the distributable surplus, shall go to the wife, but she shall have no more than the use for life of such slaves as shall be in her share: and the residue of the surplus, and after the wife's death, the slaves in her share, or if there be no wife, then the whole of such surplus, shall be distributed in the same proportions, and to the same persons, as *lands* are directed to descend by the act *regulating the course of descents;* with this only difference, that where an *infant*, having title to personal estate, die before attaining to the age when an infant may lawfully bequeath personalty *(eighteen)*, or after obtaining such age, without bequeathing it, his personal estate is distributable among his paternal and maternal kindred, without regarding from which parent he derived it, as if he had been of full age at his death.

But a husband is not compelled to make distribution of the personal estate of his wife dying intestate. 1 *Rev. Cod. c.* 104. § 29, 31. (22 and 23 *Car.* ii. *c.* 10. § 2, 4, 5, 6. 29 *Car.* ii, *c.* 3. § 5. 1 *Jac.* ii. *c.* 17. § 7.

The law of hotchpot prevails in *distributions* as in *descents*; and the whole *advancement real* and *personal*, is brought into hotchpot, with the whole *estate real* and *personal*, of the decedent. *Ibid.* § 30. *c.* 96. § 17.

Where any widow shall be dissatisfied with the provisions made for her by her husband's will, she may, before any *court* having jurisdiction of the probat of the will, or by *deed* executed in the presence of *two* witnesses, within a *year* after the husband's death but not after, renounce the provision made for her by the will, or any part thereof, and all benefit under the will: upon which, she will be entitled to a third of her husband's slaves for life, the remainder devolving at her death, to such person or persons, as would have been entitled to them, if she had not made such renunciation; and she shall moreover be entitled to such share of the husband's other personal estate, as if he had died intestate, to hold in absolute property.

If she do not make the renunciation within the year, she must abide by the will. *Ibid. c.* 104. § 26.

It is the settled construction of this provision of the statute, that it relates only to personal property, and to provisions of personalty made for the widow.

## No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

83. Are entails abolished; converted into fees; or otherwise modified &c?

84. How barred by the tenant?

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* There is in Virginia, a statute entitled *an act to reduce into one, all acts and parts of acts relating to dower*; 1 *Rev. Cod. c.* 107.

But this act is only a transcript from the various statutory provisions of the English parliament on the subject.

The law of *curtesy* and of *dower* is the same in Virginia as in England, with only two amendments:

1st, The wife is entitled to dower of the husband's *trust* estate, as well as of *legal* estate: and a husband is entitled to curtesy of the wife's trust estate. *Ibid. c.* 99. § 31. *(see Harg. Co. Litt.* 29. *a. n.* 6. 31. *b. n.* 3.

*2nd.* The husband or the wife, is entitled to curtesy or dower of estates, whereof the wife or the husband were joint tenants; for the *jus accrescendi* is abolished. *Ibid. c.* 98. § 2. *(see* 2 *Tuck. Bl.* 131. *n.* 15.)

The common law modes of assigning dower are obsolete in Virginia; and the common law remedies for the recovery thereof, are very rarely resorted to.

The usual course is, for the widow to exhibit her *bill* against the heirs, in a court of chancery; which not only decrees to her dower, and directs the assignment of it by commissioners, but also gives her an account of profits, and a decree for them.

Of *entails*—I have already spoken: See ante No. II. conveyances, "*Construction and operation of deeds.*" *p.* 327.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

87. What savings &c?

88. Is there a saving in favour of foreigners or citizens of other states?

*A.* All writs of *formedon in descender, remainder, or reverter,* of any lands, tenements or hereditaments, shall be sued out within *twenty years next after the title or cause of action accrued,* and not afterwards: and no person having any right or title of *entry* into any lands, &c. shall make any entry but within *twenty years next after such right or title accrued.*

But if any person or persons, entitled to such writ or writs, or to such right or title of entry, be *under the age of one and twenty years, feme covert, non compos mentis, imprisoned,* or *not within this commonwealth,* at the time when such right or title *accrues,* every such person and his heirs may, notwithstanding the said twenty years have expired, bring and maintain his action, or make his entry, within *ten years next after such disabilities removed, or the death of the person so disabled.*

In all writs of right, and other actions possessory, any person may maintain a *writ of right* upon the possession or seisin of his *ancestor* or predecessor, within fifty years, or any *other possessory action* upon the possession or seisin of his *ancestor* or predecessor, within *forty* years, but no person shall maintain a real action upon *his own* possession or seisin, but within *thirty years next before the teste* of the writ. 1. *Rev. Cod.* 487—8.

As to the limitations on writs of right, &c. last mentioned, there does not appear to be any *saving* in favour of infants, &c.

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

*A.* Yes.

90. Is there any thing peculiar in your state on this head?

*A.* I am not sufficiently acquainted with the laws of other states to answer this question; but it may be proper to remark that the British statutes of 21 *Jac.* i. *c.* 16. § 4, and 4 *Ann. c.* 16. § 19, the first directing that action may be re-commenced within one year, where judgment is arrested or reversed, and the second, that defendants absconding, &c. shall not have the benefit of the act of limitations, are in force in this state

by virtue of acts of assembly to the same effect.

If the action be commenced within the time allowed by the act of limitations, but the writ *abate*, after which the time runs out; (the plaintiff not having re-commenced his suit within a year after the former suit abated;) he cannot avail himself of the proviso in the act, but is barred. (1 *Wash.* 302.)

A plaintiff whose suit abates, is entitled to the benefit of the proviso in the act of limitations, under the equity thereof, if he re-commence his suit within a year thereafter. *(Ibid.)*

The act of limitations shall not extend to any action commenced against a master or commander of a ship or vessel, who shall discharge or cause to be put on shore, any sick or disabled sailor belonging to his ship or vessel, or any servant, without taking due care for their maintenance and cure, *or carrying any debtor, servant, or slave, out of this commonwealth*, contrary to law. 1. *Rev. Cod.* 491—492.

In all questions which may arise in any court of record, upon any act for limitation of actions, making entries into lands, or limitation of evidence, in the computation of *time*, the several periods between the 12*th of April* 1774 and the 12*th of April* 1778, and between the 1*st of January* 1781 *and the* 5th of *January* 1782, and between the 5*th of May* 1783, *and the* 20*th of October in the same year*, shall not be accounted any part thereof, so as to bar such action, entry or evidence. *Ibid.* 490—1.

91. What length of time bars recovery &c. in personal actions?

92. What savings?

93. Are there any in favour of citizens of other states, or foreigners?

*A.* The recovery of a debt secured by *specialty*, is not barred by length of time, in consequence of any act of assembly, but by the common law rules on that subject.

The limitations of *personal* actions are as follow:

1. Upon all actions upon the *case*, (other than for slander,) actions of *account* or *assumpsit*, (other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants,) *debt grounded upon any lending or contract without specialty, debt for arrears of rent, trespass, detinue, trover*, or *replevin* for goods and chattels, and *trespass quare clausum fregit, five* years:—

2. Upon actions of *assault, battery, wounding or imprisonment,—three* years:—

3. Upon actions of *slander—one* year.

There is no saving in favour of infants, &c. as to actions of *slander*.

In relation to the other actions, there is a general saving in favour of *infants, femes covert, persons non compos mentis, imprisoned, beyond the seas or out of the country*, allowing them the same times as are before limited, after their coming to full age, &c.

There are many cases which do not expressly come within any of the exceptions from the act of limitations, and yet are construed as coming within the *equity* of them: as, if the time elapsed during a period when no executor had qualified, or where there was a contest respecting the right of administration. *(1 Wash.* 147.)

Judgments in any court of record within this commonwealth, where execution hath not issued, may be revived by *scire facias*, or an action of debt brought thereon, within *ten* years next after the date of such

judgment, and not after; or where execution hath issued, and no return is made thereon, the party in whose favour the same was issued, may obtain other executions, or move against any sheriff, &c. for not returning the same, within *ten* years from the date of such judgment, and not after. *Rev. Code.* 489.

A saving (as before) is inserted, in favour of *infants*, &c. until *five* years shall have elapsed after their disabilities have been removed.

All actions or suits, founded upon any *account for goods sold and delivered*, or for articles *charged in any store account*, must be commenced within *one* year next after the cause of action, or the delivery of the goods, and not after; *except* that, in the case of the death of the creditors or debtors, before the expiration of the said term of one year, the farther time of one year, from the death of such creditor or debtor shall be allowed.

In suits in the name of any person residing beyond the seas, or out of this country, for recovery of any debt due for goods actually *sold and delivered here, by his factor or factors*, the saving in favour of persons beyond the seas at the time their causes of action accrued, is not to be allowed:—but, if any factor shall happen to die before the expiration of the time in which suit should have been brought, his principal shall be allowed *two* years from his death, to bring suit for any debt due on account of any contract or dealing with such factor. 1 *Rev. Code* 489—491.

If any suit be brought against any executor, administrator, or other person having charge of the estate of a testator or intestate, for the recovery of a debt due upon an open account, it shall be the duty of the court, before whom such suit shall be brought, to cause to be *expunged* from such account, every item thereof which shall appear to have been due *five* years before the death of the testator or intestate: saving to infants, &c. *three* years after their several disabilities shall be removed.

No action of debt or *scire facias* shall be brought against any executor, administrator, or other person having charge of the estate of a testator or intestate, upon a judgment against such testator or intestate, after the expiration of five years from the qualification of his executor, administrator, or other person having charge of his estate; and all such judgments, after the expiration of *five* years, *upon* which no proceedings shall have been had, shall be deemed to have been paid and discharged: *saving* to infants, &c. *three* years after their several disabilities removed.

No bill of review to any final decree in chancery shall be granted, unless the same be applied for within *three* years next after such final decision:—saving to *infants, femes covert, persons of insane mind, persons imprisoned, or out of the state, in the service of this state, or of the United States*, a right to obtain such bill of review, within *three* years after their respective disabilities are removed.

No writ of error or *supersedeas* shall be granted to any judgment of a court of law, after the expiration of *five* years from the time when such judgment shall have been made final: *saving* to infants, &c. (as in the last clause,) *three* years after their several disabilities removed. 1. *Rev. Cod.* 492.

### No. X. TAXES.

94. May lands be sold for the pay-

ment of taxes: has an absentee any privilege?

95. Before a sale, is notice to be given &c?

96. What officer is to give this notice?

97. In what manner &c.

98. If a sale takes place, is the deed absolute?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

*A.* No lands or lots shall be exposed to *sale* for any *arrears* of taxes and damages due thereon, *except* in the manner hereafter to be provided for by law; but such arrears of taxes and damages shall continue to be a *lien* upon the lands and lots on which they are chargeable. 2. *Rev. Cod.* 1819. 39.

In all cases hereafter, in which any lands may be returned delinquent for the non-payment of taxes; the proprietor, or his attorney or agent, may pay the taxes and damages charged upon the said lands into the public treasury, upon the certificate of the auditor of public accounts authorising the treasurer to receive the same. *Ibid.* 38.

The farther time of two years from the 23*d* day of *February* 1820, is allowed for the redemption of all lands vested in the *president and directors of the Literary Fund*, for the non-payment of the taxes due thereon; but such redemption shall be by payment into the treasury alone. *Act of* 1819, c. 11. § 1.

After the present year (1820,) it shall not be lawful for the *sheriff*, or other *collector* of the revenue, to collect the *arrears* of taxes on lands returned delinquent; but such arrears shall be payable into the *treasury* by the owners of the lands, or their agents, in the manner prescribed by law. And when, hereafter, any land which hath been vested in the *literary fund*, for the non-payment of the taxes charged thereon, shall be redeemed, there shall be paid by the person redeeming the same, before the redemption shall be effected, not only the taxes due at the time of its vesting, and the damages prescribed by law, but a farther sum for each year, from the time of its vesting as aforesaid to the time of redemption, equal to the last annual tax imposed thereon, with damages on each of the said sums at the rate of *ten* per centum per annum, from the first of November in the year for which it accrues, 'till paid:—*(passed March 5th* 1821;*)*—*see acts of* 1820—1821, —c. 3, § 8.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* The most prudent course to be taken by a non-resident, who wishes to keep his land-taxes paid is, to employ an agent to pay them regularly within the year, to the sheriff or other collector in the county; or, into he public treasury, if the tax has not been paid within the year for which it was due. *See last paragraph.* (1)

(1) From the foregoing account I should infer, that no lands after 1819, could or can be *sold*, either for the arrearages of taxes prior to that year, or for future taxes; but that such arrearages or future taxes remain a lien on the lands, subject to be collected and enforced in such manner, as the legislature might by any future law provide.—

But the owners or their agents in the mean time, may pay the taxes or arrears due

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* Debtors residing in *Virginia*, cannot be restrained by attachment, or otherwise, from alienating their property; except by injunction, under particular circumstances of equity.

The rules by which defendants are liable to be holden to *bail*, are established by *act of assembly*, declaring that, in all actions of *debt* founded upon any writing obligatory, bill or note in writing, for the payment of money or tobacco, all actions of *covenant* and *detinue*, and all actions upon *statutes* specially authorising bail to be taken, the plaintiff may *of right* demand bail; and that, in all *other* personal actions, it shall be lawful for any judge of the general court, or any justice of the peace for any county or corporation, upon proper *affidavit*, verifying the justice of the plaintiff's action, and showing probable cause to apprehend that the defendant will *depart* from the jurisdiction of the court, so that process of execution cannot be served upon him, *to direct bail to be taken* by endorsement on the original writ, or subsequent process. 1 *Rev. Cod.* 499.

### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?

*A.* There is no particular provision in our laws for *recording* in our courts *letters of attorney* made out of the state; but in recording deeds, the clerks of the county or corporation courts, are to enter of record, also, all endorsements on such writings, and all plats, schedules, *and other papers, thereto annexed.*

All foreign deeds, if acknowledged by the party making the same, or proved by the number of witnesses requisite before any *court* of law, or the *mayor*, or other chief magistrate of any city, town or corporation of the country in which the party shall dwell, *certified* by such court, or mayor, or chief magistrate, in the manner such acts are usually authenticated by them; *and* all policies of insurance, charter-parties, *powers of attorney*, foreign judgments, specialties on record, registers of births and marriages, as have been, or shall be made, executed, entered into, given and enregistered in due form, according to the laws of such state, kingdom, nation, province, island or colony, and attested *by a notary public*, with a testimonial from the *proper officer* of the city, county, corporation or borough, where such notary public shall reside; *or* the *great seal* of such state, kingdom, province, island, colony or place beyond sea; shall be evidence in all the courts of record within this commonwealth, as if the same had been proved in the same courts. 1 *Rev. Cod.* 367, 371.

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into the treasury, upon the certificate of the auditor allowing it.

It would seem that *certain* lands had become *vested* in the president &c. of the literary fund; and two years by the act of 1819, c. 11 § 1, were allowed from the 23d of February, 1820, to redeem those; And as it appears to me, the *literary fund* continue to become vested with lands for non payment of taxes after 1819, subject to redemption; but what land, or when they vest for the default of not paying, or what is the term allowed for redemption, I do not comprehend. *Ed.*

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A.* All persons, as well foreigners as others, shall have right to assign or transfer warrants or certificates of survey for lands: and any foreigner, purchasing warrants for lands, may locate and have the same surveyed, and, after returning a certificate of survey to the land-office, shall be allowed the term of *two* years, either to become a citizen, or to transfer his right in such certificate of survey to some citizen of this, or any other of the United States of America.

When any alien shall heretofore have purchased, or contracted to purchase, any lands or tenements within this commonwealth, or shall hereafter purchase, or contract to purchase, any such lands or tenements, and, before the same shall have been escheated to the commonwealth by an office found, such alien shall have become a citizen of the United States in pursuance of the laws thereof; in every such case, all the right, title and interest, in such lands and tenements, which shall have accrued to the commonwealth, or to the president and directors of the literary fund, by reason of the alienage of such purchaser, shall be and the same is hereby released to him, his heirs and assigns forever.

When any alien residing within the United Sates, holding or claiming title to any lands or tenements, not heretofore escheated to the commonwealth by an office found, shall have *bona fide* sold or demised the same, or shall have died, testate or intestate, seised or possessed thereof, or claiming title thereto, and when any alien, residing within the United States, shall hereafter hold or claim title to any such lands or tenements, and, before any proceedings shall be instituted by the escheator, for the purpose of escheating the same to the commonwealth, shall *bona fide* sell or demise the same, or die, testate or intestate, seised or possessed thereof or claiming title thereto; in every such case, the purchaser from such alien, or his lessee, heir or devisee, being a citizen of the United States, shall hold and enjoy such lands or tenements quit and discharged of all right, title or claim, which shall have accrued to the commonwealth, &c. by reason of the alienage of the person so having sold, demised or died.

Such lands or tenements shall be subject to the debts of the alien, in the same manner as if he had been a citizen. 1 *Rev. Cod.* 353—4.

In other respects, an alien's right to hold lands, is on the same footing as at common law;—but he may take a mortgage of land to secure a debt, and enforce it by bill in equity; (or by ejectment; in which last case, if he recover the *land itself*, he will hold it for the benefit of the commonwealth:) and a sale and conveyance of land by a *trustee*, cannot be set aside on the ground that he was an *alien* when the deed was made to him, and when he conveyed the land to the purchasers. (6 *Munf.* 305.)

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* The *right* of administration is regulated by act of assembly copied

from the statutes 31*st. Edw. iii. c.* 11, *and* 21*st Hen. viii. c.* 5.

The general court, and the several superior courts of law and county courts, respectively, shall have the like jurisdiction to hear and determine the right of administration, in relation to the intestate's place of residence or death, or where the estate shall lie, as they have with respect to the probat of wills.

If no representative of the intestate apply for administration, within *thirty* days from the death of the intestate, or at the next succeeding court after the expiration thereof, the court may grant administration to any creditor or creditors who apply for the same, or to any other person the court shall in their discretion think fit. 1 *Rev. Cod.* 382—3. —*See also a case in which the administration may be committed to the sheriff or serjeant, of the county, or corporation. Ibid.* 390—391.

106. May guardians be appointed by will: does the common law regulate &c?

*A.* Any *father*, even if he be not of twenty-one years of age, may by deed or last will and testament, either of them being executed in the presence of *two* credible witnesses, grant or devise the custody and tuition of his child (which had never been married,) although it be not born, *during any part of the infancy of such child*, to whomsoever he will; and such grant or devise shall give the grantee or devisee the same power over the person of the child, as a guardian in *common socage* hath, and authorise him, by actions of ravishment of ward, or trespass, to recover the child, with damages for the wrongful taking or detaining of him or her, for his or her use, and for the same use to undertake the care and management, and receive the profits of the ward's estate, real and personal, and prosecute and maintain any such actions and suits concerning the same, as a guardian in *common socage* may do. 1 *Rev. Cod.* 405—6.

Where no such appointment is made by the father of the infant, the county or corportion court may appoint a guardian whose powers will continue until the infant, having attained the age of *fourteen* years, shall choose another, or if that be not done, until such infant shall be of full age.

The powers and duties of guardians are particularly stated in the act of assembly before quoted. *Ibid.* 406—411. *(See also* 1 *Tuck. Black. part* 2—463, *&c.)*

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* The estate of a guardian or curator, not under a specific lien, shall after his death, be liable for whatever may be due from him, on account of his guardianship, to his ward, *before any other debt due from him. Rev. Cod.* 408.

A similar provision is also made, as to debts due from the estate of a deceased committee of an idiot or lunatic, or executor or administrator of a testator or intestate's estate; —giving such debts the preference to any other. *Ibid.* 389.

In other respects, the law as to the dignity or priority of debts, is the same as in England, except so far as it is modified, in certain cases, by laws of the United States.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* After a suit is commenced, the executor or administrator may still give a preference to other creditors *of the same degree*, by confessing a judgment to them for the actual amount of their debts.

Lands are never sold on judgments against executors or administrators.

JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* Joint-tenancy in land is created, as at common law; but the joint tenants may be compelled to make partition, and the right of survivorship is abolished. 1 *Rev. Cod.* 359.

SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?

*A.* The common law is in force, in regard to the effect and operation of instruments *sealed*, and not under seal.

111. Is a scroll &c. equivalent to wax &c?

*A.* Any instrument, to which the person making the same shall *affix a scroll, by way of seal*, shall be adjudged and holden to be of the same force and obligation, as if it were actually sealed. 1 *Rev. Cod.* 510.

A scroll used as a seal was sufficient as such before the act of assembly. (1 *Wash.* 42—44.)

A scroll annexed to a signature is not sufficient to make a sealed instrument, unless it appear, *from some expression in the body of the instrument*, that it was intended as such. (1 *Munf.* 487—493. *See also* 4 *Munf.* 442—444.)

BASTARDS.

112. Are bastards subject to common law disabilities?

*A.* Since the 1st of Jan. 1787, bastards are capable of inheriting or of transmitting inheritance on the part of their mother, in like manner as if they had been lawfully begotten of such mother.

In other respects their disabilities are the same as at common law.

113. Are antinuptial children, legitimated by marriage of the parents?

*A.* Where a man having by a woman one or more children, shall afterwards intermarry with such woman, such child or children, *if recognized by him*, shall be thereby legitimated.

The issue also in marriages deemed null in law, shall nevertheless be legitimate. 1 *Rev. Cod.* 357—8. (*See* 3 *H. and M.* 225, *and* 2 *Munf.* 442.

ALLUVION.

114. Does the common law in respect of alluvion prevail?

*A.* Yes.

FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

116. Is this so by statute, or usage?

*A.* By act passed *Feb. 16th* 1819, it is declared that, hereafter, the limits or bounds of the several tracts of land lying on the Atlantick ocean, the Chesapeake bay, and the rivers and creeks thereof within this commonwealth, shall extend to ordinary low water mark; and the owners of said lands shall have, possess and enjoy exclusive rights and privileges to, and along the shores thereof, down to ordinary low water mark:

*provided*, that nothing in this act contained shall be construed to affect any creek or river, or such part thereof, as may be comprised within the limits of any survey; and provided, also, that nothing in this section contained, shall be construed to prohibit any person from the right of *fishing, fowling and hunting on those shores of the atlantic ocean, chesapeake bay, and the rivers and creeks thereof, within this commonwealth, which are now used as a common to all the good people thereof.* 1 *Rev. Cod.* 341.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

*A.* The provisions contained in the 2d, 3d and 6th sections of the statute 13 *Eliz. c.* 5, *and 2d, 3d, 4th and 6th sections* of 27 *Eliz. c.* 4, against fraudulent conveyances, (though always in force in this state,) were *expressly* enacted by our general assembly in November, 1785.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?

*A.* The statute 29 *Car.* ii. *c.* 3, *(called the statute of frauds,)* being subsequent to the 4 *Jac.* i, was never in force in this state.

The 1st, 2d and 4th sections of that act were formed into one section, and enacted here in Nov. 1785, by our act to prevent frauds and perjuries, which took effect Jan. 1, 1787.

USES.

119. Is 27. H. viii. called the *Stat. of uses*, (or similar provisions) in force?

*A.* The statute of uses, 27 *Hen.* viii. *c.* 10, was always in force in this state; but its provisions were expressly enacted by the general assembly in 1785.

120. Is the English law of uses and trusts, in force?

*A.* Estates of every kind, holden or possessed in trust, shall be subject to like debts and charges of the persons, to whose use, or to whose benefit, they were, or shall be respectively holden or possessed, as they would have been subject to, if those persons had owned the like interest in the things holden or possessed, as they own or shall own in the uses or trusts thereof. Acts of 1785, c. 62, § 1, taken from 29 *Car.* ii. c. 3. § 10.

Where any person, to whose use or in trust for whose benefit, another is or shall be seised of lands, tenements, or hereditaments, hath or shall have such inheritance in the use or trust, as that, if it had been a legal right, the husband or wife of such person would thereof have been entitled to curtesy or dower, such husband or wife shall have and hold, and may, by the remedy proper in similar cases, recover curtesy or dower of such lands, tenements or hereditaments. 1 *Rev. Cod.* 370; first enacted in 1785. *(See* 1 *H. and M.* 91;—3 *H. and M.* 322.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?

*A.* Our law on the subject of baron and feme, is in general, the same with that of England. *See* 2 *Tuck. Black.* 433—435.

A feme sole being entitled to slaves in remainder or reversion, and afterwards marrying, and dying before the determination of the parti-

cular estate, the right vests in the husband, as her administrator, if he survive her. (*See* 1 *Wash.* 30.—2 *H. and M.* 381—394.)

Under the 4*th sec.* of the explanatory act of 1727, c. 4, slaves were adjudged to be personal property, in relation to the right of the husband to the slaves bequeathed to the wife. (2 *Call.* 447.)

But the widows of persons dying intestate shall only have the *use*, for life, of the slaves allotted to them in distribution, and not the property. 1 *Rev. Cod.* 382.

The husband is entitled to the administration of the personal estate of his wife dying intestate, and is not compelled to make distribution. *Ibid.*

The courts of chancery have jurisdiction in all cases of alimony. (4 *H. and M.* 507.)

USURY. INTEREST.

122. What is the rate of interest?

123. What provisions against usury?

*A.* The legal rate of interest is 6 *per centum per annum.*

All usurious contracts are declared utterly void.

A penalty is imposed upon the usurer of double the value of the money, &c. one moiety to the commonwealth, and the other to the informer.

Any borrower of money, or goods, may exhibit a bill in chancery against the lender, and compel him to discover, upon oath, the money or thing really lent, and all bargains, contracts or shifts, which shall have passed between them, relative to such loan, or the re-payment thereof, and the interest or consideration for the same; and if, thereupon, it shall appear that more than lawful interest was reserved, the lender shall be obliged to accept his principal money *without any interest or other consideration, and pay costs*, but shall be discharged from all other penalties of the act. 1 *Rev. Cod.* 374. (*See* 6 *Munf.* 433, 439, 472, 484, 541, 550.)

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A. Book accounts* are not evidence of debts in this state at present; though formerly they were so.

125. Is interest recoverable on book debt?

*A.* The allowance of interest on book-debts is discretionary with the jury; —for, in *all* actions founded upon *contracts*, and tried before a jury, the jury shall *ascertain* the principal sum due, and *fix the period at which interest shall commence, if interest be* allowed by them; and judgment shall be rendered accordingly, carrying on the interest 'till the judgment shall be satisfied. Acts of 1804, c. 8, § 2;—1 *Rev. Cod.* 508—9. (*See also* 5 *Munf.* 21—23.)

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

*A.* Yes.—But the assignee of a *promissory note* must *first sue the maker, and use due diligence to recover of him*, before he can sue the assignor. (1 *Call.* 497.)

If, however, the maker be *absent* from the country, or *actually insolvent*, such previous suit against him is not necessary. (*Ibid.* 6 *Munf.*

391. *(See also* 4 *H. and M.* 455;—3 *Call.* 9—10;—4 *Munf.* 496;—5 *Munf.* 388;—6 *Munf.* 316.*)*

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?

*A.* As to *foreign* bills of exchange, this question may be answered, generally, in the affirmative.

As to *inland* bills, the mode of protest is specially stated in our act of assembly, which goes on to say; "and the drawer, such protest being sent to him, or notice thereof in writing being given to him, or left at the place of his usual abode, within a *reasonable* time thereafter, shall pay the money mentioned in the bill to the person entitled to it, with interest and damages as aforesaid; and he to whom the bill shall be payable, *neglecting to procure the protest to be made, or due notice thereof to be given,*" (shall not, it seems, be prevented altogether from recovering any thing, but) "*shall be liable for all costs and damages accruing thereby.*" 1 *Rev. Cod.* 484.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

*A. See the answers to Nos.* 126 *and* 127.

No protest appears to be necessary for non-payment of a promissory note.

129. Is there any peculiar practice in your state, on this subject?

*A.* I am not sufficiently acquainted with the laws of other states on this subject, to be able to answer this question as to *them.*

*One per centum damages* are allowed on protested *inland* bills of exchange, besides 6 *per cent per ann.* interest.

Any person having a right to demand any sum of money upon a protested *foreign* bill of exchange, may prosecute an action of debt, for principal, damages, interest and charges of protest, *against the drawers and endorsers, jointly, or against either of them separately.* 1 *Rev. Cod.* 485.

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A.* Where any foreign bill of exchange is, or shall be drawn, for the payment of any sum of money, in which the value is, or shall be expressed to be received, and such bill is or shall be protested for non-acceptance, or non-payment, the drawer or endorser shall be subject to the payment of *fifteen per centum damages* thereon, and the bill shall carry an *interest of six per cent. per annum,* from the date of the protest, until the money therein drawn for shall be fully satisfied and paid. *Ibid.*

### DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?

*A.* Divorces *a vinculo matrimonii,* cannot be obtained, but by special acts of assembly.

The grounds for granting such divorces, depend therefore upon the discretion of the legislature.

### ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?

*A.* Yes.

The provisions in the laws on this subject, are too numerous and special to be here recited. *See* 1 *Rev. Cod.* 474—480.

An attachment against an absconding debtor, can legally issue, only in

the county where he last resided, or through which he is privately passing, or wherein he is absconding at the time of its being issued. 3 *Call.* 413—417.

Agreeably to the practice in this state, a *subpœna* in chancery, with an endorsement thereon, "to stop the effects and debts of the *absent* defendants, in the hands of the defendants *within the state*," mentioning their names,) "to satisfy a debt due from the absent defendants to the plaintiff," operates, *from the time of the service of that process* on the defendants within the state, as an attachment to stop the payment by them of monies due from them to the absent defendants, and to inhibit a transfer thereof from the said absent defendants to other persons. (6 *Munf.* 176.)

An attachment in chancery lies to secure a debt payable at a *subsequent* day, or to relieve the indorser of a note *which has not become payable* at the date of such attachment, which binds the property in the hands of the garnishee from the time of its service, so as to inhibit the absent defendants making a transfer thereof, even for the benefit of a creditor whose claim is already due and payable. (*Ibid.*)

A creditor residing *in Maryland*, may sue out an attachment in chancery *in Virginia*, against his debtor *residing also in Maryland*, and others residing in Virginia, indebted to, or having in their hands effects of, such debtor. *Ibid.* (*See also Ibid.* 585; —3 *Call.* 455, 460;—2 *H. and M.* 308;—4 *H. and M.* 403; *and* 4 *H. and M.* 440.)

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?

*A.* The law of landlords and tenants, in regard to distress for rent, is, in many respects, similar to the English law; but some alterations and additional provisions have been made by our acts of assembly. (*See* 3 *Tuck. Bl.* 6, 14;—1 *Rev. Cod.* 446, 454.)

A landlord in person, or by a private agent, may levy a distress, but cannot take a three months replevy-bond or sell the distrained effects, which, in such case, are only to be held as a pledge to compel the tenant to pay the rent.

A duly qualified officer alone can sell the property, or take the bond. (2 *Wash.* 57;—1 *Munf.* 596—600.)

Distress for rent cannot be made at any place not upon the demised premises, except within *ten* days, after a fraudulent or clandestine removal of the property; and if the property so carried off, be *bona fide sold* for valuable consideration, *before seizure*, it cannot afterwards be distrained.

Goods or chattels found on the demised premises, but not belonging to the tenant, or to some person bound for the rent or some part thereof, are not distrainable: but no person claiming title to such property, if it be distrained, can avail himself of his title, in any manner, but by a writ of *replevin* sued out and levied before it be sold under the distress. 1 *Rev. Cod.* 450—1.

Attachments also may be obtained for rent where the landlord suspects that the tenant will remove his effects, or where he has actually removed them, before the rent becomes due. *Ibid.* 448—449.

It seems, that on a lease of a tract of land, with sundry slaves and other personal property, reserving by way

of rent, a gross sum payable annually, the remedy by distress may be resorted to, without any express stipulation. (3 *Munf.* 277.)

Rent may be payable *in advance*, by contract; and such rent may be distrained for, if not paid when due. *Ibid.*

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?

*A.* When any suit shall be commenced and prosecuted in a court within this commonwealth, for any debt due by judgment, bond, bill or otherwise, the defendant shall have liberty, upon trial thereof, to make *all the discount he can* against such debt; and upon proof thereof, the same shall be allowed in court. 1 *Rev. Cod.* 487.

In every action in which a defendant shall desire to prove *any payment or set-off*, he shall file with his plea an account, stating distinctly the nature of such payment or set-off, and the several items thereof; and in failure to do so, he shall not be entitled to prove before the jury, such payment or set-off, unless the same be so plainly and particularly described in the plea, as to give the plaintiff full notice of the character thereof. *Ibid.* 510. (*See* 1 *Wash.* 168, 221;—2 *Wash.* 71, 255;—3 *Call.* 9, 105;—1 *Munf.* 529;—1 *H. and M.* 476;—4 *Munf.* 215:—5 *Munf.* 388, 396; *and* 6 *Munf.* 34, 36.)

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?

136. Is the common law in respect of choses in action, adopted?

*A.* Assignments of all bonds, bills and promissory notes, and other writings obligatory, whatsoever, shall be valid; and an assignee of any such may thereupon maintain any action, in his own name, which the original obligee or payee might have brought, but shall allow all just discounts, not only against himself, but against the assignor, before notice of the assignment was given to the defendant. 1 *Rev. Cod.* 484.

The assignee or assignees, his, her, or their executors or administrators, of any bill, note or obligation, shall hereafter be entitled to recover from *any* previous assignor or assignors, his, her or their executors or administrators; *provided* that, in any suit brought against a remote assignor or assignors, &c. he, she or they shall be subject only to such recovery, and shall have the benefit of the same defence, as if the suit had been instituted by the immediate assignee or assignees; and *provided*, also, that no joint action shall be commenced or prosecuted against any two or more persons, unless when they shall be joint assignors.

But the rights of indorsees of bills of exchange, &c. are not to be abridged by these provisions. *Ibid.* (*See* 2 *Wash.* 218, 219, 232, 233, 256—1 *Call.* 123, 226, 231—2 *Call.* 530, 535—2 *H. and M.* 105; and other cases.)

If a *judgment* of a county court be assigned, and afterwards reversed by the superior court of law, the assignee may thereupon sue the assignor, without carrying the case to the court of appeals. (6 *Munf.* 15, 18.)

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* Yes.

But *see* 2 *Tuck. Bl.* 122, 4; *and* 259, 260, also 1 *Rev. Cod.* 452, 3, in which several important provisions are enacted, taken from statutes 32 *Hen.* viii. *c.* 34, § 1, *and c.* 37, § 1, *and* 52 *Hen.* iii. *c.* 4.

It is also provided, that executors &c. may maintain debt, or distrain, for rent due to their testators, &c. upon any demise or lease, for life or lives, or for years, or at will, *although the same be determined.*

The law of *waste*, in its application *here*, must be varied and accommodated to the circumstances of our new and unsettled country. (6 *Munf.* 134—155.)

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

*A.* The same executions are issuable on decrees in chancery as on judgments at law, if the parties obtaining such decrees desire it; or they may resort to an attachment. 1 *Rev. Cod.* 545.

A *sequestration* is proper, if the defendant obstinately continue in jail exhausting his estate in paying other creditors, to the injury of the plaintiff. (3 *Call.* 382. *See also* 1 *H. and M.* 310—329, *especially* 319—320, *in judge Tucker's opinion.*)

On foreclosing a mortgage, the court decrees a *sale* of the land, &c.

The judges of the superior courts of chancery may, in all cases, at their discretion, where a sale is decreed of property, direct the same to be made for cash, or on such credit, and on such terms as may be deemed best; and, whenever, in any suit in equity, it shall be proper to decree the execution of any deed or other writing, it shall be lawful for the court to appoint a commissioner to execute the same; and the execution thereof by such commissioner, shall be as valid in law to pass, release or extinguish the right, title and interest of the party, on whose behalf it is executed, as if it had been executed by such party in proper person, and as if such party had been, at the time, capable in law of executing the same: *saving*, however, the rights of infants, or absent defendants, or of any other persons to show cause against any such decree, or to contest or reverse the same. 1 *Rev. Cod.* 204.

The process of the superior courts of chancery are executed by their marshals, or, (in case of a vacancy in the office of marshal,) by the sheriffs. *See acts of* 1819, 20, 25.

The process of the county or corporation courts in chancery, are executed by the sheriffs, or serjeants; or by the coroner where there is any just exception to the sheriff or serjeant.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?

*A.* In general, the creditors of an insolvent testator or intestate, are not to be paid *pro rata*, but according to the dignity of debts.

This is the rule as to *legal* assets; but *equitable* assets are distributed *pari passu* among all the creditors in proportion to their claims. (*See* 2 *Tuck. Bl.* 511—512.)

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?

*A.* The quantity of land remaining unappropriated by individuals in this state, is very small and unimportant.

There is no *proprietary* land yet to be taken up or located; the title of *Denny Fairfax*, and of those who claim under him, to such of the lands in the Northern Neck, as were waste and unappropriated at the time of the death of lord Fairfax, being now extinguished, and those lands vested in the commonwealth. 1 *Rev. Cod.* 352, 3; (1 *Munf.* 218, 238.)

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation?

*A.* English law books are allowed to be read in the courts of this state; the convention in 1776, having by an ordinance, declared the *common law of England* and *general* statutes in aid thereof, passed prior to 4 *Jac.* i. in force, except so far as altered by the several ordinances, declarations and resolutions of the general convention, until the same should be changed by the legislature; and the general assembly in Dec. 1792, in repealing so much of that ordinance as related to any *statute* or act of parliament, and declaring that no such statute or act shall have any force or authority within this commonwealth, having, at the same time, saved to the commonwealth, and to all persons, bodies politic and corporate, the right and benefit of every writ remedial and judicial which might have been legally obtained from, or sued out of any court, &c. of this commonwealth, with the like proceedings thereupon to be had, &c.

As to the extent to which the decisions of British courts are to be regarded as authority, see the observations of *judges Tucker and Roane,* (1 *H. and M.* 158—161—164.)

The reported decisions of the courts of other states in the Union are also frequently read in our courts, not as *binding* authority, but as entitled, *arguendo*, to great consideration.

# APPENDIX.

## RULES *of the* COURT *of* APPEALS.

### 1811, *May* 3.

THE act of last Assembly concerning the court of Appeals, having made it necessary to revise and add to, the former rules of this court, they have been revised as follows, and are ordered to be published, for the information of the bar and the public.

1. *Ordered*, that no affidavits be read in support of, or opposition to, any motion hereafter made to the court, unless reasonable notice be given to the opposite party of the time and place of taking the same, or good cause be shown why such notice is not given: And every motion which is not a motion of course shall be supported by affidavit.

2. *Ordered*, that objections to securities given upon obtaining writs of supersedeas, writs of error or appeals, shall hereafter be made within sixty days after bringing up the record, and not afterwards, unless for good cause shown to the court.

3. *A* clear and concise state of the case of each party in all appeals from decrees in chancery, and in all appeals, writs of error, or supersedeas to, or from a judgment of the general court, or any superior court of law, in which a demurrer, special verdict, case agreed, demurrer to evidence, bill of exceptions or points reserved, shall constitute a part of the record, or exhibits in the cause, with the points insisted on, signed by his counsel and printed or fairly transcribed, the expense whereof shall be taxed in the bill of costs, shall be delivered to each judge before the hearing of the cause: and no error other than such as shall be pointed out and insisted on in such statement on the part of the plaintiff or appellant, shall be (without leave of the court) admitted as a ground for argument on the hearing of the cause, and all depositions, exhibits, accounts and articles intended to be relied upon or objected to in the argument shall be particularly noticed in such state, and a reference thereto in the official copy of the record in the cause made. If statements shall not be furnished in pursuance of this rule, the causes will be either dismissed, heard exparte, or put at the end of the docket.

4. *All* causes depending in this court, which shall be ready for hearing in pursuance of the preceding rule, shall, unless good cause be shewn to the contrary, be heard in the order in which they stand upon the docket: Any cause, &c. alledged to be merely for delay, may, upon motion, be taken up at any convenient time, six days previous notice having been entered on the docket, unless a statement shall be exhibited to the court, shewing it to be a case for argument.

5. *Ordered*, that no petition for an appeal from any decree in chancery, shall hereafter be received or allowed by this court, or any judge thereof, unless the nature of the case and the errors supposed to exist in the decree, sought to be reversed, be clearly and distinctly set forth in such petition and the same be signed by the party or his counsel prefering the same.

6. *No* counsel or attorney who shall prosecute any suit in an inferior court, in which an appeal shall be prayed, shall be permitted to appear or prosecute the same in this court.

7. *Where* there are two or more counsel on the same side, no one of them shall argue twice, except by the leave of the court.

8. *The* absence of counsel, although attending any other court, except by special permission of this court, will not be considered good cause for delaying or continuing any suit.

9. *In* chancery causes it is unnecessary to read the record; but the counsel may refer thereto, and state what they consider as proved by the answer or any depositions or exhibits on which they rely: and in all cases it is recommended to the gentlemen of the bar to select and cite only the most pertinent authorities.

10. *Cases* of peculiar hardship or general inconvenience may be heard out, of course, where the reasons for so doing are extremely strong: to ascertain which, a clear and candid state of the case, and of the facts on which the reasons for departing from the regular course, are founded, shall be presented to the court, verified by affidavit, where such can be obtained, or signed by the counsel prefering the petition, notice of which, by presenting a copy of the petition to the counsel for the adverse party, is to be given at least four days before the petition shall be presented. And in case the petition is intended to be opposed, the adverse counsel shall present to the court and the counsel for the petitioner, in writing, the reasons for such opposition, verifying or denying, in the same manner any facts, which may be relied on in support of, or opposition to the petition, at least one day before the petition shall be presented; which matters, so stated, the court will take into consideration without argument, and decide thereupon as to them shall seem most reasonable.

11. *It* is expected, that the counsel will respectively, in all cases, where a special decree or entry shall be deemed necessary, prepare notes of such decree or entry, as they may think ought to be made in the cause; to be considered as part of their statement, and delivered to the judges with the record, at the final argument in each cause.

12 *Where* any process issue to revive a suit, on the death of a party, either plaintiff or defendant, shall be returned executed, there shall be at least sixty days allowed to the party or parties, in whose name or names such suits may be revived to prepare for the trial thereof.

13. *No* certificate of a judgment or decree of the court of appeals, shall, without the special direction of the court, be transmitted to any inferior court, in less than sixty days, from the rendition thereof, unless the court shall previously have adjourned for one or more weeks.

1811, *October* 2.

14. *It* is the opinion of this court, founded as well on a full consideration of the law, as on various decisions which have heretofore been had, that, in future, where a judgment or decree is reversed neither in the whole nor in part, on the ground of error against the appellant or plaintiff in any appeal, writ of error or supersedeas, yet, if error is perceived against the appellee or defendant, the court will consider the whole record as before them, and will reverse the proceedings either in whole or in part, in the same manner as they would do, were the appellee or defendant, also to bring the same before them, either by appeal, writ of error or supersedeas; unless such error be waived by the appellee or defendant, which waiver shall be considered a release of all errors as to him.

*December* 20.

15. *No* appeal, which shall have been dismissed or abated by the court, shall be re-instated or revived, after the lapse of sixty days from such dismission, or abatement, except for good cause shewn to the court, verified by affidavit, and upon reasonable notice to the adverse party of the time of making the motion, nor then, except in very special cases, unless such motion be made within one hundred and twenty days from the time of such dismission or abatement.

*Provided*, that, if the court shall not be in session on the day to which such notice shall be given, a further time of ten days shall be allowed the party to exhibit his motion, after the next meeting of the court.

1813, *November* 19.

16. *The* court, considering that the frequent calling of the causes which have abated, or are otherwise not ready for trial, tends to delay the court, without promoting the speedy decision of such cases. It is *ordered*, that they be placed on a separate docket, there to be proceeded in until ready for trial, when they are to be placed upon that part of the docket from which they have been removed.

## RULES of the SUPERIOR COURTS of CHANCERY, at *Richmond* and *Lynchburg*. (1)

1. *The* causes on the court docket must be called and tried in the order they stand, unless for good cause shewn, a cause may be passed over, or continued.

2. *In* every case, brought before the court, *for argument*, the counsel for the plaintiff is to open it, he will be answered by the counsel for the defendant: and then the plaintiff's counsel may reply. This will end the discussion.

3. *But two* counsel can be allowed to argue on any one side of a cause, without leave of the court.

4. *Counsel* should prepare notes for their decrees.

5. *Whatever* the parties, by counsel, agree to do in any cause depending, they may direct the clerk to enter accordingly, without an application to the court.

6. *The* rules in the office will be strictly conformable to the act of assembly, unless by *consent* of parties, and so to be entered, by the clerk.

7. *All* the papers or documents referred to by any bill as part thereof, must be filed with it, or the suit may be dismissed as for the want of a bill.

8. *No* cause is to be put down for hearing, unless it is ready for trial as to all parties.

9. *Any* suit which has been dismissed, in court, except upon a hearing, may be reinstated, for good cause, upon reasonable notice thereof to the adverse party, or his counsel.

10. *Objections*, to securities given for the prosecution of any suit, in this court, may be made at any time during the pendency of such suit, upon giving to the adverse party reasonable notice thereof.

11. *No* objection, to any deposition, for want of notice shall be received, after the cause is set for hearing, unless such objection be filed previously thereto.

12. *Commissions* to take depositions, may issue at any time, to either party, after the cause is set for hearing, and before the *argument* thereof (2) without any application to the court for that purpose: and exceptions, to the reading of such depositions, may be made, at any time before the hearing of the cause.

13. *That* the papers read at the hearing of any cause, in this court, in which an issue may be directed, may be read, upon the trial of such issue, be-

(1) Being the "Richmond district," and "Lynchburg district." See "courts." Ed.
(2) Dangerfield v. Claiborne, et. al. 4 Hen. & Mun. 397.

fore the court of common law, to avail there, as much as they ought to avail here;(1) "and that exceptions there, to such testimony, may be made as in other cases."

14. *That* in all cases where accounts are directed, the commissioner shall proceed *ex parte*, upon one month's notice to the party, who shall fail to attend; but he may, for good cause shewn, give a farther day; but he must make the same a part of his report.

15. *All original* reports, made by the commissioners of the court, *in matters of account*, must lie a *term* before they can be acted upon by the court, unless for good cause shewn.

16. *To* all such reports, exceptions, if to be taken, must be stated in writing, and filed with the clerk of this court, thirty days at least, before the next term.

17 *When* a party intends to produce *viva voce* testimony in court, upon the hearing of a cause, to prove an exhibit, he should apply, before that time, for an order, for that purpose, upon an affidavit, giving a description of what is intended to be proved, as well as notice to the adverse party of the motion.(2)

18. *No* party is to be allowed, upon the trial of a cause, to call for the vouchers of another party, and to put him upon the proof of them, unless where the objection was taken before a commissioner, and not supplied before he made out his report: and, then, only, within the rule of court: unless for good cause shewn, and upon reasonable notice thereof to the party or his agent, or attorney in fact.(3)

19. *That* where an answer is not responsive to a material allegation of the bill, the plaintiff may *except* to it as insufficient, or he may, on the trial, avail himself of the tacit acknowledgment of the defendant, that the charge is true.(4)

20. *The* clerk shall keep a docket of all injunctions put down for dissolution, noting therein the day each case was put down, for the inspection of counsel, which shall be deemed sufficient notice thereof to the adverse party.

21. *The* injunctions upon the motion docket, shall be all called over in the order they stand, every motion day, and taken up or not, as the counsel for the *defendant* shall think proper.

22. *No* motion shall be admitted for dissolving an injuction, unless the answer shall have been filed before the commencement of the term, in which the motion is offered, except in cases of injunctions granted within three months preceeding such term.

23. *On* the last day of every term, the clerk must call over all the injunctions dissolved at the preceeding term, and dismiss them unless good cause to the contrary be shewn.

(1) Sep. 1796, M. S. Sep. 1805, M. S.
(2) Emerson v. Beckley and Stone, 4 Hen. & Mun. 441.
(3) Read's executor v. Winston, et. al. ib. 450, & Williamson, et. al. v. Childrey, et. al. M. S. June term, 1812.
(4) Page's executor v. Winston's administrator. 2 Mun. 298.

24. *The* counsel, on every motion day, after the injunctions are disposed of, shall be called over, beginning with the attorney general first, (and the late attorney general next, if there be one) and the rest in the order they qualified in court, that each may be heard in such motions as are not docketted.

25. *In* every case, where a bill is presented for an injunction, the documents referred to as a part thereof, should accompany the bill, before the subject can be considered by the court, or the judge thereof in vacation, unless for good cause shewn.

26. *In* all cases where bond and security must be given in the clerk's office of this court, it should be done within thirty days after the date of the order under which it was directed, unless by law, a greater time be allowed, or the order will be unavailing to the party.

27 *The* affidavits that have been read, upon a motion to dissolve, in case the suit should, for good cause shewn, be carried on as an original suit in chancery, will be regarded by the court as testimony, on the final hearing of the cause, unless they shall be objected to, at the time cause shall be shewn against the dismission of such suit, and notice thereof given to the adverse party, which will be sufficient, if endorsed on the papers in the cause, or entered at the rules with the clerk of this court.

28. *In* all cases where affidavits are to be read in support of, or in opposition to any motion to be made in court, or the judge thereof in vacation, reasonable notice must be given to the adverse party, of the time and place of taking the same.

29. *Objections*, to affidavits taken on motions to dissolve injunctions, must be made, before any such motion, by stating the objection on every such affidavit.

30. *Every* petition for an appeal from any decree of this court, upon the ground that there was no *culpable* neglect in the petitioner to apply for the same, at the time the decree was rendered, or at any time thereafter during the term, must state the particular circumstances which prevented the application, be signed by the petitioner, and verified by affidavit.

31. *Every* petition for an appeal from any decree of this court, upon the ground of *error* in the proceedings or decree, must concisely state the nature of the case, and point out the *errors* relied upon; to be signed by the petitioner, and certified by his counsel to be, in his opinion, sufficient to reverse the decree, which petition must be accompanied by a complete copy of the record.

32. *In* every petition for an appeal from any decree of an inferior court to this, the like rule must be observed.

33. *The* court will proceed to hear and determine all appeals at the term to which they are sent up, unless good cause be shewn to the contrary.

34. *No* counsel, or attorney who shall prosecute any suit in an inferior court, in which an appeal may be prayed to this court, shall be allowed to prosecute the same here, *unless it was allowed upon petition.*

35. *The* punctual attendance of counsel can never be dispensed with when the court is sitting, but for some reasonable cause; and, therefore, every suit which may be dismissed for the non-attendance of counsel, without such cause previously made known to the court, *shall be at his costs.*

36. *The* papers in every case, NOT ARGUED, will be received by the court as furnishing a statement; but the points insisted upon by each party, should be made out in writing, and signed by counsel, and furnished with the papers, when the case is submitted, unless in very plain cases.

37. *When* a commissioner of this court shall have occasion to submit any question to the judge in vacation, under the act, *reducing into one all acts and parts of acts, concerning the superiour courts of chancery,* (1 *Rev. Code of* 1819, *c.* 66. *s.* 23,) he must transmit his statement to the clerk, who must file the same with the papers in the cause, and preserve it as a part thereof, and send a copy to the judge, whose opinion will be returned to the clerk, who, in like manner, must file and preserve it, sending a copy thereof to the commissioner.

38. *Every* bill of review should be presented, with a complete copy of the record.

39. *That* no suit is to be revived without the names of the representatives, of the deceased party or parties.

40. *That* the clerk may, either in, or out of court issue process to revive, when the proper names are furnished, and not before.

41. *That* unless such process be executed with all due diligence, the benefit thereof *may* be lost to the party who obtained it.

42. *That* when an order is made for an account, to be taken before a commissioner of the court, or before auditors to be agreed upon by the parties, it should be taken with all convenient speed; and unless a report be made thereupon within twelve months from the date of the order, the benefit thereof *may* be lost to the party who obtained it, unless for good cause to be shewn to the court.

43. *The* clerk of this court shall not suffer the papers, in any case, to be taken from his office, at any time, by counsel, nor during term, from the court room, but by the judge.

44. *Reasonable notice,* of all motions which are *not of course,* must be given to the adverse party.

45 *That* every motion which is *not of course*, should be supported by *affidavit*.

46. *That* each commissioner of the court must report to every term, the state of his docket, that the court may know the delinquent party.

47. *The* clerk is to see, that all the papers are regularly endorsed, in each cause.

48. *The* clerk is to endorse, on each paper filed in every cause, the *time* when the same was filed; and to note the rules in each case, on the bill therein.

49. *The* counsel should sign their pleadings.

50. *In* causes of injunctions, removed hither by *certiorari*, if a motion to dissolve, in any case, might have been made in the court below, the case may be docketted here upon the return of the writ *executed*; and a motion to dissolve, may be made upon any subsequent motion day; after actual notice to the party against whom it is to be made, or to his attorney in fact, or to the counsel.

51. *To* allow a defendant to amend his answer, must, from the nature of the case, be always at the *discretion* of the court. (1)

52. *It* may be done in a *small* matter, on motion, at any time before *issue* joined. (1)

53. *But* in a *material* point, the motion must be made upon an affidavit of the facts, which make it necessary; and after reasonable notice thereof, to the plaintiff, or his counsel. (2)

54. *The* affidavit ought to state, that, at the time of putting in the answer, the defendant did not know the circumstances upon which he makes the application, or any other circumstance upon which he ought to have stated the fact otherwise. (3)

55. *Where* process *to revive* has been *executed*, the party shall be allowed *one term*, after the *return day* thereof, to prepare for trial. (4)

56. *In* every case where there is a *decree nisi*, it may be set aside, upon filing the answer. (5)

57. *In* no case, shall a bill be referred to a commissioner of the court, for *scandal and impertinence*, after answer filed: neither shall an answer, under such circumstances, be referred, after a replication thereto: nor shall depositions be so referred, after a publication thereof.

58. *The* original reports of the commissioners of this court, made, *in matters*

(1) Liggon v. Smith, 4 Hen. & Mun. 405. (2) Ibid. (3) Ibid. (4) Minor v. Jones, Ibid. 480. (5) Fishback v. the Bank of Virginia, MS. Jan. 1812.

*of account* to any term, may then, be put down for hearing at the following term.

59. *The* plaintiff, or plaintiffs, in every injunction bill, and the defendant, or defendants, in every answer, or plea, which is *sworn* to, should sign the same.

60. *It* is not expected by the court, that counsel will, in any case, *after* a decision, argue against it, unless requested; but, they are at liberty, before a decree is entered, to state their objections, in *writing*, to the judge, for him to consider.

61. *The* commissioners of the court will attend to the *manual* with which they have been furnished.

62. *The* first day of every term, and every Saturday during the term, shall be motion days.

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**Note.**—*The preceding rules in the court of appeals, and in the Richmond and Lynchburg chancery districts, are published as received from my correspondents, and it is presumed they will be found substantially correct.*

*To afford an easy reference to the various matters they contain, I have framed an alphabetical and synoptical* "index" *for each of them.*

*In performing this it will be perceived, that some pains have been taken to give the facility intended. There is no regulation or point of any consequence which has not been indexed under various heads, under every one indeed, where it occurred to me that it might possibly be sought for. Ed.*

## CORRECTION.

P. 325, for "courtesy" *read* "curtesy."

# OHIO.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# OHIO.



## No. 1. STATE OFFICERS.

1. Who is Governor of your state &c.?

*A. Ethan Allen Brown;* residence, Cincinnati; title, "governor of the state of Ohio; (1) term of office, 2 years, and until another is elected and qualified; but is not eligible more than 6 years in any term of 8 years; elected by the people; (2) salary $1200.

2. —— Secretary of state &c.?

*A. Jeremiah M'Lean*; (3) resides at the seat of government *(Columbus;)* term of office 3 years; appointed by the legislature; salary, $1000.

3. —— Chief justice of the supreme court of law, &c.?

*A. Calvin Peas;* residence, Warren, Trumbull co; term of office 7 years; app. by joint ballot of both houses of the general assembly; salary, $1200. (4)

4. —— Clerk of the superiour or supreme court, &c.?

*A.* By the *Const.* the sup. court is to sit once a year in each county, and that court and every other court appoints its own clerk in every county for 7 years, removable by the courts for breach of good behaviour.

There are therefore, a great number of clerks of the S. C. There is

(1) "And shall be commander in chief of the army and navy of this state, and of the militia &c. *Const.*

(2) He must be at least 30 years of age, a citizen of the U. S. 12 years, and an inhabitant of the state 4 years, next preceding his election. *Const.*

(3) In the Ohio register of 1822, the name is "M'Lene;" so also, "John M'Clean" one of the judges of the sup. court. In both instances I adopt "M'Lean," grounding myself upon the manner of spelling by my correspondent: It is impossible for me to avoid misnomers. Ed.

(4) The judges of the sup. court, and presidents of the courts of common pleas, are to receive adequate compensation to be fixed by law, and not to be diminished during continuance in office; but to receive no fees or perquisites, nor hold any other office of profit or trust under this state or of the U. S. *Const. of Ohio*, Nov. 1, 1802.

The answer to this question by my correspondent in 1821, is "*Calvin Peas*, ch. Justice, *John M'Lean, Peter Hitchcock, Jessup N. Couch*, associates;" these officers are called "judges" &c.

The "Ohio Register" of 1821 by *William Lusk*, gives the *names* and order of the judges of the S. C. as follows, "Hon. *John M'Clean, Jessup N. Couch, Calvin Pease, Peter Hitchcock*:" The same register of 1822, gives the following names and order, "Hon. *John M'Clean, Jacob Burnet, Calvin Pease, Peter Hitchcock.*"

It will be perceived, that Mr. Burnet fills the place of judge Couch deceased: As to the variation in the spelling of *names*, I have no means to rectify mistakes. Ed.

no such court, as that "of appeals in the last resort."

5. —— Attorney General: &c.?
*A.* We have no attorney or solicitor general.

Each court appoints its own prosecutor of the pleas and fixes his compensation, which is paid from the county treasury.

6. When, and where, is the annual meeting of the legislature?
*A. Columbus*, is the seat of government; the election for representatives of the general assembly, is on the 2nd tuesday of October annually, and the legislature meet on the 1st *monday of December ensuing.*

UNITED STATES OFFICERS.

7. Who is District judge, &c.?
*A. Charles W. Byrd;* resides near Manchester, Adams co.

The State, composes one district.

8. —— Clerk of the District court &c.?
*A. Harvey D. Evans;* resides at Columbus.

9. —— District Attorney, &c.?
*A. John C. Wright;* resides at Steubenville.

10. —— Marshal, &c.?
*A. William Dougherty;* resides at * * * (1)

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?
*A. Thomas Todd;* The circuit is composed of Ohio, Kentucky, and Tennessee.

12. At what times and places, are District courts of the U. S. held, &c.?
*A.* At Columbus, on the 2nd *monday in January and September*, annually.

13. —— Circuit courts &c.?
*A.* At Columbus, on the 1st *monday of January and September*, annually.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?
*A.* The statute laws of this state, were revised and reprinted in 1816, and contain the laws to that year inclusive, in 2 *vols.*

15. Can the publick laws in pamphlets, be procured, &c.
*A.* The laws since then are in pamphlets, and probably may be procured at Columbus, or Chillicothe.

16. Is there any Digest of the state laws &c?
*A.* There is none.

17. Are there any Reports of cases in your state courts, &c.?
*A.* None.

18. Is there any Digest of cases in your state courts, &c.?
*A.* None.

19. Are there any Treatises on the law, in your state &c.?
*A.* "*Every man his own lawyer;*" by John M'Dougal: published about the year 1813, at Chillicothe.

Proposals have lately been issued by a gentleman at Chillicothe, for compiling all the laws relating to the title of property, within this state. Its publication is doubtful.

20. —— Foreign law books republished in your state, &c.?
*A. Not answered.* Ed.

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?
*A.* None.

22. Is there any Digest of cases in those courts, &c.?
*A.* None.

23. Have any books been composed, in your State, &c.?
*A.* Historical Sketches, *of the prin-*

(1) Nat. Intel. Mar. 11, 1822.

*ciples and maxims of American Jurisprudence, in contrast with the doctrines of the English common law, on the subject of crimes and punishments.*" 1 *vol. Oct.* Steubenville, 1819. (1)

(1) The author of this work, is *John M. Goodenow* Esq. counsellor at law.

Mr. Goodenow—at the time of publishing these "sketches" resided in Steubenville, but since then has removed to Bloomfield, in Trumbull Co. Ohio. The book contains upwards of 400 pages, besides the appendix.

The professed object of Mr. G. is to prove, that the courts in *Ohio* were not possessed of *common law* jurisdiction, and more especially, in the case of crimes and offences at common law.

The author in prosecuting this inquiry, takes a wide scope; and not only pursues the main argument, but has treated on many particular subjects and features of the common law, as acted upon and exhibited in practice. Some idea may be formed of its wide range,—by the following synopsis of the *contents:*


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24. Is there any distinction in the profession of Attorney and Counsellor, &c.?
*A.* There is none.

25. By whom are attornies or counsellors admitted, &c.?

*A.* They are admitted on examination, by the supreme court; no particular term of study is required; they must produce a certificate of moral character, and of their qualifications, from a practising attorney. The licence is general, and the *clerks* can give the names of those admitted in their respective counties.

26. On what conditions, &c. from other states, &c.?

*A.* Foreign attornies, are admitted upon examination after 1 years residence.

COURTS.

27. What are the names of the several courts in your state, &c.?

*A.* "*Magistrates courts;*" "*city court of Cincinnati;*" "*courts of Common Pleas;*" *Supreme court.*"

28. Their style, &c.?

*A.* "Judges of the Supreme court;" "The President and Associate judges of the court of Common Pleas;" "The Mayor and Aldermen of the city of Cincinnati;" "Justices of the Peace."

29. The extent of their several territorial jurisdictions, &c.?

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

I. The "*Supreme Court.*"

This court is composed of 4 judges, and holds one session annually in each county of the state, and its jurisdiction is in general confined to the county.

It has *exclusive* original jurisdiction in all cases of *divorce* and *alimony*, and concurrent jurisdiction with the common pleas in all *civil* cases at law or in equity, where the matter in dispute exceeds $1000; and *appellate* jurisdiction in all cases, where that court has original jurisdiction.

It has power generally, to issue all remedial writs necessary for the due administration of justice; and either of the judges in vacation, may allow writs of error, supersedeas, certiorari and habeas corpus.

II. The "*Court of Common Pleas.*"

The state is divided into 9 *circuits* of the court of common pleas, each circuit containing several counties, with a *president* to each circuit, and 3 associate judges for each county.

The territorial jurisdiction of this court is limited to the county, except,

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Chap. VIII. WHETHER THE COMMON LAW BE OF CONSTITUTIONAL OR LEGAL OBLIGATION IN THE STATE OF OHIO, . . . . . 383

The State of Ohio vs. Lafferty, (*appendix.*) . i

This is no place to notice the principal argument of the author, or to examine the various matters which he discusses. He has brought into view many historical evidences, and maintains all his positions with great fluency of expression, and a vigorous style of argument.

But a few copies were printed (less than 100,) and as I understand were gratuitously and principally distributed among judicial characters, in Ohio and to some few of Mr G's friends.

Whatever may be decided on the general doctrine advanced by the author, or however, many of his particular opinions may be questioned, this is a book of an original character, and Mr. Goodenow in publishing an edition for the public, might it is hoped, receive a proper remuneration for his labor, and certainly could not fail to advance his reputation.

in some instances of sending process into other counties.

It has original jurisdiction, in all *civil* cases at law and in equity, where the matter in dispute exceeds the jurisdiction of a justice of the peace; and *appellate* jurisdiction from justices of the peace, in all cases.

This court also, has the *probate* of wills, and the granting of letters testamentary and of administration; and generally takes cognizance of all probate and testamentary causes and matters, and has the appointment of guardians, &c.

It has *exclusive* jurisdiction over all *crimes* and misdemeanors, *except* in cases capital, where it is concurrent with that of the supreme court.

III. The "*City court of Cincinnati.*" (1)

The jurisdiction of this court extends through the city, with power to send its process throughout the surrounding county.

It has common law *civil* jurisdiction concurrent with the common pleas, when either the plaintiff or defendant or both, reside within the city; and in *criminal* cases, where the punishment is less than penitentiary. (2)

IV. The "*Court of a Justice of the Peace.*"

A justice of the peace has jurisdiction throughout his *township* in civil cases, and over the county, in criminal.

He has cognizance as at common law in *civil* cases, not exceeding $100 in amount; *except*, in trespass for assault and battery, malicious prosecution, ejectment, replevin, detinue, slander, cases of real contract, and where the title to land comes in question.

Justices of the peace, *decide* no criminal causes. (1)

33. Which are courts of equity, and which of law, &c.?

*A.* The supreme court, and the courts of common pleas respectively, are courts both of law and equity, and the only courts possessing chancery powers.

Any judge of either of those courts in vacation, may allow writs of injunction, and ne exeat.

Proceedings are by bill and subpœna, as in England.

34. What methods are used to carry up judgments &c.?

*A.* From *Justices of the peace*, cases are removed to the court of common pleas, by appeal, or certiorari; the former as a matter of course, on giving security within 10 days to prosecute, &c.; the latter, on allowance by a judge of the common pleas, and security, &c. within 15 days after the judgment.

From the *common pleas* to the sup. court, by appeal, writ of error, and sometimes, habeas corpus cum causa.

Appeals from the common pleas are of course, on security within 30 days after judgment.

Writs of error and habeas corpus, on allowance by any judge of the supreme court, and security, &c.

By *appeal*, the original judgment is vacated, and proceedings are had

(1) Held I presume, by the "mayor and aldermen." *See answ. No.* 28. *Ed.*

(2) My correspondent does not mention any *appeal* from this court; it is probably, to the supreme court. *Ed.*

(1) Being I presume mere conservators of the peace for the county, with power to apprehend, bind over, and commit offenders, &c. *Ed.*

*de novo* in the supreme court, by jury or otherwise, as the case may be.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A. David Smith*; at Columbus.

36. Who is the principal *Bookseller* at the seat of Government?

*A.* There is no book store there, of any magnitude.

*John Kilbourn* has a small one.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* A deed of bargain and sale, is the common instrument of conveyance.

2. Does the legal possession pass without livery, &c.?

*A.* The possession passes by the legal operation of the deed, without other ceremony.

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* To create estates in fee, the words "heirs and *assigns*" are necessary. (1)

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* By the rules of *common law.*

5. Are attesting witnesses &c. required to conveyances?

*A.* *Two* attesting witnesses are necessary in Ohio, to all conveyances of lands.

6. Must the deed be sealed?

*A.* The deed must be sealed.

7. Is a scroll sufficient?

*A.* And a *scroll,* is a sufficient seal.

8. Are the common law requisites for the perfection of Deeds &c. altered in any particulars, in your state?

*A.* In nothing material.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* It is not.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* If a deed or mortgage is recorded within *six* months from its date, it is good against all of a later date: if not recorded, it is void against subsequent purchasers *without notice;* but notice otherwise than by recording, is sufficient.

The record is to be made in the recorder's office of the county, where the land lies.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

*A.* Yes; she can do all.

12. Is this done by joining with him in the conveyance, &c.?

*A.* By joining in the conveyance.

13. Is a private examination of the feme necessary, &c.?

*A.* A private examination is necessary before the officer, taking the acknowledgment of the deed.

14. What officers may take this examination, &c.?

*A.* Any judge of the court of common pleas, or justice of the peace.

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c?

*A.* "*State of—— county of—— ss.*

*Be it remembered, that on the—— day of——in the year &c. before me, J. P. a justice of the peace within and for the county afd. personally came*

(1) The terms of the question seem to imply that the word "assigns" is requisite in the creation of a fee simple estate; this inaccuracy of my own and the inadvertence of my correspondent, has probably occasioned him to fall into a mistake, in stating that word to be necessary. A grant to A. and his "heirs" without "assigns" creates a fee simple by the common law; "assigns" however is so invariably added, that it is commonly understood to be essential: I am not aware that in Ohio, or any other state, the term "assigns" has by statute been made necessary to the constitution of a fee simple, in any instrument, and if not, it is unnecessary. *Ed.*

*A. B. and C. his wife the above* (or within) *grantors, and acknowledged the foregoing* (or within) *instrument of writing to be their voluntary act and deed for the uses and purposes therein mentioned. And the said C. wife of the said A. B. being by me examined separate and apart from her said husband, and the contents of the said deed being made known to her, declared, that she voluntarily and of her own free will and accord, without any fear or coercion of her husband, did and now doth acknowledge the signing and sealing thereof. In testimony whereof, I have hereunto set my hand and seal, the day and year aforesaid.*

*J. P.* [SEAL.]

The form must be particularly followed, and this certificate be on the same sheet with the deed.

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* It is, so far as the law is settled.

Neither the statutes nor judicial decisions hitherto: have established any exceptions.

Our stat. contains a general provision, that deeds executed in any other *state, territory or country*, agreeable to the laws thereof, shall be valid in this state.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* As to legal estates of inheritance they are the same.

She is also entitled to dower, of the third part of all the right, title, and interest, which her husband at the time of his decease had in any lands and tenements, held by bond, article, lease, or other evidence of claim.

Dower may be barred, by a valid jointure, as by 27 H. viii. and forfeited by elopement, as by W. ii. c. 34. and by a divorce, occasioned by the wife's aggression.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A. Judges of the court of common pleas; Justices of the peace, and the Mayor of Cincinnati.*

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* The same as *answ.* No. 15, omiting what relates to the wife.

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* The present stat. on this subject, took effect *June* 1, 1820, and contains no provision for proof of deeds, by affidavit endorsed.

The previous statute authorized that mode of authentication, and the usual form was as follows. viz.

"*State of——! County of——ss.*

*Be it remembered, that on the—— day of—— before me J. P. a justice of the peace within and for the county afd. personally appeared, A. B. and C. D. who being severally sworn, depose and say, that they these deponents saw E. F. the above* (or within) *named grantor, sign, seal and deliver the foregoing* (or within) *deed, and that these deponents each signed the same as subscribing witnesses. In testimony whereof I have hereto set my hand and seal the day and year aforesaid.* *J. P.* [SEAL]

An affidavit by one is sufficient, stating, that the two signed *as witnesses.*

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A.* An affidavit should be subscribed, but not an acknowledgment.

22. Is the certificate to be under the seal, as well as the hand of the officer?
*A.* Under both *hand* and *seal.*

23. If a quaker is witness, what is the form of affirmation by your law?
*A.* The same as an oath, substituting "*affirmed*" for *sworn.*

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* Any officer anthorized by the laws of that state, to take acknowledgments or depositions.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A.* By common usage in this state, the publick *seal of any city* with the Mayor's certificate, or of any county or superiour *court* with the clerk's certificate, is received as sufficient.

But the deed is admitted to record even without this certificate, though it would be required on trial.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?
*A.* There is no statute provision, on this subject,

The proof must be according to common law rules, on the trial.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* Any acknowledgment taken in any other state or *country*, according to the laws of that state or country, or of this state, is valid.

There is no other provision on this subject. (1)

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?
*A.* The *originals* if acknowledged, are evidence on trial without further proof; but *copies* from the record are no otherwise evidence, than as proof of a lost instrument according to the rules of com. law.

They are certified by the recorder, under his official seal; and copies so authenticated are evidence in court, of the existence of such *records.*

29. In what order, do mortgages take preference of each other?
*A.* There is no special provision, and the answer is to be drawn from the principles referred to in the *answer*, No. 10.

Recording within six months is notice from the date; recording afterwards, is notice from the time of recording; notice otherwise, is equivalent to notice by recording: the subsequent purchaser *without notice*, where the first deed is not recorded within the 6 months, nor before his purchase, is preferred.

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?
*A.* Yes, *six* months. *See answers* Nos. 10, 29.

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

(1) My correspondent is to be understood as respects the *officer* and mode of *authentication* of the acknowledgment or proof, and not of the *form* of the acknowledgment, or proof itself, that, must be according to the statute or law of the state. Ed.

*A.* Yes, in all respects the same.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* Nothing material, now recollected.

It may however be well to observe, that husband and wife, can join in a power of attorney to authorize the execution of a deed, which if executed by her, and the husband respectively, in the manner before directed for a deed, (see Nos. 5, 6, 7, 11, 12, 13, 14, 15,) will produce the same effect in conveying her right.

The power of attorney must be recorded in the proper county, and may be revoked by the *wife* at any time before the execution of the deed, by causing such revocation to be also recorded.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A.* Judgments bind real estate; and it may be sold on execution.

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* From the first day of the term at which judgment is rendered, *except* judgments confessed, which bind only from the day of actual entry.

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* Where several executions against the same debtor, are sued out during the term at which judgment is rendered or within 10 days thereafter, and where several executions against the same debtor come to the hands of the officer on the same day, they are all paid *pari passu*; in all other cases, the execution first delivered to the officer is first satisfied.

36. Does a judgment bind, after acquired land?

*A.* It does.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* The same rules govern, as on judgments and executions against real estate. *See answ.* No. 35.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* He may, until a levy is made, if it be bona fide, and without fraud.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* The difference of the court, makes no difference in the lien.

By our present act on the subject (which took effect *June* 1, 1820,) judgments bind only in the county where they are entered: This comprehends, both the common pleas and supreme court; the previous act, had no express provision on the point, but the common opinion is, that its construction would be the same. I speak of state courts: between the federal and state courts, I believe the question has not been made, as to conflicting liens.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* There is not, *except* in the federal courts.

41. Can execution be taken out at once, in every county, &c.?

*A.* Execution is issued from the county where judgment is had, directed to the sheriff of any county in the state; which without the county (where the judgment was) binds only by virtue of a levy, and only one can be taken out at the same time.

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* Execution issues at the same time, against chattels and lands; but the chattels must first be sold or *nulla bona* indorsed, before a levy can be made on lands.

Lands must be appraised, and can be sold only for *cash*.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* A deed executed by the officer in form of other deeds, is good; but in making title through it, you must shew the regularity of the execution, advertisement, appraisment and sale.

By a statute which took effect *June* 1, 1820, the court, on being satisfied of the regularity of the officer's proceedings, may order a deed to be made to the purchaser which deed is *prima facie* evidence, of the regularity of the sale. Before sale perfected, the court on motion will set aside any of the proceedings, for irregularity.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* Real estate must be appraised and cannot be sold, till it brings two thirds of its appraised value.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* Not as defined by common law: Process on *mortgages*, is by scire facias, and the execution we call a *levari facias*, which is a simple order, to sell the land.

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A.* A law was passed *Feby.* 1820, by which if the defendant in execution requires it, his *chattels* are to be appraised, and if they will not sell at one half their appraised value, are to be returned to him for *six* months, on his giving security for their redelivery to the shff. at the end of that time. If he fails to give that security (and at all events at the end of six months,) the property sells for what it will bring.

This law is unlimited in duration. We have no other laws, coming within the purview of this question.

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* None, except as in the last *answer*.

48. May the debtor redeem land sold on execution, &c.?

*A.* We have no provision, for redemption.

49. May judgments on warrant of attorney, be entered in vacation?

*A.* Our stat. gives no authority for it, and it has not hitherto been done.

50. Can judgments be entered on warrant of atty. before the debt is payable?

*A.* They can, on sufficient authority.

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* Probably not, the question is unsettled.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* The reversal of judgment does not affect the title, but restitution is

to be made, of the purchase money and interest.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?
*A.* Yes; to both questions.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?
*A.* He may; our law makes no exceptions, of any description.

55. Is the Ca. Sa. regulated by the common law, &c.?
*A.* Commitment under a ca. sa. does not in all cases extinguish the debt; execution may subsequently be had against chattels and lands, in case of a discharge by the insolvent act, or by taking the oath, that he cannot support himself in prison.

But few questions under the ca. sa. have yet been adjudicated upon in this state; but it is generally considered, as very different from the common law writ.

56. Are any kinds of personal estate exempt from execution?
*A.* Persons having families may hold exempt from execution, 1 cow; 12 sheep and their wool shorn; all the flax in their possession and the yarn or thread manufactured therefrom; 2 beds and bedding; their wearing apparel; 2 spinning wheels; 2 pots or kettles: and any quantity of cloth of their manufacture, not exceeding 100 yards; all which they hold absolutely. There are no other exemptions.

### No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?
*A.* There is. It extends to all civil actions, where the petitioner has resided in the state, two years.

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?
*A.* Three or four months. The claim is determined by the court.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?
*A.* He may apply at any time when he finds himself unable to pay his debts, and in any situation, of the claims against him.

60. Is there any thing peculiar in your insolvent law?
*A.* Nothing material.

### No. V. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* They are, and without limit as relates to the interest of heirs generally.

A will made when the testator has no child, is rendered void on the birth of a child; and a child born after the will made in any case (unless expressly disinherited,) and a child absent and supposed to be dead, succeed to the same share as if the ancestor had died intestate; to raise which, the devisees contribute.

62. What formalities of execution, are essential to a will of lands &c?
*A.* The will must be *signed* by the testator, or by some person for him in his presence and by his direction, and be attested by *two* or more disinterested witnesses, subscribing their names in his presence.

63. What formalities are required, in the revocation of wills of land?
*A.* Any will or clause thereof may be cancelled by obliteration, by a codicil executed as above, and by birth of a child as above.

64. Are the provisions of the 29

C. ii. c. 3. adopted in regard to the execution of wills of land &c?

*A.* The provisions of our statute, are similar to the 29 *C.* ii. *c.* 3.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?

*A.* Before the *court* of common pleas of the county.

The heir, may contest afterwards by bill in chancery within *two* years, on which an issue is tried by a jury; but after this, the probate is binding and conclusive, excepting, on infants, femes covert, persons absent, insane, or in captivity.

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

*A.* By the oath of the witnesses.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* In the office of the court of common pleas of the county; and office copies are evidence:

68. What formalities are required, to wills of chattels?

*A.* The same as of lands.

Our law of nuncupative wills, is taken from the 29 *C.* ii. *c.* 3, with slight variation.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A. See the preceding answer* No. 68.

70. May executors, or administrators having letters in another state, sue in your state?

*A.* They may.

71. If not, what is to be done to enable them to sue?

*A. See the preceding answ.*

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A.* Exemplifications, are evidence.

73. How are foreign wills and testaments proved in your state, &c?

*A.* We have no statutory provisions as to the mode of authenticating foreign wills and testaments.

In practice (in cases not falling within the acts of congress,) (1) the seal and certificate of the judge of probate (or other proper officer,) with a certificate of his appointment, under the seal of state &c, has sometimes been introduced and received in evidence.

All wills affecting lands, must be authenticated and recorded in the county where the lands lie, and are subject to be contested, as the original might be. (2)

## No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

*A.* I. If the estate come to the intestate by descent, devise, or deed of gift from an *ancestor*, it descends in parcenary in the following manner;

1st. To the children of the intestate, or their legal representatives.

2d. To his brothers and sisters of the blood of the ancestor, whe-

(1) *See* 2 *vol* 122.—3. *vol.* 621.—*acts of congress, Bioren's edit.*

(2) It is not clear whether this last observation of my correspondent, applies to *foreign* wills, viz. that *they* are to be recorded, &c. and are subject to be contested as the originals might be. It would seem from his answer—to *No.* 65, that the probate of a will in the common pleas, was conclusive on all persons in regard to land, after 2 years; except infants, &c.—*Ed.*

ther of the whole or half blood, to the intestate.

3d. To the ancestor, if living.

4th. To the brothers and sisters of the ancestor, or their representatives.

5th. To the brothers and sisters of the intestate, of the half blood not of the ancestor, or their representatives.

6th. To the next of kin to the intestate, of the blood of the ancestor.

II. If the estate came by *purchase* to the intestate, it descends,

1st. To his children, and their representatives.

2d. To his brothers and sisters of the whole blood, and their representatives.

3d. To the brothers and sisters of the half blood, and their representatives.

4th. To the father.

5th. To the mother.

6th. To the next of kin to and of the blood, of the intestate.

One of the several heirs in the same degree being deceased, his representatives take his share; and if all the heirs are in the same degree, they take *per capita;* if not, *per stirpes.*

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

*A. See the preceding answers.*

78. Is there any thing peculiar in your law of descents?

*A.* Inheritance may be derived through an alien, or a bastard by way of the mother.

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

*A.* The appraisers of the personal estate, allow the widow a suitable proportion of it at their discretion, for her support one year.

If there are legitimate children and the personal estate after the above allowance and the debts paid, is over $400 the widow has one third as her own property, if under $400 she has one-half; if there are no legitimate children, she takes all the remaining personal property as her own.

In other respects, distribution of personalty, is according to the law of descents of *real* estate.

80. How among collaterals?

*A. See the preceding answer.*

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A. See preceding answers.*

## No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

*A.* They cannot.

83. Are entails abolished; converted into fees; or otherwise modified &c?

*A.* By a stat. of 1812, no estate can be granted to any persons, but such as are in being or their immediate issue; and estates given in tail, go in fee simple, to the issue of the first donee.

84. How barred by the tenant?

*A. See the last answer.*

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*See preceding answers.*

As to curtesy, we have no stat. nor as far as I know any adjudications; but the common law is supposed to prevail.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

*A. Twenty-one* years.

87. What savings &c?

*A. Infancy, insanity, coverture, imprisoned,* or *beyond sea,* when the right of action accrues; the stat. runs from the removal of these disabilities. If a person has left the state and is absent when the cause of action accrues, and remains absent in a *place unknown* to the plaintiff, the stat. begins to run from his return.

88. Is there a saving in favour of foreigners or citizens of other states?

*A.* None, except, as in the last answer.

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

*A.* In general, they are.

90. Is there any thing peculiar in your state on this head?

*A.* Payment of any part of the principal or interest, or a demand (though not judicial) within the time of limitation, prevents the stat. from running.

91. What length of time bars recovery &c. in personal actions?

*A.* Debt and covenant on specialty, 15 years; trespass, (except as below) detinue, trover, replevin, case (comprehending assumpsit) except book accounts, and debt for rent, 6 years; actions upon book accounts, and forcible entry and detainer, 4 years; trespass for assault and battery, slander, libel, and false imprisonment, 1 year.

You will observe, there are some cases not provided for, as *debt on* simple contract, &c. where probably we have no limitation.

92. What savings?

*A.* The *savings* are the same as in the case of lands. *See* No. 87.

93. Are there any in favour of citizens of other states, or foreigners?

*A.* None, except, as in No. 87, which answer applies, to all kinds of actions.

No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

*A.* They may.

There is no provision for absentees in our present stat, which was passed *Feby.* 1820.

95. Before a sale, is notice to be given &c?

*A.* Yes; all this is to be done.

96. What officer is to give this notice?

*A.* The county *auditor*; except, as to lands within the Virginia military district (between the little Miami and the Sciota,) belonging to non-residents, when it is to be given by the auditor of the state, at Columbus.

97. In what manner &c.

*A. See answ.* No. 95.

98. If a sale takes place, is the deed absolute?

*A.* It is absolute.

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

*A.* The sales are entered, in the office of the county auditor at the seat of justice of each county, *except,* lands of non-residents in the Virginia military district, which are entered with the auditor of the state.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

*A.* They do not; but the state has a perpetual lien on them, till taxes paid.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* With the county auditor at the seat of justice of the county, containing the lands; or with the auditor of state at Columbus.

Taxes of non-residents, *except* in the Virginia military district, may be paid to the county auditor from the 1*st. Sept. to the* 31*st. Decr.* of each year; and in all cases of non-residents, to the treasurer of state at Columbus, on certificate from the auditor, from the 15*th Sept. to the* 31*st. Decr.* of each year.

If the owner has no agent, he can have the lands entered for taxation, by application to the county auditors previous to the 1*st. Sept.* of each year, giving the description, quantity, and quality of the land, whether, 1*st.* 2*d. or* 3*d.* rate.

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* No; *except*, in cases of absentees.

The defendant may be held to bail of course, on bonds, sealed bills, bills of exchange, and notes for a sum certain; and in all cases of contract, or trespass on real or personal property, when plaintiff files an affidavit of the amount due or damages sustained.

In other cases, only by special order of court. Our bail, is in nature of bail at common law. (1)

### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?

*A.* There is, for the conveyance of lands, they are to be recorded as deeds.

*See ante*, No. II. (conveyances) *answers*, No. 9, &c.

There is none, in respect to chattels.

### ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A.* They do not.

Aliens, can hold by descent or purchase, in the same manner and with the same privileges, as citizens.

### ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* By local acts, similar to those

(1) Bail in my question,—refers to the rule at *common law*; by this both I and my correspondents must be understood to refer to the long established statute and positive provisions on this subject: at *common law*, only felons and criminals could be imprisoned, or held to bail; no creditor could bereave a man of liberty, and the state of a citizen for debt; it is the reproach of legislation and of legislators, that this shameful and impolitic power, is lodged in the hands of creditors. *Ed.*

named in the question. If the widow and nearest of kin decline, the court may appoint the next of kin; if all the kin decline, then creditors or others, may be appointed.

106. May guardians be appointed by will: does the common law regulate &c?

*A.* We have no statutory provision for appointing guardians by will, though probably such would be recognized, or at least appointed by the court.

The stat. directs generally, their appointment by the court of common pleas, and regulates their conduct.

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* It is not.

The funeral charges, expenses of the last sickness, and costs of administration are first paid, and all other debts *pari passu*.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* They cannot give a preference.

Lands of the deceased, are never sold on such judgments.

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* Our stat. is silent on this subject, and we have no judicial decisions; but they are not generally considered to be in force.

### SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?

*A.* It is without change, *except*, as to the form of the seal:

The negotiability of bonds, and the seal giving no preference in the administration of assets, and perhaps some other cases,—may be considered as exceptions.

111. Is a scroll &c. equivalent to wax &c?

*A.* Either of them is, as a private seal, in all instruments.

### BASTARDS.

112. Are bastards subject to common law disabilities?

*A.* They are not.

They can inherit, and transmit inheritance, and have the rights of other citizens. (1).

113. Are antinuptial children, legitimated by marriage of the parents?

*A.* They are.

### ALLUVION.

114. Does the common law in respect of alluvion prevail?

*A.* We have no stat. on the subject, nor decision; probably it does.

### FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

*A.* We have no provisions, or decisions.

(1) My correspondent states this so.—Yet possibly—it is to be understood *sub modo*, as inheriting from the mother, and transmitting estates by descent to collateral relations—by the same mother, &c.—provisions in several states, have been made to this extent. *Ed.*

116. Is this so by statute, or usage?
*A. See the preceding answer.*

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?
*A.* Similar acts, are in force.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* We have the provisions, of the *3d. 4th. 6th. 19th. and 20th.* sections of that act, or those in substance similar.

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?
*A.* We have no similar provisions, by statute.

120. Is the English law of uses and trusts, in force?
*A.* In general it is, *except* so far, as drawn entirely from the before mentioned statute of 27 *H.* viii.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?
*A.* The common law prevails, in reference to both branches of the question.

USURY. INTEREST.

122. What is the rate of interest?
*A.* Six per cent. per annum.

123. What provisions against usury?
*A.* That if any person shall *demand* or *receive,* more than six per cent. per annum on any demand whatever, he shall forfeit the whole amount of the debt, one half to the county treasury, and the other half to the informer.

I know of no proceedings or important decisions, under this singular statute.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?
*A.* On all book accounts of not more than 18 months standing, the party himself may be examined under oath respecting them, of which testimony the jury are to judge.

Under this stat. the courts hold, the 18 months is to be calculated from the date of the last charge, and that all kinds of books of account are admissible, with the parties oath.

125. Is interest recoverable on book debt?
*A.* It is recoverable by stat. after an unreasonable delay of payment, on which the jury determine; commonly, six months.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?
*A.* They are, and generally governed by the English law merchant.

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?
*A.* In practice, we have as yet fol-

lowed the English law in these respects.

But a late statute (*Feby.* 25, 1820,) enacts, that the holder may recover against the indorser, having first used *due diligence* to obtain the money of the drawer or maker, and that a demand of payment on the drawer or maker, within a reasonable time after due, shall be adjudged *due* diligence.

Under this stat. we have yet, no decisions.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?
*A.* It is not, *except*, to recover damages on bills drawn on persons, without the state.

129. Is there any peculiar practice in your state, on this subject?
*A.* None, *except*, the stat. named, in *answer*, No. 127.

130. What damages are recoverable, upon the protest of foreign bills of exchange?
*A.* On all bills, drawn on persons living within the United States and without this state, the drawer and indorsers are liable to ten per cent. damages on protest for non acceptance, or non payment; if drawn on persons without the United States, 15 per cent; with interest and charges.

### DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?
*A.* They are; where the party had a *former wife or husband living, at the time of the marriage*; for *wilful absence five years*; for *adultery*; and for *extreme cruelty*; by the supreme court only, and without any restriction as to the place where, the cause of divorce arose or the parties reside.

### ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?
*A.* They do.

All creditors who present their claims, share equally in the property attached.

### LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A.* It is not.

We have no distress for rent, and no provision on the subject, *except* one to secure the landlord's share of the crop, from execution against the tenant.

### SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A.* Nearly so, but more extensive.

Our statute, allows any "debt, contract, or demand," to be set off.

### CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?
*A.* They are not, *except* bonds.

By the stat. named in answer No. 127, *bonds* are made assignable, as bills of exchange; the assignee may sue in his own name, and the assignor is liable, as an indorser.

136. Is the common law in respect of choses in action, adopted?
*A.* In other respects it is, generally. *See No.* 110.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?
*A.* It is generally so considered.
We have no particular stat. provisions or decisions, on the subject.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?
*A.* By sequestration; by the usual executions against chattels, lands, or the person; by writ of habere facias possessionem; by decree of conveyance, which after a time to be stated in the decree operates as a conveyance; or by attachment; and the process is executed by the sheriff of the county.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?
*A.* They are paid *pro rata*, (except as in answer No. 107,) and distribution is made, by order of court.

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?
*A.* There are no lands of either description.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation?
*A.* They are, and we have no restrictions on the subject.

## CORRECTION. AND NOTE.

Page 400. For "Sciota" read "Scioto."

*Rules of Court.* No regular system is yet established in the Supreme court of Ohio.

## SUPPLEMENTAL.

Since the receipt of the manuscript from my correspondent in Ohio and after it was printed, I received a line from him stating that in consequence of some alterations in the laws his previous answers would require to be corrected as follows.

No. III. JUDGMENT, (EXECUTION) &c. page 395.

*Quest.* 35. Expunge the answer to that question as it now stands and insert the following; "our statutes on the subject of this article (judgments and execution) have been frequently varied; the following summary taken from our statute of *Feby.* 1st. 1822, furnishes the answer to this question.

1. Judgments in respect of lands, have a preference according to priority of date, those recovered at the same term being considered of the same date and subject no doubt to preference, as cases of *personal* property. *(See answ. to No. 37.)*

2. If execution is not taken out and levied within one year from judgment, the lien ceases as against other judgments, except, in cases of appeal, error, injunction or disability of the officer.

3. If the real estate levied on is sufficient at two thirds its appraised value, to satisfy the judgment, the lien on the residue of the debtor's property also ceases as against other judgments.

4. When there are several executions in the officers hands at the same time they are to be levied separately on separate tracts of property, giving the oldest judgment a choice, and if they are of equal date, the property to be equally distributed by estimation of the appraisers.

5. Former levies may be set aside within six months and levied under this act, if not, the debtor's other property is exonerated from the lien as against other judgments."

*Quest.* 37. The former answer to question *No.* 35—is to be substituted as the proper answer to Quest. 37, being erroneously placed under *No.* 35.

*Quest.* 46. The answer to this question as it now stands, is to be taken subject to the following alteration by the late act viz, "that the stay on the bond and appraisment is extended to nine months when the property is to be sold peremptorily; and appraisment of chattels is abolished as to all causes of action arising after the *4th of July* 1822.

Some persons had construed the former law, as allowing successive appraisments at the end of each six months."

DIVORCE. page 404.

*Quest.* 131. To the causes of divorce stated in answer to this question, our late act of Jany. 11, 1822 has added the following, "*wilful absence for* 3 *years; impotence;* and *imprisonment in the penitentiary,* if application be made during the imprisonment."

# ILLINOIS.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# ILLINOIS.



## No. I. STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. Shadrach Bond*, Kaskaskia; title "his excellency;" term of office, 4 years; elected by the people; salary $1000.

2. —— Secretary of state &c.?
*A. Elias Kent Kane*, resid. Kaskaskia; app. by the governor by and with the advice and consent of the senate; no definite term of office, each governor nominating to the senate the person he sees proper for that office.

3. —— Chief justice of the supreme court of law, &c.?
*A. Joseph Philips*; resid. Kaskaskia; *appointed, until after the 1st day of January* 1824; (1) app. by the general assembly. Salary $1000.

4. —— Clerk of the superiour or supreme court, &c.?
*A. James M. Duncan*; resid. Vandalia; no term of office prescribed, and subject to removal for any corruption in office.

5. —— Attorney General: &c.?
*A. Samuel D. Lockwood*; resid. Vandalia; term of office during good behaviour; app. by the general assembly.

(1) The part in *italick*, is so in the manuscript; I presume his term of office then ceases, and some stated period is after that assigned by the constitution. Ed.

6. When, and where, is the annual meeting of the legislature?
*A. Vandalia*, Fayette co.
The legislature first assembled there, on the *1st monday in December*, 1820. (2)

## UNITED STATES OFFICERS.

7. Who is District judge, &c.?
*A. Nathaniel Pope*; resid. Kaskaskia; one district only.

8. —— Clerk of the District court &c.?
*A. William H. Brown*; resid. Vandalia.

9. —— District Attorney, &c.?
*A. Jepthah Hardin*; resid. Shawneetown.

10. —— Marshal, &c.?
*A. Henry Connar*; resid. Kaskaskia.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?
*A. Illinois*—is not as yet comprehended in any circuit; having only a district court.

12. At what times and places, are District courts of the U. S. held, &c.?
*A.* On the *first monday of May and December* annually, at Vandalia.

13. —— Circuit courts &c.?
*A. See answ. to No.* 11.

(2) I presume this to be the day annually. Ed.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?
*A.* The laws of Illinois are compiled in 2 vols. from 1819 to 1821.

15. Can the publick laws in pamphlets, be procured, &c.
*A.* It is made the duty of the secretary of state to distribute the laws, to all civil and military officers in each and every county in the state, at the expense of the state.

16. Is there any Digest of the state laws &c?

17. Are there any Reports of cases in your state courts, &c.?

18. Is there any Digest of cases in your state courts, &c.?

19. Are there any Treatises on the law, in your state &c.?

20. —— Foreign law books republished in your state, &c.?

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?

22. Is there any Digest of cases in those courts, &c.?

23. Have any books been composed, in your State, &c.?
*A.* The *answer* to these several questions is in the negative.

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?
*A.* None.

25. By whom are attornies or counsellors admitted, &c.?
*A.* By any two of the justices of the supreme court on examination.

No definite term of study is required; the licence is general, for all courts.

The clerk of the supreme court keeps a register, of the names of attornies and counsellors.

26. On what conditions, &c. from other states, &c.?
*A.* Any person producing a licence or other satisfactory voucher—proving, that he has been regularly admitted an attorney at law in any court of record within the United States, and being a person of good moral character, may be admitted to an *examination* for the degree of attorney and counsellor at law, within this state.

COURTS.

27. What are the names of the several courts in your state, &c.?
*A.* "*Justices court;*" "*County commissioners court;*" "*Court of probates;*" "*Circuit court;*" "*Supreme court.*"

28. Their style, &c.?
*A.* "Justices of the peace or magistrates;" "county commissioners;" "judge of probates;" "justices of the supreme court," (they holding circuit courts.)

29. The extent of their several territorial jurisdictions, &c.?
*A.* Justices of the peace, county commissioners, and judges of probates, have no jurisdiction beyond the limits of their respective counties.

Each justice of the supreme court holds a circuit court, composed of a certain number of counties: the circuits are 4 in number, are styled 1st, 2d, 3d, and 4th circuit.

I. "*Justices of the Peace.*"

A single justice has jurisdiction over all sums of $100, where the amount or balance is due on any contract, specialty, note or agreement; or for goods, wares and merchandize sold and delivered; or for work and labour done; or for any

specifick article or articles, whether due by obligation, note, or assumsit; or on account of any sum or sums of money not exceeding $100.

An *appeal* lies from the justices court to the circuit court of the county, where the judgment is for 4 dollars or more.

II. The "*County Commissioners Court.*"

This is a court of record, composed of 3 judges called "County Commissioners;" they are elected by the people, and hold their offices for the term of 2 years:

It holds 4 sessions in each year, at the court house of the county.

The jurisdiction of this court extends, to all matters and things concerning the county revenue, and regulating and imposing the county tax; it grants licences for ferries and taverns, and other licences and has power in other things that may bring in a county revenue; it has jurisdiction in all cases of roads, canals, toll bridges, and many other cases appertaining to county government and police; and possesses power to issue all kinds of writs and processes, necessary to the execution of the jurisdiction vested in the court by law.

An *appeal* lies from this court to the circuit court of the county, by any person who may think himself aggrieved by any determination, in regard to roads.

III. The "*Court of Probates.*"

These courts, as established by a late law (*Feb.* 10, 1821,) have jurisdiction within their respective counties, of all matters and things relative to the proof of last wills and testaments; the granting of letters testamentary and of administration; the settlement of all estates of which any person may die seized or possessed, and of all matters relative to estates, undetermined in the several county commissioner's courts; the distribution of estates; and also, the settlement of all estates which were not settled, under the authority of the late territorial government of *Illinois*, and are unsettled; *except*, such estates as any of the circuit courts had before this act took effect, have been called upon by bill to settle.

The respective judges of probate are also vested, with all powers and capacities relative to wills, administrations and estates, with which the county commissioners were vested at the passing of the act.

In all cases, an *appeal* or writ of error so as to remove both law and fact, lies to the circuit court of the county; to be prosecuted in like manner as appeals and writs of error to the supreme court are prosecuted, from the decisions of the circuit court.

The judges of probate in their respective counties, have the *sole* power in the first instance, to hear and determine all applications for discharge from imprisonment for debt. (1)

IV. The "*Circuit Court.*"

The circuit court is held by one of the justices of the supreme court in every county within his circuit,—*twice* (2) in each year.

These courts, in *civil* cases, have jurisdiction over all causes matters and things at common law or in equity, arising in each of the counties in their respective circuits, where the debt or demand exceeds $20.

The courts in term time, or the justices in vacation, may award injunctions, writs of ne exeat, habeas

(1) The court of probates in each county, is held by a single judge. *Ed.*

(2) I understand my correspondent, that the circuit court is held twice yearly in every county, *Ed.*

corpus, and all other writs and process, necessary to the execution of their powers.

In *criminal* causes, the circuit courts respectively, have power and authority, to hear and determine all causes of treason, felony, and other crimes and misdemeanors that may be committed in any county or place within their respective circuits.

Writs of error and appeals lie from final judgments or decrees of the circuit courts to the supreme court in all cases, where the amount exclusive of costs is $20 or more, or relates to a franchise or freehold.

V. *The "Supreme Court."*

This court is composed of a chief justice and 3 associate justices; separately holding (as has been shown) circuit courts, but collectively form the "supreme court," which is the court of errors and appeals in the last resort.

It is a court of *appeals* only, *except*, in cases of mandamus relating to the revenue, and in such cases of impeachment as may be tried before them, as against clerks of the circuit courts.

This court at present holds one session annually at Vandalia (the seat of government) on the 2d monday in December, and sits until all the business is disposed of.

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

*A. See answer* No. 29.

33. Which are courts of equity, and which of law, &c.?

*A.* The circuit courts exercise both legal and equitable powers, and the proceedings are by bill and subpœna &c. as in the English chancery; on appeals from the chancery side, the supreme court proceeds according to its powers as an appellate court of equity.

34. What methods are used to carry up judgments &c.?

*A.* Causes are carried up from inferiour courts by appeal, and writ of error.

The courts from and to which appeals and writs of error lie, are indicated in the preceding answers.

On appeals to the circuit court from the judgment of justices of the peace, the appellant, receives from the justice a copy of the judgment, and produces it to the clerk of the circuit court, at whose office he enters into bond with security approved by the justice giving the judgment, conditioned for the payment of debt and costs, if judgment is affirmed:

On execution of the bond, the clerk certifies the fact to the justice and constable enjoining further proceedings, and issues a summons to the appellee to appear at the court to which the appeal is returnable.

The cause is heard in a summary way by the court, on all the testimony that was or should have been admitted before the justice.

Appeals from the circuit to the supreme court, must be prayed, when the judgment or sentence is given, and a bond be entered into approved by the court, to prosecute the appeal.

The applicant is bound to lodge an authentick copy of the record in the clerk's office of the sup. court before the end of the succeeding term of that court.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A. James Hall and Henry Eddy*; residence, Shawneetown.

36. Who is the principal *Bookseller* at the seat of Government?

*A.* There is none.

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* It is that of "Bargain and Sale."

2. Does the legal possession pass without livery, &c.?

*A.* The possession follows the deed; livery of seizen is unnecessary.

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* They are; it stands upon the common law.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* Generally, by rules of the common law.

5. Are attesting witnesses &c. required to conveyances?

*A.* More than one attesting witness is required to conveyances by deed of real estate in fee,—though the precise number is not specified in our statute.

6. Must the deed be sealed?

7. Is a scroll sufficient?

*A.* By statute, any instrument to *which* the person making the same shall affix a *scroll* by way of seal, is to be of the same force and obligation, as if it was actually sealed.

8. Are the common law requisites for the perfection of Deeds &c. altered in any particulars, in your state?

*A.* They are not: but see No. 5.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* We have no statute requiring acknowledgment, or proof or recording, as requisite to title, between the parties.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* All deeds and conveyances whether executed within or without the state by our statute, must be recorded in the recorder's office of the county where the lands, &c. are, within 12 months after their execution, if not so proved and recorded "shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for valuable consideration, *unless* such deed or conveyance be recorded *before* the proving and recording of the deed of conveyance under which such subsequent purchaser or mortgagee shall claim."

I presume *notice* of the *prior title* if the deed is unrecorded, *will bar* the second incumbrancer.

Recording has this effect, to dispense with the necessity of a *formal notice.*

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

12. Is this done by joining with him in the conveyance, &c.?

*A.* A *feme covert* by joining with her husband in the conveyance to the grantee, may convey lands or freehold estate held in her own right, and her *dower* in her husband's estate so as to bar *her*, and her heirs.

13. Is a private examination of the feme necessary, &c.?

*A.* It is.

14. What officers may take this examination, &c.?

*A.* Any justice of the sup. court;—county commissioners, of the county where the deed was executed; and any justice of the peace of such county.

15. What is the form of a certifi-

cate by the officer, where a feme covert acknowledges the execution,&c?

*A.* "*State of* ILLINOIS } *ss.*
——— *County.* }

*On this*———*day of*———18———. *Personally appeared before me, J. P. one of the justices of the peace in and for said county,* (or one of the justices of the supreme court of said state, or one of the commissioners of said county,) *the within named A. B.* (grantor,) *who acknowledged this indenture of bargain and sale* (as the case may be) *from him to C. D.* (grantee) *to be his act and deed for the purposes therein mentioned;—and E. wife of the said A. B.—also came before me, and being by me examined separate and apart from her said husband, and this deed being fully read to her and explained, she freely declared that she relinquished all right* and dower (1) *to the premisses mentioned therein to the within named C. D. without the coercion or compulsion of her said husband, and desired that the same may be so recorded. Given under my hand and seal the day and year aforesaid.*

*J. P.* [SEAL.]"

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* Our statute, makes no exceptions.

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* Nothing.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A.* The same as those that take the private examination. *See answ.* No. 14.

(1) Where the estate conveyed is the wife's the words "and dower," might perhaps be omitted. *Ed.*

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* "*State of* ILLINOIS. } *ss.*
——— *County.* }

*This day A. B. the grantor within named personally came before me the undersigned one of the justices of the peace in and for the county aforesaid and acknowledged this indenture of bargain and sale* (as the case may be) *from him to C. D. the grantee within named, to be his act and deed for the purposes therein mentioned. Given under my hand and seal this*———*day of*———*in the year of our Lord*———.

*J. P.* [SEAL.]"

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* "*State of* ILLINOIS. } *ss.*
——— *County* }

*Be it remembered that on this*———*day of*———*personally came before me J. P. a justice of the peace in and for said county* (John Doe) *one of the subscribing witnesses to a deed of conveyance* (as the case may be) *from A. B. to C. D. and deposed on the holy evangelists of almighty God, that he saw the said A. B. execute the said deed by signing his name thereto and sealing and delivering the same to the said C. D. as his act and deed for the purposes therein mentioned. Given under my hand and seal this*———*day of*———18———.

*J. P.* [SEAL.]"

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A.* Not of necessity.

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* Yes.

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* Insert "solemnly affirmed" in the place of "deposed on the holy evangelists of almighty God."

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* It must be acknowledged by the grantor and proved by one of the subscribing witnesses, before some judge of a superior court of the state, mayor, or other chief magistrate of the city, or before the clerk of the county or *other* court of the county where such deeds or conveyances shall be made and executed, and certified under the common or public seal of such city or county.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A. See answer*, No. 24. After it is certified under the common or public seal, it will be received as evidence in courts of record.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

*A.* When the grantors and witnesses of any deed or conveyance are deceased or cannot be had, it is lawful for the justices of the sup. court, or county commissioners, or any justice of the peace, to take the examination of any witness or witnesses on oath or affirmation to prove the *hand writing* of such deceased witness or witnesses,—and where such proof cannot be had then it is lawful to prove the hand writing of the grantor or grantors, which shall be certified by the judge or justice before whom the proof is made.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* There is none by statute.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

*A.* They are evidence; copies are certified by the recorder under the seal of his office.

29. In what order, do mortgages take preference of each other?

*A.* By priority of execution, provided the requisites of the law are complied with as they relate to the recording. *See answ. No.* 10.

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* Mortgages must be recorded within 12 months after their execution, otherwise, a subsequent mortgagee having his mortgage recorded gains the preference. *See answ.* No. 10. (1)

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* They may.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* Nothing more occurs to me.

## No. III. JUDGMENT, (EXECUTION,) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A.* They do.

(1) The same rule as to other deeds. *See No.* 10. *ante.* Ed.

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* From the signing.

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* By delivery of execution, to the officer.

36. Does a judgment bind, after acquired land?

*A.* No; but execution can be levied on it.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* The first execution.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* Yes, if it does not cause a deficit to satisfy the execution.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* The judgment in such cases would be no lien against either the debtor or judgment creditor on lands without the jurisdiction of the court rendering such judgment.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* Judgments are in general a lien on all lands. (1)

41. Can execution be taken out at once, in every county, &c.?

*A.* Execution may not issue at once into every county; and the lien may be lost by subsequent executions &c.

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* On judgment obtained in the circuit court there is a stay of execution (2) for 5 months, and the land may then be sold for cash, after a previous appraisement.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* No; it must be acknowledged by the officer in court, and entered on the records of the court.

I know of no *summary* redress.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* Real estate before selling, must be appraised by three freeholders; if it does not sell after having been *twice* offered, for its valuation or two thirds thereof, upon the *third* or any subsequent offering, the officer can sell it to the highest bidder for what it will bring in ready money, having given 15 days notice at 3 of the most publick places in the county.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* There is a writ of levari facias in use but not one of *elegit* or *extent*.

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A.* We have here "stop laws" as they are called, tending to impair

(1) I presume my correspondent is to be understood as saying "on all lands lying within the territorial jurisdiction of the court rendering the judgment." Ed.

(2) Stay of *sale* on execution is intended here. Ed.

the remedy of the creditor on his execution by *suspending* executions from the 18*th Jan. last*, to the 20*th Nov. last* past. (1821.)

The creditor also, is compelled to take the paper of the state bank of Illinois, or wait 3 years for *specie:*

The effect of the stop law ceased on the 20*th Nov*, last, but as regards compelling the creditor to take "state paper" or wait 3 years, remains in force until repealed by the general assembly.

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* The def't when pl'ff refuses to take "state paper" can *replevy* for 3 years by giving good security, to be adjudged of by the officer.

48. May the debtor redeem land sold on execution, &c.?

*A.* No.

49. May judgments on warrant of attorney, be entered in vacation?

*A.* It is not the practice in this state, so to do.

50. Can judgments be entered on warrant of atty. before the debt is payable?

*A.* Not practised.

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* As it is not practised here, I am unable to determine the effect such a confession would have—I should be inclined to think it would not operate as an incumbrance.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* In this state, a judgment is reversed *if ever*, before execution.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* The ca. sa. is not at the election of the creditor.

Bail are exonerated, by surrender of the principal.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* Imprisonment for debt is prohibited by the constitution, *except* when the debtor refuses to deliver up his property, or where there is a strong presumption of *fraud.*

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* A *ca. sa.* is regulated by rules of the common law, with the exception of actual imprisonment.

56. Are any kinds of personal estate exempt from execution?

*A.* One bed, with its necessary furniture, one milch cow, one spinning wheel, and the arms and accoutrements necessary for military duty.

## No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?

*A.* There is such a law, and none, on account of the cause of action or nature of the debt, are excluded.

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?

*A.* It is *immediate*, by the court of probate.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

*A.* When the debtor is in custody by virtue of mesne or final process, he can apply to the court of probate for his discharge, and the officer is obliged to accompany him, for that purpose.

60. Is there any thing peculiar in your insolvent law?

*A.* Nothing peculiar; it is humane in its provisions.

No. v. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* They are.

62. What formalities of execution, are essential to a will of lands &c?
*A.* All wills and codicils in writing, by which any *lands*, tenements and hereditaments, *goods and chattels* are devised, must be *signed* by the testator and witnessed in the *presence* of the testator by *two* or more credible witnesses, *two* of whom must declare on oath or affirmation before the judge of probate for the county, that they were present, and saw the testator sign the will or codicil in presence of the other witness or witnesses, if any and that they believed the testator to be of sound mind, memory, and judgment at the time of signing it: This is deemed *legal proof* of the execution of the will or codicil.

No seal is necessary. If there be no proof of fraud or compulsion exhibited to the judge of probate, sufficient to invalidate or destroy the will or codicil, it can be *recorded* by him in a book kept for that purpose.

63. What formalities are required, in the revocation of wills of land?
*A.* Our statute declares, that no *words spoken* shall revoke or annul any will or codicil in writing, executed in due form of law.

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?
*A. See answer to No.* 62.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?
*A. See answ. No.* 62.

Any persons interested may contest any will before the court of probate, and all persons interested must have notice by summons 20 days before the day assigned for trial.

All matters of fact and law, are determined by that court; and an *appeal* lies from *it* to the circuit court of the county, and from *that*, to the supreme court.

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?
*A. See answer No.* 62.

67. In what office is the will and inventory registered: are office copies evidence?
*A.* In the office of the court of probate; and office copies are evidence.

68. What formalities are required, to wills of chattels?
*A. See answ. No.* 62.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?
*A. See answ. No.* 62.

70. May executors, or administrators having letters in another state, sue in your state?
*A.* No, they may not.

71. If not, what is to be done to enable them to sue?
*A.* Letters must be taken out here.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?
*A.* The original, must be produced.

73. How are foreign wills and testaments proved in your state, &c?
*A.* All wills and codicils legally executed and proven out of this state within the United States or *elsewhere*,

transferred here, and accompanied with a *certificate* from the proper officer, that the will or codicil was proved and executed agreeable to the laws and usages in that state or country in which it was executed, proved and duly authenticated, may be *recorded* here, and is as available in *law* as wills made in this state.

### No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

*A.* I. The estates both of resident and non-resident proprietors in this state dying intestate, descend to and are distributed among the *children* and descendants of a deceased child in *equal parts;* the descendants of a deceased child or grand child or grand children take the share of their deceased parent in equal parts among them.

II. Where there is no child, children or their descendants, then in equal parts to the *next of kin* in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate take in equal parts among them, their deceased parent's share; and there is in no case a distinction, between the kindred of the whole and half blood.

78. Is there any thing peculiar in your law of descents?

*A.* There is a *saving*, to the widow of the intestate her third part of the real estate for life, and one third of the *personal* estate. (1)

(1) The "personal" estate—I presume, forever. Ed.

### No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

*A.* The surplusage of personal estate is distributed, in the same manner as real estate.

80. How among collaterals?

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A. See the preceding answers.*

### No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

*A.* Yes. (2)

83. Are entails abolished; converted into fees; or otherwise modified &c?

*A. Entails*, are not known in this state.

84. How barred by the tenant?

*A. See answ. No.* 83.

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* The widow, is endowed of the third part of the real and personal estate. *See answ.* No. 78.

### No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

*A.* There is no limitation of time—against the right owner and his heirs.

(2) So answered; but doubtless—not intended, from what follows. Ed.

87. What savings &c?
*A.* As there is no length of time, there are no savings.

88. Is there a saving in favour of foreigners or citizens of other states?
*A.* *See answs.* Nos. 86, 87.

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?
*A.* See, the preceding answers.

90. Is there any thing peculiar in your state on this head?
*A.* We have no statute, regarding adverse possession of lands.

91. What length of time bars recovery &c. in personal actions?
*A.* The only *limitations* by statute are the following; all actions of trespass *quare clausum fregit;* all actions of trespass; detinue; actions *sur trover*; and replevin for taking away goods and chattels; all actions of account; and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant their factors and servants; all actions of debt, grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent; all actions of assault, menace battery wounding and imprisonment or any of them, which shall be sued or brought, shall be commenced within the following times and not after; actions upon the case other than for slander, actions of account, and actions of trespass, debt, detinue, and replevin for goods and chattels, and actions of trespass *quare clausum fregit*, within 5 *years* next after the cause of action or suit and not after; and the actions of trespass for assault, battery, wounding, imprisonment or any of them, within 3 years next after the cause of action or suit, and not after; and actions for slander, within 1 year next after the words spoken.

92. What savings?

93. Are there any in favour of citizens of other states, or foreigners?
*A.* There are no savings, by the statute.

## No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?
*A.* Lands may be sold for taxes, and absentees have no privilege.

95. Before a sale, is notice to be given &c?
*A.* Yes, all these particulars are required.

96. What officer is to give this notice?
*A.* The sheriff of the county.

97. In what manner &c.
*A.* By publishing as many as 5 weeks successively, in the paper printed at the seat of government as it respects non-resident lands; and by advertising, at the door of the court houses in the respective counties.

98. If a sale takes place, is the deed absolute?
*A.* No.

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?
*A.* Residents and nonresidents whose property is sold for taxes, are allowed *one year* to redeem, by paying the price the same sold for, together with 50 per cent. thereon and the costs of advertising and selling.

The sales are entered in the auditors office, (i. e.) of non resident lands.

Residents lands cannot be sold for taxes, until all the personal property is first sold.

100. Do lands on which taxes are not paid, in any case vest in the state:

and then how and in what time to be redeemed?

*A.* If there are no bidders at the sale, the land is struck off to the state, and can be redeemed as above.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* There is no county officer with whom you could conveniently correspond.

It is most prudent to entrust business of that nature to a special agent.

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* Not by attachment, though by bill in chancery they may be.

Bail is required in no cases (civil,) unless plffs. or their agents make affidavit, that they are in danger of losing their debt or demand, or the benefit of their judgment; and in cases where bail is required, *special* bail must be taken.

### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?

*A.* No.

### ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A.* Aliens, may take real estate by purchase, but it is questionable with me, whether they can by *descent*.

### ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* By local acts.

106. May guardians be appointed by will: does the common law regulate &c?

*A.* Not by statute.

The court of probate, may allow of guardians who are chosen by infants of the age of 14 years, and appoint guardians for such as are within that age; a *bond* to the infant is required, in such penalty as the court may direct.

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* It is.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* As to the first branch of this question my answer is in the negative:—But lands are sold, on judgments against exr's and admr's.

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* Yes.

### SEALS.

110. Is the common law, in regard

to the effect of instruments sealed, and not under seal, in force?
*A.* Yes.

111. Is a scroll &c. equivalent to wax &c?
*A.* Yes; in all cases.

BASTARDS.

112. Are bastards subject to common law disabilities?
*A.* Yes.

113. Are antinuptial children, legitimated by marriage of the parents?
*A.* No.

ALLUVION.

114. Does the common law in respect of alluvion prevail?
*A.* Yes.

FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?
*A.* We have no tide waters; and several fisheries are not known.

116. Is this so by statute, or usage?
*A.* *See answ.* No. 115.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?
*A.* Yes.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* Yes.

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?

120. Is the English law of uses and trusts, in force?
*A.* All statutes made in aid of the common law, prior to the *4th James 1st, (excepting the 2d section of the 6th chap. of 43d Eliz. the 8th chap. 13th Eliz. and 9th chap. 37th Henry viii,)* and which are of a general nature, are in force in this state.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?
*A.* Yes.

USURY. INTEREST.

122. What is the rate of interest?
*A.* 6 per cent per annum; but any rate can be agreed upon by the parties.

123. What provisions against usury?
*A.* None.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?
*A.* It is necessary to make oath, of the correctness of the charges.

125. Is interest recoverable on book debt?
*A.* No.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes

negotiable; and generally governed by the law of England?
*A.* Yes.

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?
*A.* Yes.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?
*A.* No.

129. Is there any peculiar practice in your state, on this subject?
*A.* The only *peculiar* statute regulations varying the general rights of parties, to bills of exchange or promissory notes as established in England, are the following.

If any bill, note, bond or writing obligatory, is endorsed after the day on which the money or property therein contained becomes due and payable, and the endorsee institutes an action thereon against the maker and signer, the def't (being maker and signer) may set up the same defence that he might have done, had the action been instituted in the name and for the use of the person or persons, to whom the note, bond, bill, or writing obligatory, was originally made due and payable.

But if any note, bond, bill or writing obligatory, is endorsed *before* the day the money or property therein contained becomes due and payable, and the endorsee institutes an action thereon, the def't may give in evidence at the trial, any money or property actually paid on the note, bond &c, before it was endorsed or assigned to the pl'ff, on proving, that the pl'ff had sufficient notice of the payment before the endorsement.

130. What damages are recoverable, upon the protest of foreign bills of exchange?
*A.* If without the U. States 20 per cent, if within 10 per cent.

### DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?
*A.* Yes; where either party had a former wife or husband living at the time of the subsequent marriage; or for impotency or adultery in either of the parties at the time, or any time after the subsequent marriage:

The circuit courts *only*, have power to grant divorces *a vinculis.*

The place where or residence of the parties, are not material.

### ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?
*A.* Yes.

### LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A.* Yes.

### SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A.* Yes.

### CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?
*A.* Yes.

136. Is the common law in respect of choses in action, adopted?

*A.* Yes; *except* in the cases to be inferred from preceding answers; and *see answ. No.* 129.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?
*A.* Yes.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?
*A.* Decrees in chancery from the time of their being signed, have the force, operation and effect of judgments at law, *from the time of the actual entry of the decree* (1)

A writ of *fi. fa.* issued on any decree in chancery, binds the goods of the person against whom it is issued, from the time of delivery to the sheriff.

(1) There seems some little ambiguity here; it is so in the MS. Ed.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?
*A.* Yes; *pro rata.*

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?
*A.* None.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation?
*A.* They are cited and read, without restriction.

# GEORGIA.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# GEORGIA.



## No. I. STATE OFFICERS.

1. Who is Governor of your state &c.?

*A. John Clark;* residence, Milledgeville; title, "His excellency" by courtesy, and is "governor and commander in chief of the army and navy of Georgia and the militia thereof;" elected, for two years and until a successor is chosen and qualified, by joint ballot of the legislature; salary $3000.

2. —— Secretary of state &c.?

*A. Abner Hammond;* residence, Milledgeville; elected, annually by joint ballot of the legislature. (1)

3. —— Chief justice of the supreme court of law, &c.?

We have no Chief Justice.

The state is divided into six judicial Districts; a judge is appointed for each, and his title is "One of the judges of the Superior Court of the state of Georgia."

Each judge elected for 3 years by joint ballot of the Legislature. They reside in their respective districts; salary $2100 each.

4. —— Clerk of the superior or supreme court, &c.?

*A.* The *clerks* of the superior courts of law and equity, are elected by the people of each county; they reside at the seat of justice in each county respectively.

5. —— Attorney General: &c.?

*A. Roger L. Gamble;* There are also five solicitors general.

The Attorney and Solicitors General, are arranged for each judicial district; elected for three years by joint ballot of the legislature.

6. When, and where, is the annual meeting of the legislature?

*A. Milledgeville,* Baldwin Co.

The Legislature assemble annually, *1st Monday in November.*

### UNITED STATES OFFICERS.

7. Who is District judge, &c.?

*A. Jeremiah Cuyler;* (2) resid. Savannah.

8. —— Clerk of the District court &c.?

*A. George Glen;* resid. Savannah.

9. —— District Attorney, &c.?

*A. Richard W. Habersham;* resid. Savannah.

10. —— Marshal, &c.?

*A. John H. Morell;* resid. Savannah. (3)

11. What Justice of the S. court

(1) By the amended constitution (May, 1798,) he was elected by the general assembly in joint ballot for 2 years; I presume the constitution is altered in this particular, also in others since them. *Ed.*

(2) Nat. Calend. 1822.

(3) "Morel," Nat. Calend.

of the U. S. holds the circuit in your state, &c. ?

*A. William Johnson.* South Carolina and Georgia, compose the *sixth* circuit court of the United States.

12. At what times and places, are District courts of the U. S. held, &c.?

*A.* At Savannah, *2d tuesdays of February, May* and *August*: at Augusta *2d tuesday of November.* (1)

13. —— Circuit courts &c. ?

*A.* Milledgeville, *May 6th.* Savannah, *December 14th* annually.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c. ?

*A.* A digest or compilation of our statute law, was compleated in *March* 1801, containing the laws from 1755 to 1800.

A 2d digest was published in 1810. *2 vols. quarto.*

The 1st is quoted "*Crawford & Marbury's digest*;" the 2d—"*Clayton's digest.*"

A digest of our laws publick and private are now (May 1821,) in the press; compiled by *L. Q. C. Lamar Esqr.*

Also another of all the publick laws in force including 31 *Car.* ii, *&* 29 *Car.* ii. by *Oliver H. Prince Esq.* Both by authority of the legislature.

15. Can the publick laws in pamphlets, be procured, &c.

*A.* The pamphlets, are few, and difficult to be procured.

16. Is there any Digest of the state laws &c ?

*A. See answ. No.* 14.

17. Are there any Reports of cases in your state courts, &c. ?

*A.* There are no reports of cases in our state courts, and no state reporter.

(1) Nat. Calend. 1822.

18. Is there any Digest of cases in your state courts, &c. ?

*A.* Nor any—Digests of cases.

19. Are there any Treatises on the law, in your state &c. ?

*A.* The "Georgia Justice;" for the use of county officers, ex'rs and adm'rs *by A. S. Clayton* Esq.

We have no treatises, within the description of this question, but the foregoing.

20. —— Foreign law books republished in your state, &c. ?

*A.* None.

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c. ?

*A.* None.

22. Is there any Digest of cases in those courts, &c. ?

*A.* None.

23. Have any books been composed, in your State, &c. ?

*A.* None.

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c. ?

*A.* There is no distinction in the profession of Attorney and Counsellor.

25. By whom are attornies or counsellors admitted, &c. ?

*A.* They are admitted by the Superior Courts of the several circuits, upon examination in open court; and sometimes by the legislature.

No particular term of study is necessary.—On admission into the Superior Court of one county,—they are authorised to practice in any court of law or equity in the state. Their names are registered on the minutes of the courts.

26. On what conditions, &c. from other states, &c. ?

*A.* Gentlemen of the profession from other states, are admitted upon exa-.

mination, certificate of moral character, and a declaration of their intention to reside in this State.

COURTS.

27. What are the names of the several courts in your state, &c.?
*A.* "*Magistrates Courts*;" "*Inferior Courts*;" "*Superior Courts*;" "*Courts of Ordinary.*"

The powers of the "ordinary," (1) are vested in the justices of the "inferior courts."

28. Their style, &c.?
*A.* "Justices of the peace;" "Justices of the inferior court;" "Judges of the Superior courts;"—"The ordinary."

29. The extent of their several territorial jurisdictions, &c.?
*A.* I. *A* "*Justice of the Peace:*"

This officer (whose court is called "a magistrates court,") has cognizance in cases of a *civil* nature within his *district*, where the debt or demand does not exceed $30, on liquidated demands. (2)

His jurisdiction is confined to the "Captain's District," within which he is a justice of the peace.

Errors committed by a justice, are corrected on *certiorari*—by the Superior Court of the county.

II. The "*Court of Ordinary*," or "Register of Probates."

[The name of this court designates, its powers and objects of jurisdiction.

It has cognizance of causes of probate of wills and granting of letters, testamentary and of administration; the settlement of estates; of ex'rs and adm'rs accounts, the appointment of guardians and care of minors &c, with all the incidental powers of such a court, and many others conferred by statute.] (3)

Any one justice of the inferior court and the clerk in vacation, may grant citations, temporary letters of administration, and marriage licences.

The jurisdiction and powers of the Court of Ordinary, are vested in and exercised by the justices of the Inferior Court in each county, and its records deposited with the clerk of that court.

From the decisions of this court an *appeal* lies, to the Superior Court of the county.

III. The "*Inferior Court.*"

This court, has original cognizance of all *civil* causes at law, which shall be tried in the county where the defendant resides, (4) *excepting* cases respecting titles to land.

Their jurisdiction is confined to the county; and they sit at stated times, twice—in each year.

It has no criminal jurisdiction, which by the constitution is exclusively vested in the Superior Courts of the county.

Errors in this court are corrected in the Superior Court of the county, on *certiorari*. (5)

(1) Styled in the *Const.*—"A court of ordinary or register of probates."

(2) Justices of the peace are elected annually by the voters in each militia captain's district; two are chosen for every district: This is not stated by my correspondents but I collect it from a note attached to the constitution of Georgia, in my possession.

By liquidated demands my correspondents probably intend, actions *ex contractu*. *Ed.*

(3) What is stated within [ ] is taken from some reading of my own on this branch of the Georgia, Surrogate laws. I mention this least any mistake I may be under, might be attributed to my correspondents. Ed.

(4) By the *const.* there is an exception in cases of joint obligors residing in different counties, in which case the action may be commenced in either county. Ed.

(5) This court styled the "inferior court"

IV. The "*Superior Courts.*"

The state is divided into several *(six) judicial districts*, composed of 7 or more counties; and a judge is appointed for each district, who holds a court in each county within his district *twice* (1) in every year, called the superior court of the county. (2)

This court within each respective county is by the constitution vested with exclusive and final jurisdiction in all *criminal* cases, and in all cases concerning titles to land; which shall be tried in the county where the crime is committed, and where the land lies.

It has *concurrent* jurisdiction with the inferior court of the county in all *civil* causes, at common law, and is also the court of chancery having *exclusive* jurisdiction within the county in all causes of equity.

The mode of exercising its equity powers however is very peculiar:

All bills are sanctioned by the judge at chambers in vacation, or in term time, and must be served on the defendant at least 30 days previous to the sitting of the court to which they are returnable.

The proceedings are such as are usual in equity until the cause is set down for hearing, and then in case of original bills, it is submitted to a special *jury*, who together with the judge are the chancellors.

This court has final and conclusive jurisdiction, in all causes civil, criminal, and in equity:

There is no superior court in the state, and all causes in law or equity or brought there by appeal from the ordinary, or by certiorari—to justices and the inferior court, are heard, tried and ended *in* the county, and by the judge of the Superior Court.

By the constitution, these courts have power to correct errors in inferior judicatures of the county, by writs of *certiorari*, as also *errors* in the superior courts, (1) and to order new trials on proper and legal grounds; but such new trials shall be determined and such errors corrected, in the superior court of the county, in which the action originated. [And the judges (by the constitution) in all cases of application for new trials, or correction of errors, shall enter their opinions on the minutes of the court. (2) ]

By an article in the constitution, the judges of the Superior Courts or any one has power to issue writs of *mandamus*, prohibition, *scire facias*, and all other writs necessary for carrying their powers into full effect.

Where parties conceive the judge has mistaken the law at the trial, or the verdict is against law or evidence, or whatever the complaint be,

(1) By the constitution as I understand it, inferior as well as superior courts are to hold only 2 sessions annually in each Co. Ed.

(2) These judges by the constitution of May 1798, were to be *elected* for the term of 3 years, to have salaries, not to be diminished during their continuance in office, but not to receive any other perquisites or emoluments; —It does not appear by the copy of the constitution in my possession, by whom the judges of the Superior Courts were to be elected;—probably this is fixed by amendments which the legislature are authorised to make under certain restrictions, by the const. of 1798. Ed.

is composed of 5 persons called "justices of the inferior court:"—They are elected by the voters in each county, annually.

This is not mentioned by the gentlemen, in their account of this court; I collect it from a *note* attached to my copy of the Georgia constitution. Ed.

(1) Their own errors. Ed.

(2) Taken from *const.* Ed.

it is heard, by the judge upon an application to set aside the verdict, &c. or as the case may be; and his judgment is final.

30. Which have original jurisdiction, &c.?

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

33. Which are courts of equity, and which of law, &c.?

*A. See answ. No.* 29.

34. What methods are used to carry up judgments &c.?

*A.* The method of carrying up causes from the "court of ordinary," as has been shewn is by *appeal* to the Superior Court of the county; from a Justice's court, and the Inferior court, only by certiorari; as to the "Superior Courts of the county," their judgments and decrees are definitive, subject only to their own individual consideration and correction, upon proper application.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A. Camak & Hines;* reside at Milledgeville the seat of government, and are editors of the "Georgia Journal."

36. Who is the principal *Bookseller* at the seat of Government?

*A. Ginn & Curtis.*

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* Bargain and Sale, is the most usual deed.

2. Does the legal possession pass without livery, &c.?

*A.* By statute, no livery of seizen is necessary.

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* The English law prevails in this particular, *except*, that we have no estates tail.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* The construction and operation of common assurances, are generally governed by the rules of the common law.

5. Are attesting witnesses &c. required to conveyances?

*A.* *Two* attesting witnesses are necessary to all conveyances of real estate, or any instrument relating thereto, as powers of attorney, to dispose of land &c.

6. Must the deed be sealed?

*A.* The deed must be sealed.

7. Is a scroll sufficient?

*A.* A scroll is sufficient.

8. Are the common law requisites for the perfection of Deeds &c. altered in any particulars, in your state?

*A.* The common law requisites are not altered, in any material particular.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A.* All deeds are to be recorded within *twelve* months.

If a justice of the peace, justice of the inferior court, or a judge of the superior court sign the deed *officially* as one of the attesting witnesses, this is sufficient to admit it to record, otherwise it must be acknowledged by the grantor, or be proven by one or more of the attesting witnesses, in order to admit it to record. (1)

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* The prior deed or mortgage must be recorded within twelve months; to affect *bona fide* subsequent purchasers and mortgagees.

The recording must be in the clerk's office of the superior court of the county where the land lies.

Notice will bar the subsequent incumbrancer; if within the twelve months; otherwise it will not.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

*A.* A feme covert cannot hold any property in her own right unless by marriage settlement, through trustees.

Her real estate as well as personal in possession, vests absolutely in the husband on marriage.

12. Is this done by joining with him in the conveyance, &c.?

*A.* She may relinquish her dower,

(1) It will be perceived, that my correspondents do not precisely answer this question. It can hardly be doubted however, that as between parties and their heirs, the deed without acknowledgment, proof or recording would be operative:

*Recording* seems principally intended for *notice* to 3d. persons, or for preserving the evidence of title. Ed.

by joining with her husband in the deed or mortgage.

13. Is a private examination of the feme necessary, &c.?

*A.* A private examination is necessary, before the conveyance takes effect against her.

14. What officers may take this examination, &c.?

*A.* By the statute, any judge of the superior, or justice of the inferior court, or a justice of the peace.

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c?

*A.* The form is as follows.

"*Georgia.*}
——— *County.*}

"*Be it remembered that on the day of———in the year of our Lord eighteen hundred and———the within named E. B. wife of the within named A. B. who have both signed the within deed personally came before me J. P. one of the justices of the inferior court in said county,* (or other officer as the case is) *and being duly examined by me separately and apart from her said husband did declare, that she did freely and voluntarily and without any compulsion from her said husband, sign, seal, and deliver the within deed for the purposes therein mentioned, with intention thereby to renounce give up and quit claim her thirds and right of dower of, in and to the said lot of land* (or other premises as the case is) *within conveyed.*

*Given under my hand and seal the day and year within mentioned.*

*J. P.* J. I. C. [SEAL]"

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* In all cases such acknowledgement is necessary to bar the feme's right of dower, *except* on sales, upon execution by the sheriff under a judgment, and for taxes. (1)

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* There is no other peculiarity variant from the common law in relation to the right of dower, *except* that the process of obtaining dower, is altogether different from that known to the common and statute law of england.

We know nothing of proceeding by writ of "*unde nihil habet,*" nor of the mode there used to enable the widow to recover damages where the husband dies seized. (2)

The method here of recovering dower is by partition, as in cases of tenants in common &c: Eleven partitioners are appointed by the court upon petition, to assign dower.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A. See answ. to No.* 14. The same officers.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* The certificate is in this form;

"*Georgia!*}
——*County.*}

*Be it remembered that on the———day of———in the year of our Lord eighteen hundred and ——— the within named A. B. who has signed the within deed personally came before me J. P. one of the justices of the inferior court in the said county* (or other officer describing his office) *and ac-*

(1) It would seem by this, that the husband's estate sold on judgment against him is discharged of dower. Ed.

(2) As to the widow's right to a child's part &c, see title No. viii. Entails, Dower, Curtesy &c.

*knowledged that he signed sealed and delivered the within as his voluntary act and deed for the uses and purposes therein mentioned.*

*Given under my hand and seal the day and year afd.*

*J. P.* J. I. C. [SEAL]" (1)

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* " Georgia ! }
—— County }

Be it remembered that on the——day of——Anno Domini eighteen hundred and—— came before me J. P. one of the justices of the inferior court in the county aforesaid (or other proper officer describing his office) C. D. one of the witnesses to the foregoing (or within) conveyance, and being duly sworn (or on his solemn affirmation,) doth say that he saw A. B. the grantor therein named sign seal and deliver the same for the uses and purposes therein mentioned.

C. D. (name of witness)

Taken and subscribed by the said C. D. before me the day and year aforesaid.

Witness my hand and seal.

*J. P.* J. I. C. ) [SEAL]"

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A.* The grantor need not sign the acknowledgment, but the deposing witness must.

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* It is most usual for the officer to seal as well as sign the certificate, though it is not absolutely necessary in cases of *deposition.*

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* No form of an affirmation is prescibed by our law, the common affirmation is used in such cases; as in the parenthesis No. 20.

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* Any officer of such state authorized by the law thereof to take acknowledgments, and the certificate of the Governor under the seal of the state, that such officer holds the office he assumes.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A. See preceding answer.*

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

*A.* In cases where the grantors or witnesses are dead or removed *so that they cannot be found,* secondary evidence *(on trial)* will be received in our courts, such as proof of hand writing.

We have no provision in our laws, on the subject of admitting deeds or mortgages so proved to *record.* (1)

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* We have no provision, to meet the case contemplated in this question.

(1) Owing to an accident, I did not receive the form sent to me in this case. I have therefore drawn it in this manner which I presume would be sufficient. Ed.

(1) This is I think the purport of the answer, but the MS. was not quite distinct. Ed.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

*A.* Deeds and mortgages duly recorded, are evidence on trials.

Copies are exemplified in the usual way and by the clerk having possession thereof under his hand and seal of office, or his private seal, upon certifying he has no seal of office.

29. In what order, do mortgages take preference of each other?

*A.* Mortgages take preference by priority of their date, within 12 months, after which period from the time of recording; and the same, of other deeds.

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A. Answered,* see *Nos.* 9, 10, 29.

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* Deeds and mortgages are placed on the same footing, in all these respects.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* There is no other thing necessary, to render deeds and mortgages effectual.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A.* Judgments bind real property, and it may be sold on execution after thirty days advertising by the sheriff. The regular sale day, is the first tuesday in each and every month. The place of sale at the court house of the county between 10 and 3 o'clock; and no property can be sold at any other time and place by a sheriff or other officer. (1)

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* Judgments bind real and personal property from the commencement of the term of the court during which the judgment was obtained.

In the northern circuit, it has been held to be from the signing of the judgment.

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* The priority is determined as between judgment creditors in respect of lands and personal property, by the priority of judgment.

In cases where several judgments are obtained at the same time against one defendant, the priority is determined by first delivery of execution to the officer.

36. Does a judgment bind, after acquired land?

*A.* Judgments bind all property as well real as personal, and whether in possession or afterwards acquired.

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

(1) This regulation of sales of real property on execution within the county, at the court house on a certain day or days at the stated terms of court, is calculated to answer most valuable purposes; to save expense, give notoriety to the transaction, prevent frauds on the debtor and creditor, and advance their true interests in all respects.— It is adopted in many states, and should be universal in all cases where real property is sold on execution, &c. Ed.

*A.* Fully answered; *See Nos.* 34, 35, 36.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* Chattels as before observed are bound by the judgment, he may not therefore alienate before execution.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* The effect of judgments in the inferior courts, are to bind all the property of the defendant in the state.

The prior judgment must be satisfied, and a subsequent judgment in the county where the land lies, cannot affect the lien thus created.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* All judgments in any court of this state, bind the property real and personal of the defendant in every part of the state, and the creditor of the county where the land or other property is, has no preference except he obtains it by his vigilance in obtaining the first judgment.

41. Can execution be taken out at once, in every county, &c.?

*A.* But one fieri facias can issue on a judgment and it remains in force until satisfied; it is directed—"to all and singular the sheriffs of the state of Georgia," and may successively be levied on property in every county in the state and remains in force until it is satisfied.

Should it be lost or destroyed on motion and proof of the fact the court from which it issued will issue another, reciting therein the proceedings that were had in the last one. No subsequent judgment can affect the lien in any other county.

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* All executions may issue, after four days from the adjournment of the court at which the judgment was obtained; on which the lands may be sold; (*See No.* 33,) and no previous appraisment is necessary.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* In case of sale, the sheriff's deed delivered to the party passes the property absolutely, and no order of court confirming the title and sale is necessary.

If there be fraud or illegality in the sale, we have no summary mode by which the party aggrieved may have redress.

But after the levy and before sale if there be any illegality in the issuing the execution, the defendant may make affidavit setting forth the causes of illegality, and upon such "affidavit of illegality" being given to the sheriff he is compelled to postpone the sale until the order of the court from whence the execution issued is had on the matter.

So also if the property levied on should not belong to the defendant; the person claiming such property (before sale) may interpose his claim by making affidavit that it is not subject to the execution &c.

The claimant on this gives bond with approved security to the sheriff, conditioned to satisfy and pay to the plaintiff such damages as the jury on the trial of the right of property may assess against him, in case it appears the claim is made for the purpose of delay; on this the sheriff must postpone the sale and return

the claim and the bond to the court; an issue is then to be made up to try the right of property at the next court and the jury are sworn in addition to their usual oath, *to give such damages not less than ten per cent as may seem reasonable and just to the plaintiff against the claimant, in case it shall be sufficiently shown that such claim was intended for delay only;* upon this issue the plaintiff in execution holds the affirmative.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* No appraisment is necessary previous to selling.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* There are no writs of the description contained in this question, known to the laws of our state.

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* There are no laws now in force, tending to obstruct or delay regular executions.

48. May the debtor redeem land sold on execution, &c.?

*A.* A sale by the sheriff is absolute.

49. May judgments on warrant of attorney, be entered in vacation?

*A.* Our statute expressly prohibits the entering up judgments on warrants of attorney, either in vacation or term time.

50. Can judgments be entered on warrant of atty. before the debt is payable?

*A. Answered above.*

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A. Answered* No. 49, 50.

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* We have no statutory provision on this subject; *See* 2 *Bac. Ab.* (6 *ed. pr. Wilson,*) 505, 739, 740,—5 *Binn.* 273.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* A Ca. Sa. may be issued in the first instance in ordinary cases; but to charge bail, a fi. fa. must issue and then a ca. sa. before a *sci. fa.* against bail.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* There is no exemption from imprisonment, by our law.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* This matter is regulated, by the common law.

56. Are any kinds of personal estate exempt from execution?

*A.* No kind of personal property is entirely exempt, except arms and accoutrements.

Slaves cannot be sold until, the other personal property is *exhausted.*

## No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?

*A.* We have a standing insolvent law under which debtors may be released from imprisonment, on surrender of their property; there is no exception on account of the nature of the debt or cause of action.

58. What time is required to effect

a discharge: Is the claim for a discharge, determined by the court or a jury?

*A.* Notice is to be given to the creditors in the state, at least 30 days before the time fixed for discharge, and 60 days to those residing out of the state.

The claim for discharge is determined by the justices of the inferior court, except when fraud is suggested in which case an issue is formed &c, and the fact is tried by a jury.

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

*A.* The debtor to entitle him to the discharge, must be in prison or on the prison bounds on mesne or final process.

60. Is there any thing peculiar in your insolvent law?

*A.* Nothing, except as above stated.

No. v. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?

*A.* They are.

62. What formalities of execution, are essential to a will of lands &c?

63. What formalities are required, in the revocation of wills of land?

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?

*A.* We have at present no local statute regulating the execution and revocation of wills; the statute of the 29. C. ii. c. 3. is in full force in this state.

In regard to the *execution* of wills of land, the 5 §. of that stat. enacts—"That all devises and bequests of any lands or tenements devisable by the statute of wills, or by any particular custom, shall be in writing, and signed by the party devising the same, or some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else they shall be utterly void and of none effect."

In respect of *revocation*, the 6 §. enacts—"no devise in writing of lands, tenements, or hereditaments, or any clause thereof, shall be revocable, other than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator himself, or in his presence, and by his directions and consent: but all such devises and bequests shall remain in force until the same be burnt, &c. in manner aforesaid, or unless the same be altered by some other will or codicil in writing, or other writing of the devisor, signed in presence of three or four witnesses, declaring the same." *See 7 Bac. ab.* "*Wills;*" *Let. D.*

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?

*A.* Before the court of Ordinary in the county where the testator resided.

An *appeal* lies from the decision here to the superior court where the fact is tried by a jury; but the appeal (or caveat) must be entered in 4 days, otherwise the heir is remediless.

Our courts recognize the english doctrine on the subject of probate of wills, and our equity courts have refused to disturb the probate, even on the ground of fraud.

66. Is the execution proved by the

witnesses, or oath of the executors, or both, in the first instance?

*A.* The execution is usually proven, by one or more of the subscribing witnesses.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* The will &c. is recorded in the office of the clerk of Ordinary; and office copies with a proper cetificate and under seal, are evidence.

68. What formalities are required, to wills of chattels?

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A.* Governed altogether by the rules of the common law.

70. May executors, or administrators having letters in another state, sue in your state?

*A.* Executors or administrators having letters testamentary or of administration from other states cannot sue in this state, without taking out letters in this state.

71. If not, what is to be done to enable them to sue?

*A.* Executors must take out letters testamentary in the county where the property or debt is, and administrators, letters of administration.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A.* Exemplications of wills and testaments by the proper officer in other states, are evidence in this state if authenticated in the manner prescribed by acts of congress in regard to records &c. 2 *vol.* 102, 3—3 *vol.* 621 *laws U. S. Bioren's edit.*

73. How are foreign wills and testaments proved in your state, &c?

*A.* Concerning foreign wills and testaments, we have no provision.

## No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

*A.* Real and personal estates are considered by the statute of Georgia of the same nature and placed on the same foot in regard to descents, only so far as the widow is concerned.

I. If there be a widow and child or children they take *equal* shares, unless the widow shall prefer her dower in which case she has nothing further of the real estate, but nevertheless receives a child's part out of the personal estate. If any of the children die before the intestate, their *lineal descendants* stand in their place.

II. If there be a widow and no child or representative of children, then the widow takes a moiety of the estate, and the other moiety goes to the *next of kin* of the intestate in equal degrees and their representatives.

III. If there be no widow, the whole goes to the child or children or their issue, the issue of a child taking the parents share.

IV. If there be neither widow or child or legal representatives of children, the whole is to be distributed among the *next of kin* unto the intestate in equal degree and their representatives, but no representation is admitted among collaterals further

than to the child or children of the intestates brothers and sisters.

V. If the father or mother be alive and a *child* dies intestate and without issue, such father (or mother in case the father be dead) inherit and take distribution as a brother or sister would do.

Such mother however having intermarried, is not entitled to any part of the childs estate who may die intestate and without issue, but the same goes to and is vested in the next of kin on the father's side; and in case of the death of the last child intestate and without issue, the mother takes no part of such childs estate but it is to go to and be vested in like manner in the next of kin on the father's side.

VI. If a person dies intestate and without issue, having brothers and sisters of the whole blood and the half blood, then the brothers and sisters of the whole blood and the half blood in the paternal line only, inherit equally; but if there be no brother or sister or issue of brother or sister of the whole blood or half blood in the paternal line, then those of the half blood and their issue in the maternal line inherit.

The *next* of kin are investigated by the following rules of consanguinity; children shall be nearest parents; brothers and sisters shall be equal in respect to distribution, and cousins shall be next to them; the half blood, shall be admitted to a distributive share of the real and personal estate in common with the full blood.

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

*A.* The foregoing rules (under *No. VI. Descents,)* apply in respect to the distribution, of *personal* estate on intestacy.

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A. Answered,* under the preceding heads of Descents and Distribution.

## No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

83. Are entails abolished; converted into fees; or otherwise modified &c?

84. How barred by the tenant?

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* Entails are abolished by statute, without any reservation.

In respect to dower and curtesy, the common law is altered by statute; no tenancy by curtesy can take place, because the marriage vests all the real estate in the husband.

The widow by statute, is obliged within *twelve* months after the death of her husband to make her election, whether she will take a child's part of the real estate or her dower; if she makes no such election it is to be considered as taking her dower.

If she take dower it is as in england a life estate; if she takes a childs part, it is at her disposition by deed or will. (1)

(1) It is seen before under the head of descents, that a widow takes a childs part of real

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?
*A.* *Seven* years by statute, he and his heirs being under no disability.

87. What savings &c?
*A.* The savings are to *infants, femes covert, persons non compos, imprisoned and beyond seas.*

"*Out of the state,*" has been adjudged to be equivalent to, *beyond seas.*

88. Is there a saving in favour of foreigners or citizens of other states?
*A.* No other than as above.

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?
*A.* The general principles of the english law are adopted.

If the disability of the party is once removed and the statute begins to run, it runs on against him and all claiming under him notwithstanding any subsequent disability of the party or any disabilities in those who derive from or claim through such party; and this by construction of the statutes.

90. Is there any thing peculiar in your state on this head?

91. What length of time bars recovery &c. in personal actions?
*A.* *Twenty* years on bonds under seal; other acknowledgements not under seal 6 years; open accounts 4 years; trespass *quare clausum fregit,* 3 years; trespass, assault and battery 2 years; slander, and quitam actions, 6 months.—(1)

92. What savings?
*A.* The savings are to infants &c. as in the case of lands; *(see answ. No. 87.)*

93. Are there any in favour of citizens of other states, or foreigners?
*A.* None, except as above.

No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?
*A.* Lands may be sold for taxes.

Where property belongs to nonresidents, not having any agent or atty. &c. the *receiver* of taxes who makes out the list of property taxed &c. is to advertize such—for six months successively once in each month in a public gazette, and if the tax is not paid, it is doubled.

95. Before a sale, is notice to be given &c?
*A.* Notice is given of the *sale* of land for taxes, the amount of tax due, and of the time and place.

96. What officer is to give this notice?
*A.* The collector of taxes.

97. In what manner &c.
*A.* In case of resident defaulters, notice is given in the newspaper, 20 days; (2) the place of sale is at the *court house* of the county where the land lies: As to nonresidents, whose tax has been advertised for 6 months as before mentioned by the receiver and remain unpaid, the collector proceeds forthwith to sell &c.

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and personal estate on intestacy unless she elects dower, and even then she takes a childs part of the personal estate:—I understand by this latter clause if she takes a childs part of real and personal estate, the real estate is so *far* a fee that she may *convey* or *devise* it. Ed.

(1) This enumeration is as stated in the M. S.—It appears however not to comprehend *all* personal actions. What actions are comprehended under the term "other acknowledgments" is uncertain. Ed.

(2) Perhaps this should be 30 days, from the M. S. I am not certain. Ed.

98. If a sale takes place, is the deed absolute?
*A.* The deed is absolute.

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?
*A.* The sales are entered in the Comptroller's office.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?
*A.* They never do.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?
*A.* The post-master or clerk of the Superior court, or it would be most prudent to have an agent appointed; for in the latter case, if he neglected to discharge his duty he would by statute, be liable. (1)

## No. XI. MISCELLANEOUS. BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?
*A.* Debtors property *pendente lite* may be attached, provided they are about to remove or are actually removing without the limits of this state; and they may be held to bail in such cases although none should be required at the commencement of the suit.

In ordinary cases where bail is required, an affidavit must be made by the plaintiff of the amount of the debt due, and that *he has reason to apprehend the loss of the whole or some part of his debt unless the deft. is held to bail.*

If a non-resident plaintiff make this affidavit out of the limits of the state, it must be accompanied by a certificate under the great "seal of the state" of the Governor, that the person testing the affidavit, is authorized to take affidavits &c.

### LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?
*A.* The execution of letters of attorney must be duly authenticated by a notary, and a certificate of the governor under the seal of the state.

### ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?
*A.* Aliens, cannot hold real property by purchase or descent.

### ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?
*A.* The right of administration, is regulated by the same rules as apply to descents and distribution.

If an administratrix marries, on

(1) My correspondents were obliging enough, to send me a particular abstract of the tax laws; from which and their answers, the foregoing account is given, possibly what I have incorporated may be imperfect.—It seems *non-residents* may be double taxed, and their lands sold without redemption in a few months. Ed.

application she will be superseded. (1)

106. May guardians be appointed by will: does the common law regulate &c?

*A.* Guardians may be appointed by will; they are also appointed by the ordinary.

### PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* Debts take priority as follows, 1st. Funeral expenses; 2d. other expenses of the last illness; 3d. charges of probate and of administration; 4th. debts due the state; 5th. judgments, mortgages, and executions (the oldest first;) 6th. rent; 7th. bonds and other obligations; 8th. debts on open account: But no preference of creditors in equal degree.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* If executors and administrators confess judgment, it can only be done at the 2d term of the court at which the suit is commenced.

Lands are sold on judgments against executors and administrators, *de bonis testatoris.*

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* Joint-tenancy in land is created as at common law and its incidents the same.

(1) So I understand the M. S.—but it is not quite distinct. Ed.

### SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?

*A.* The common law in regard to the effect and operation of instruments under seal and not under seal, is not changed. *(See No 135, 139.)*

111. Is a scroll &c. equivalent to wax &c?

*A.* A scroll is equivalent to wax in all instruments.

### BASTARDS.

112. Are bastards subject to common law disabilities?

*A.* Bastards, are subject to the common law disabilities.

113. Are antinuptial children, legitimated by marriage of the parents?

*A.* Antinuptial children, are legitimated by marriage of the parents.

### ALLUVION.

114. Does the common law in respect of alluvion prevail?

*A.* The common law prevails.

### FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

*A.* The owners of lands bordering on navigable water, are entitled to the right of fishery.

116. Is this so by statute, or usage?

*A.* This is by usage.

### FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against

fraudulent conveyances in force in your state: or similar acts?
*A.* The statutes of *13th et 27th Eliz.* are in force, in *extenso.*

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?
*A.* The statute of 29 *Car.* ii. *c.* 3, is also in full force.

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?
*A.* The statute of uses, is in force.
120. Is the English law of uses and trusts, in force?
*A.* The english law of uses and trusts, is in force in this state.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?
*A.* The common law prevails generally, with this further, that the land of the wife also vests absolutely in the husband on marriage.

USURY. INTEREST.

122. What is the rate of interest?
*A.* The rate of interest, is 8 per cent.
123. What provisions against usury?
*A.* Our usury law avoids the contract, and inflicts as a penalty 8 times the amount of the contract.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?
*A.* Merchant books containing the original entries with proof of delivery of the articles by the clerk, or if he be dead, of his hand writing, are evidence; if no clerk, then on proof of that fact, inspection of the books and the reputation of the merchant for keeping correct accounts, they are evidence of goods sold; but not of *cash* charges. (1)
125. Is interest recoverable on book debt?
*A.* On open accounts, no interest is recoverable at all. The cases in which interest is allowed are, upon liquidated demands signed by the party to be charged.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?
*A.* They are negotiable by statute, whether they contain negotiable words or not. (2)
127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?
*A.* Such demand and notice is necessary in order to charge the drawer or indorser; but as regards the time of notice, it cannot be said that as yet, our courts have adopted the english rules on this head.
128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

(1) Proof is doubtless always required, that they are the books containing the original entries Ed.
(2) I think this is the import of the M. S. Ed.

*A.* A protest is not necessary on inland bills, though usual.

129. Is there any peculiar practice in your state, on this subject?

*A.* Nothing, but what is mentioned.

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A.* We have no statute in relation to damages upon non payment, protest and return of foreign bills.

A usage is established by the board of commerce in Savannah; in the interior of the state we have none.

### DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?

*A.* Divorces "*a vinculo matrimonii*" are granted in this state upon "*legal grounds*," also for adultery.

All libels for divorces are first to be tried in the superior court before a special jury; and if they by their verdict find there exist sufficient causes to grant a divorce "a vinculo matrimonii," the record is certified to the legislature, and they divorce the parties or not as they think proper. Most usually the verdict of the jury is confirmed, and the parties are divorced by a law.

### ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?

*A.* Attachments issue in five cases;

1st. Where the debtor resides out of the state.

2nd. When he is actually removing out of the state or county.

3rd. When he absconds.

4th. When he conceals himself.

5th. When he stands in defiance of a peace officer.

Upon any of the foregoing grounds an attachment may issue; the party applying for it must make oath of the ground of his application and swear to the amount of his debt; he is also to give bond and security to the defendant conditioned that he will prosecute his attachment to effect and not discontinue or be cast in his suit, and in default then he will pay all costs and also all damages that may accrue from sueing out the attachment. Attachments by the statute may issue whether the debt be due or not.

### LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?

*A.* Distress for rent is limited to Savannah and Augusta; in other parts of the state the recovery must be on verdict.

### SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?

*A.* Mutual debts may be set off in this state, and the law is similar to the english.

### CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?

*A.* Choses in action are assignable by statute, and stand as to liabilities &c. of the respective parties, upon the like principles as govern bills of exchange.

136. Is the common law in respect of choses in action, adopted?

*A.* The common law in relation to

choses in action governs, with the above exceptions.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* Tenants for life, years &c. are entitled generally to the same rights and subject to the same liabilities, as by the common and statute laws of england.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

*A.* Decrees in chancery are executed in like manner, as judgments at law.

The sheriff executes the process in every instance.

Mortgages are not foreclosed in chancery, but on a twelve months rule *nisi*, granted by the superior court of the county where the land lies.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?

*A.* In cases where the testator or intestates estate is insolvent, judgments, mortgages, and executions lodged in sheriff's hands are liens and take preference according to their legal priority over each other; the rest of the creditors are then paid *pro rata*.

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?

*A.* There are lands belonging to the state, which will probably be sold at auction to the highest bidder. There are no proprietary lands to be taken up or located. (1)

(1) We transmit to you an account of what is called here "Head Rights," being a certain portion of the vacant public lands, which every citizen of this or any other state is entitled to *gratis*.

I. By our *stat. of* 1779, any free white person or head of a family may have allotted to him 200 acres of land, and 50 acres for every negro not exceeding 10.

An act in 1780, entitled every citizen of this or any *other* state to a grant of head rights, viz. 200 acres for the head of a family, and 50 for each member of the same white or black, to be laid out on any vacant lands not in possession of the *indians*.

The locater from another state by this act, is required to bring his whole family into the state, to take the oaths to the government and give security for settling the land within 9 months.

An act in 1783, in addition to the above gives to persons entitled to "head rights," the option to *purchase* 50 acres for every head right in his family at 1*s*. per acre for the 1st. 100 acres, and 1*s*. 6*d*. for the 2d. 100 acres &c. not to exceed 1000 in all, with a condition that a part is to be cultivated 12 mo. before a grant can issue.

II. The method of locating "head rights," is by application to the *County Surveyor*, who is elected by the people:

This officer makes and is to record the *plats* within 2 months, and transmit copies to the Surveyor General within 3 months.

A *caveat* may be entered against passing the grant in the office of the county surveyor, in which case the grant is not to issue until the caveat is tried; and the c. surveyor is to advertize all caveats entered in his office 30 days.

Caveats are tried before the "justices of the county or any 3 of them," on the day succeeding that on which they meet for the purpose of granting warrants for land.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation? *A.* English law books, are allowed to be used in the courts of this state as authority.

Such as contain cases argued and determined prior to the revolution are received as evidence of the law. Of the reports of cases in our sister states, "*Johnson's (New York) Reports,*" stand the highest.

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A jury of 12 freeholders of the bystanders are empanelled and sworn to try the dispute according to law and equity, and they immediately proceed to try it and render their verdict:—

By an act of 1784, an appeal is allowed to the Governor, whose decision is final.*

* *This is the outline of my correspondent's communication on "head rights."—I do not clearly understand, from what authority the grant issues, to persons claiming head rights, or land purchased in addition, but presume it is to be in some way the business of the county justices:—*

*Nor does it appear—what are the conditions of* settlement *and cultivation; or indeed whether citizens of Georgia, are subject to any conditions;—nor whether a* family *is to go on the head right land &c.*

*On the whole, the bounty held out to* settlers *in Georgia by the gratuity of head lands—would seem to be very considerable, especially in connection with the right of increasing the quantity to the amount of* 1000 *acres at* 1*s. and* 1*s. and* 6*d.* per acre.

*My correspondents appear to question the legal right of the governor under the act of* 1784, *to try caveats on the appeal, inasmuch as that act was passed anterior to the formation of the constitution, which expressly vests the* Superior Court *with exclusive cognizance in all cases of* titles *to land, to be tried in th county where the land lies.—Ed.*

# INDIANA.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# INDIANA.



## No. 1. STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. Jonathan Jennings;* residence, Corydon; Elected by the people; styled "the Governor of the State of Indiana;" (1) term of office 3 years and until a successor chosen and qualified; but not to hold longer than 6 in any term of 9 years; salary $1000.

2. —— Secretary of state &c.?
*A. Robert A. New;* residence, Corydon; appointed by joint ballot of both houses of the general assembly; term of office 4 years, or until a new one be chosen.

3. —— Chief justice of the supreme court of law, &c.?
*A. James Scott;* residence, Charlestown; term of office 7 years; appointed with 2 associates, by the Governor by and with the advice and consent of the senate; salary $800. (2)

(1) "And commander in chief of the army and navy of this state and of the militia thereof." *Const.*

(2) We have no officer recognized specially as "Chief Justice." The law organizing the supreme court follows the words of the constitution; "The supreme court shall consist of three judges any two of whom shall form a quorum &c." *James Scott* is the presiding and the senior judge of the three. *Jesse L. Holman* and *Isaac Blackford* are the other two. Salaries $700.

4. —— Clerk of the superior or supreme court, &c.?
*A. Henry P. Coburn,* clerk of the supreme court; residence, Corydon; appointed by the court; term of office during good behaviour.

5. —— Attorney General: &c.?
*A. Harbin H. Moore;* appointed by the legislature; term of office 3 years; salary $200; residence Columbus. (3)

6. When, and where, is the annual meeting of the legislature?
*A. Corydon,* Harrison County; (4) The legislature assemble there on the *1st Monday in December.*

## UNITED STATES OFFICERS.

7. Who is District judge, &c.?
*A. Benjamin Parke;* Vincennes, Knox County.

8. —— Clerk of the District court &c.?

(3) The duty of this officer is to represent the state in the Supreme Court only, where questions of law in criminal cases are frequently brought for adjudication.

(4) By the constitution until the year 1825, and until removed by law: *Indianapolis* was laid out for the permanent seat of government in the summer of 1821. Lots are to be sold in October 1821. This place is not far from the territorial centre of the state. In all probability, the legislature will assemble there in 1825; but no law is yet passed to that effect.

*A. Henry Hurst;* Corydon.

9. —— District Attorney, &c.?

*A. Charles Dewey;* Madison, Jefferson Co.

10. —— Marshal, &c.?

*A. John Vawter;* Vernon, Jennings Co.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?

*A.* Indiana is not included as yet within any circuit.

12. At what times and places, are District courts of the U. S. held, &c.?

*A.* On the *first Mondays in May and November,* at Corydon.

13. —— Circuit courts &c.?

*A.* There is no Circuit Court.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?

*A.* We have the *Revised Code* of 1807, containing the laws of the *Territory;* and another of the laws of the *State* to January 1818. *2vols.* They are quoted as the old and new "*Rev. Code.*"

15. Can the publick laws in pamphlets, be procured, &c.

*A.* Probably copies may be had of the last 3 or 4 years from the state printer.

The two revised codes could be procured through the agency of a friend, but a complete set of territorial laws from the organization of the N. W. Territory, I do not think is owned by any lawyer or officer in the state.

16. Is there any Digest of the state laws &c?

*A.* None, except the two legislative revisions or compilations, above mentioned. (1)

17. Are there any Reports of cases in your state courts, &c.?

18. Is there any Digest of cases in your state courts, &c.?

19. Are there any Treatises on the law, in your state &c.?

20. —— Foreign law books republished in your state, &c.?

21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?

22. Is there any Digest of cases in those courts, &c.?

23. Have any books been composed, in your State, &c.?

*A.* No books within the purview of any of the preceding questions, have been published in Indiana.

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c.?

*A.* None.

25. By whom are attornies or counsellors admitted, &c.?

*A.* By two Judges of the supreme court or by two circuit Judges on examination, no previous term of study being required.

A certificate from the *Court* of some county, of good moral character, is indispensable to the candidate's receiving a licence to practise. A licence from the supreme judges admits to all the courts in the state. A licence from two circuit judges to all the circuit courts.

It is the duty of the Clerk of the supreme court to keep a Roll of all Attornies and the time of their admission, (priority of time giving rank as the bar are called on for motions) and to endorse on their licen-

(1) *Judge Parke* has recently (1821) been appointed by the legislature to revise our statute laws, and to digest a code to be submitted to the next legislature &c. for which service a compensation of $1000. is allowed.

ses that they have taken the oath prescribed by law &c.

26. On what conditions, &c. from other states, &c.?

*A.* On examination, in the same manner as noviciates. But where character is known, a certificate is dispensed with and examination nominal.

COURTS.

27. What are the names of the several courts in your state, &c.?

*A.* "*Justice of the Peace,*" "*Court of County Commissioners,*" "*Associate Judge's Court*" (i. e. our probate court,) "*Circuit Court,*" "*Supreme Court.*"

28. Their style, &c.?

*A.* "Justices of the Peace," "County Commissioners," "Associate Judges," "President Judge," "Judge," *(of the Supreme court.)*

29. The extent of their several territorial jurisdictions, &c.?

*A. Justices of the peace* in criminal cases, have jurisdiction throughout the county in which they are commissioned; in civil cases they are confined to the townships in which they are elected and reside, except when in an adjoining township no justice can be found.

The jurisdiction of County Commissioners and Associate Judges, as well as that of the Circuit Courts, extends to the county.

The state is divided into 5 *circuits* embracing from 8 to 12 counties in each circuit.

For each circuit there is appointed a president judge and two associate judges, who hold courts in and for each county at stated times, usually 3 times in each year. The president alone in the absence of the associate judges, or the president and one associate judge in the absence of the other, are competent to hold a court, as also the two associate judges in the absence of the president, except in capital cases and cases in chancery.

The *President* Judge has chancery jurisdiction *throughout* the circuit; and may execute in any part of the circuit the duties which in vacation, are discharged in any particular county by the associates.

The appellate jurisdiction of the Supreme court (and it has no other, except in a single case) is co-extensive with the state.

30. Which have original jurisdiction, &c.?

*A.* I. "*Justices of the Peace.*"

A Justice of the Peace has original jurisdiction in all cases of debt and account, where the sum demanded or due exclusive of interest does not exceed $50.

They may take confessions of judgment to the amount of $100.

They have jurisdiction of all trespasses committed on personal or real estate or to the person, where the *damages claimed* do not exceed $20.

In demands for rent they are limited to $30, and in trover and conversion to $20.

From their judgments in all civil cases an *appeal* lies on payment of costs, to the Circuit Court of the county.

II. The "*Court of County Commissioners.*"

This court consists of three "qualified electors," one of whom is annually elected by the electors of the county to continue in office three years.

They are made by law a body politic and corporate; have the regulation of the domestic police of the county and are invested with extensive powers.

The clerk of the circuit court for

the county is *ex officio* their clerk, and the sheriff of the county is bound to attend their orders.

The appointment of constables, overseers of the poor, inspectors of elections, the assessment of county taxes, the opening regulating and repairing of roads, establishment of ferries, granting of tavern licenses, the selection of grand and petit jurors, and supervision of weights and measures fall under their jurisdiction.

They hold 4 sessions a year.

In certain cases where individuals consider themselves aggrieved, an *appeal* lies from their decision to the Circuit Court.

III. "*Probate Court*" or "*Associate Judges' Court.*"

The clerks of the several Circuit Courts, are authorised to take proofs of last wills and testaments and to grant letters testamentary and letters of administration in *vacation;* which letters &c. so granted by them may be repealed by the associate judges in term time.

These clerks are Recorders of all wills, testaments &c. and all administration bonds, inventories, accounts &c; and other documents appertaining to the settlement of estates of decedents are filed in their respective offices.

The "Associate Judges" have general power to act as judges of *probate,* appoint guardians and bind out minors &c: They are invested with power to award process, punish for contempts and are courts of record. The clerk of the Circuit Court and the sheriffs of the county are ex officio officers of the probate court.

An *appeal* lies in all cases from the decisions of the Probate to the Circuit Court.

They hold the same number of terms as the circuit courts, which are generally three in the year.

IV. The "*Circuit Courts.*"

The president and associate judges in their respective counties have jurisdiction, over all crimes and misdemeanors whatever committed within the several counties; and original jurisdiction in all cases matters and things at common law and in chancery, and full cognizance of all actions real personal and mixed; and may issue all writs and process necessary to carry these powers into effect according to the course of the common law and the usages of courts.

Chancery and common law suits are tried promiscuously, according to the direction of the court and convenience of parties.

V. The "*Supreme Court.*"

The supreme court consists of 3 judges (any two of whom is a quorum) and has *appellate* jurisdiction only, in all cases of law and equity coextensive with the limits of the state, with plenary powers to carry their jurisdiction into effect.

The only original jurisdiction given to this court by statute is in chancery, when the president judge of any of the circuits is interested in a case, or *prejudiced,* or has been counsel for either of the parties; then the cause is certified to the Supreme Court which takes original cognizance of the same.

The proceedings in chancery are by Bill and Subpœna according to the English Practice. (1)

(1) The judges of the supreme court are appointed by the governor by and with the advice and consent of the senate; the presidents of the circuit courts, are appointed by joint ballot of both branches of the general assembly; the associate judges, are elected by the qualified electors in the respective counties:

The judges of the supreme, circuit and in-

31. —— partly original, and partly appellant &c.?

32. —— appellant jurisdiction only, &c.?

33. Which are courts of equity, and which of law, &c.?

*A.* The answer to these questions will be found under *No.* 30.

34. What methods are used to carry up judgments &c.?

*A.* Cases are taken up from inferior courts to the superior court by *appeal* and *writ* of *error*, under the following limitations and restrictions.

No appeal is allowed in a criminal case, nor can any writ of error in a criminal case operate as a *supersedeas*.

No appeal can be granted from an inferior court unless judgment be *final* and amounts exclusive of costs to $50, or relates to a franchise or freehold.

Every appeal to be prayed for at the time of rendering the judgment, and bond and security to be given within such time as the court shall fix, for due prosecution of the same.

A writ of *error* cannot be brought after the expiration of 5 years from the passing the judgment or decree complained of, with the usual exception in favour of femes covert, infants, absentees &c. &c. *See* the laws of Indiana, session acts of 1817, 18 & 19. more especially, the Revised Code of 1818.

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A. Armstrong Brandon*, Corydon.

36. Who is the principal *Bookseller* at the seat of Government?

*A.* There are no booksellers in the state.

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ferior courts hold their offices for 7 years if they so long behave well; receive a compensation not to be diminished during continuance in office: The president judge must reside within the circuit: The Supreme Court is held at the seat of government: The supreme court appoints its own clerk; and the clerks of the circuits in the several counties, are chosen by the qualified electors in each: all Clerks hold for 7 years unless re-appointed. *Const.*

No. II. CONVEYANCE BY DEED, &c.

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?
*A.* Our common deed is that of bargain and sale.

2. Does the legal possession pass without livery, &c.?
*A.* The legal possession is consequent upon the execution of the deed, without livery or other act of either party. (1)

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?
*A.* The common law is observed except in respect of entails, which are estates unknown to our laws.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?
*A.* The common law governs.

5. Are attesting witnesses &c. required to conveyances?
*A. Two* subscribing witnesses are necessary, unless acknowledged by the grantor before an authorised officer.

6. Must the deed be sealed?
*A.* Yes.

7. Is a scroll sufficient?
*A.* Yes.

8. Are the common law requisites for the perfection of Deeds &c. altered in any particulars, in your state?
*A.* It is believed not, further than respects subscribing witnesses. (See No. 5.)

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?
*A.* No.

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?
*A.* They must be proved and recorded within twelve months after execution, or are void as against any subsequent purchaser or mortgagee, unless proved and recorded before the proving and recording of the subsequent conveyance: As to the effect of *notice* other than by recording, it may be doubtful; I subjoin the words of our statute. (2)

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?
*A.* Yes.

(1) We have no local acts on the subject embraced in this question, but for more fully comprehending our situation as to the common law and acts of parliament I here insert the *52d chapter of the Revised Code of* 1818, which was at this time newly declared, but had been in force many years.—"Be it enacted &c. that the common law of England, all statutes or acts of the British parliament *made in aid of the common law prior* to the 4th *year* of the reign of *K. James the first* (excepting the 2d *sec. of* 6th *chap. of* 43d *Elizabeth, the* 8th *chap.* 13th *Elizabeth and* 9th *chap.* 37th *Henry* viii,) and which are of a general nature not local to that kingdom and not inconsistent with the laws of this state, and also the several laws in force in this state, shall be the rule of decision and shall be considered as of full force until repealed by legislative authority."

(2) Every deed of conveyance that shall at any time after the publication hereof be made and executed and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent and vojd against any subsequent purchaser or mortgagee for valuable consideration, unless such deed be recorded as aforesaid before the proving and recording the deed or conveyance under which such subsequent purchaser or mortgagee shall claim. *Rev. Cod.* 1818. *chap.* 28. *Sec.* 8.

12. Is this done by joining with him in the conveyance, &c.?
*A.* By joining with the husband.

13. Is a private examination of the feme necessary, &c.?
*A.* This is necessary.

14. What officers may take this examination, &c.?
*A.* The Recorder of the proper county, a Justice of the peace where the land lies, or any Judge of the Supreme, or Circuit Courts.

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c?
*A.* "*Indiana!*

*County of*——*ss.*

*Personally appeared on this*——*day of*——182——*before the undersigned E. F. one of the justices of the peace in the state aforesaid* (or other proper officer describing his office) *A. B. and C. his wife who severally acknowledged the within written conveyance* (or instrument) *to be their act and deed; and the said C. being examined by me separate and apart from her husband and having had the contents of said conveyance by me read* [or made known] *to her declared, that she voluntarily and without any coercion or compulsion from her husband sealed and delivered the same as her act and deed.*

Given under my hand and *seal.*

E. F. [SEAL.]"

To be certified on the *back* of the deed, instrument, &c. (1)

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?
*A.* Yes in all cases; there is no difference between residents and non residents.

17. Generally, is there any thing peculiar in respect to dower in your state?
*A.* No.

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?
*A. See answer to* No. 14.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?
*A.* The same as in Answer No. 15, omitting what relates to the wife.

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?
*A.* "*Indiana!*

*County of*——*ss.*

*Personally appeared on this*——*day of*——182——*before the undersigned E. F. one of the justices of the peace in the state aforesaid* (or other officer describing his office) O. P. *one of the subscribing witnesses to the within conveyance* (or instrument) *and made oath that he saw A. B. the grantor sign seal and deliver the same as his act and deed.*

*Sworn before me the day and year aforesaid.*

*E. F.*"

21. Must the grantor or witness subscribe the acknowledgment, or deposition?
*A.* No.

22. Is the certificate to be under

(1) We have no *form* prescribed, the above is collected from the statute; I have given the words, at least all substantial ones.

Judges of the Supreme and Circuit Courts and Justices of Peace of any county other than that where the land lies, may take the above acknowledgments and proofs, and the same duly certified by the clerk of the circuit court under the county seal, shall be as valid and effectual as if taken before a justice of peace of the county where the land lies. *Rev. Cod.* 1818.

the seal, as well as the hand of the officer?

*A.* In the case of relinquishment of dower the hand and *seal* of the officer is required by law. In other cases the law has not exacted it. It is however the usual practice.

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* "*I A. B. do affirm that I will &c. and that as I shall answer to God at the great day.*"—The words in the certificate in such case would be "and being affirmed according to law saith that &c."

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A.* In such case the deed may be acknowledged or proven as before directed, before any judge or justice of peace where the deeds are executed and certified under the county seal, then to be admitted to record here and will be considered as valid and effectual as if here executed and acknowledged.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A.* No proof is necessary by our laws. The seal of the county from which the deed comes like that of a notary, proving itself.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

*A.* Yes; first the hand writing of witnesses may be proved; in default of which that of the grantors, on which the deed may be admitted to record and read as evidence in court.

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* The same recourse to hand writing of witnesses and grantors, as in the preceding case.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

*A.* Yes; but we have no law respecting exemplications of deeds. The records themselves are usually brought into court. Our counties are small and the Recorders office is invariably kept at the seat of justice.

29. In what order, do mortgages take preference of each other?

*A.* Within a year from the date or more properly "*execution*" they take preference by priority of execution, afterwards, by priority of recording.

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

*A.* Twelve months.

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* There is no difference.

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* It is believed not.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

*A.* Real estate is bound by the judgment, and may be sold on execution.

34. From what time is a judgment

(or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

*A.* From the actual signing.

35. What is the order of priority among judgment creditors, in respect of lands?

*A.* By priority of judgment.

36. Does a judgment bind, after acquired land?

*A.* This is doubtful; *res non adjudicata.*

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

*A.* The first execution, chattels not being bound until delivery of execution into the officer's hands.

38. In respect of chattels, may the debtor alienate, before execution delivered?

*A.* Yes.

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

*A.* It is believed not: But an act of the last legislature *(winter of* 1821*)* provides, that a transcript of the judgment of any of the circuit courts under the official seal of the court and signature of the clerk, on being deposited and filed with the clerk of the circuit court of the county where the lands lie, shall from the time of such filing bind the lands of the defendant in such county.

40. Is there any Court in which a Judgment will bind the lands, in every county?

*A.* Yes.—Judgments of the supreme court would bind according to priority, in every county.

41. Can execution be taken out at once, in every county, &c.?

*A.* An execution directed to the proper officer of the supreme court, operates throughout the state.—*See preceding answer.*

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

*A.* Yes. Our executions command the officer to make so much out of the *estate* of the defendant; but the law directs him to take personal property *first*, in default of which land may be taken on the same execution.

Before it is offered for sale, it is the duty of the sheriff to call an inquest of 12 freeholders to appraise it, and unless it brings *one half* of its appraised value no sale can take place at any time.

The creditor however has it in his power at any time after an unsuccessful attempt to sell, to take the land at half its appraised value and the sheriff is bound to make him a deed.—*Acts of* 1820, 21.

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

*A.* It is the duty of the sheriff to acknowledge the deed in open court, no other confirmation of the sale is required.

If the execution is regularly issued and it appears together with the return correct on *its face*, there is no *summary* redress.

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

*A.* See *answer to No.* 42.

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

*A.* There is a writ of *levari facias* to have execution of mortgaged premises. But none of elegit or extent.

We have what in popular language

is called an *extent* law—which is this;—Whenever an officer under a *fi. fa.* levies on land, the defendant has a right to demand a jury of 12 freeholders who after being sworn by the officer, shall examine the premises levied upon and say whether they will *rent* in the term of 7 years for sufficient to satisfy the execution.

If their verdict is in the affirmative the officer is bound to expose the term to the highest bidder,—or as is the practice to sell the smallest part of the term that may be, to satisfy the execution.

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

*A.* The law of appraisment above named and a suspension or "replevy" law, are the only legal impediments to the speedy collection of debts.

By the present *replevy* law enacted at the last session of the legislature, (1) all executions issued by *justices of the peace* are entitled to a suspension of 9 months. Those from *other* courts to 12, 15, 18 and 21 months in the order of their amounting to $100; over $100 and not exceeding 300; over 300 not exceeding 600; and all sums over 600 to the last term of 21 months, on the defendants tendering to the sheriff a bond with *sufficient security* to pay the execution, interest and cost at the expiration of the time.

The body also on ca. sa. is repleviable on bond and security in like manner, and in the same proportion as to amount.

These bonds have the force of judgments, and if not paid at maturity execution issues against principal and security, upon which no replevin is to be taken nor delay permitted. *Acts of* 1820—21.

47. What security is required, that the property shall not be wasted, and be forth coming?

48. May the debtor redeem land sold on execution, &c.?

*A.* No.

49. May judgments on warrant of attorney, be entered in vacation?

*A.* No.

50. Can judgments be entered on warrant of atty. before the debt is payable?

*A.* In no case.

Judgments may be confessed on warrant of Atty, but only in open court. We have not copied the ex-extreme jealousy of Virginia and Kentucky who refuse all quarter to warrants of Atty. to confess judgment, and make it highly penal for an Atty. at law to presume to act under them.

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* The creditor is responsible for the price of the land at public sale; there is no reverting.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* Yes, to both branches of the question.

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* For any sum, and none are exempted.

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* By the common law.

(1) "1821," as I infer from my correspondent's letter. Ed.

56. Are any kinds of personal estate exempt from execution?
*A.* Personal property not exceeding $100, which value is to include the indispensable articles for family use and support.

No. IV. INSOLVENT (LAW.) (1)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?
58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?
59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?
60. Is there any thing peculiar in your insolvent law?
*A.* Any person insolvent and unable to pay his just debts, may by petition to the *Circuit Court* obtain relief in the following manner.

With his petition the applicant must file a schedule, containing a faithful list of all debts by him owing and to him due or accruing, and of all his property of whatever character or description. The court thereupon orders 60 *days* public notice to be given of the time and place they will act on his petition: such notice to be published 3 weeks successively in some public newspaper printed in the state.

On final hearing the applicant is required to verify by oath or affirmation his petition and schedule and to swear, that he will without fraud deliver up and convey to such trustees as the court may appoint all his estate real and personal, and that he never has directly nor indirectly disposed of any property to injure and defraud his creditors.

At the same time he is required on oath, to answer the questions of any creditor who may think proper to interrogate him.

The court then appoint trustees to accept a conveyance or assignment from the insolvent of his property, excepting such as is by law exempted from execution. The trustees give bond and security for the faithful execution of their trust.

They are required to settle all claims, empowered to institute suits &c. and directed to convert the whole estate into money and then pay off the creditors who have given notice of and substantiated their claims (for which they have 6 months, the trustees giving public notice by advertisement of the time and place of their meeting for that purpose) *pro rata*, retaining for their expenses such sum as the court may think reasonable.

Creditors not putting in their claims in 6 months are barred from a share in the distribution. Creditors aggrieved by the decision of trustees may appeal to the circuit court. The trustees continue to make a dividend every six months till the estate is exhausted.

If the applicant be guilty of fraud, concealment, diminution &c, on proof of this within 3 years, and on conviction he is to suffer the penalty of perjury.

After surrender of property, the *person* to be discharged from all

(1) I had almost been of opinion that since the decisions of the Supreme Court of the U S. respecting state insolvent laws, it was unnecessary to give an account of our own, which have fluctuated for several years past with the annual legislation of the country; but as it is in the list of questions to which answers are requested and as our last act of 1820 is somewhat peculiar, I have inserted as an answer to all the questions under this head a brief abstract of our present law.

debts at that time owing, but future property to be liable.

A party in prison on mesne or final process is to be discharged on executing satisfactory bonds before the clerk of the circuit court to the party *imprisoning*, that he will faithfully surrender his property for the benefit of his creditors, according to law &c.

By an amendment, *passed Jany.* 1821, a debtor filing with the clerk a petition, schedule, and bond, after process has been issued against him, the clerk is bound to issue a supersedeas to such process, and on final hearing of the application, it is made lawful for any person to establish by competent testimony *fraud* on the petitioner, which if shewn to the satisfaction of the court they are to refuse to discharge him, and if process has been superseded to direct new process to issue. *Acts of* 1820—21.

I perceive no objection to the insolvents taking the benefit of this act, before any process whatever has issued.

## No. v. WILLS, &c.

61. Are lands and frechold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* They are.

62. What formalities of execution, are essential to a will of lands &c?
*A.* The will is to be subscribed by the party devising or by some person for him and be attested by two witnesses.

Co-attestation is not necessary; sealing, probably is by a late law; without the subscribing and two witnesses, the will is void by our statute of frauds.

63. What formalities are required, in the revocation of wills of land?
*A.* The revocation is to be with the like formalities as the making, the subscription by testator and two witnesses.

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?
*A.* The provisions are similar, I am not certain if they are identical with the english statute.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?
*A.* Before the clerk of the circuit court in vacation, and before the judges of probate in open court.

The probate is supposed to be conclusive; it will be recollected an appeal lies to the Circuit Court. *See No.* 30, "*Courts.*" (1)

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?
*A.* By the oath of two credible witnesses.

67. In what office is the will and inventory registered: are office copies evidence?
*A.* In the office of the clerk of the circuit court. Office copies are evidence by statute.

68. What formalities are required, to wills of chattels?
*A.* This is left as it was at common

(1) It appears under this number division III "Probate Court;" that where the will &c is proved before the clerk, the "Associate Judges" in term may repeal his act; from their sentence again or from their own original sentence an appeal lies to the "Circuit Court," that is the "President Judge" and th*e same* two associate judges; so I understand it. Ed.

law except, that the *seal* of the party is required by a late act.

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A. See the preceding answer.*

70. May executors, or administrators having letters in another state, sue in your state?

*A.* They may.

71. If not, what is to be done to enable them to sue?

*A. See the preceding answer.*

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

*A.* They are, the originals are not necessary. There is an express provision in our revised code (1818) by which all wills and probates granted by courts in other states under the seal of the courts and officers granting the same, are as valid and effectual as if granted *here.*

73. How are foreign wills and testaments proved in your state, &c?

*A.* As to wills, testaments &c. made within the U. S. *See the preceding answer:* As respects *foreign* wills, testaments, deeds, judgments &c. they should be exemplified in due form under the seals of the proper courts, or officers; questions might arise on these here, as our laws do not provide in all cases: It would be proper in addition to the exemplification under the seal of the court, officer &c. to verify the *authority* of the officer certifying, under the great seal of state; or a notarial declaration; or that of the american minister or consul; the seal of state, however would be most proper.

In regard to public acts, records and judicial proceedings, in the several U. States and Territories, our *Revised Code* c. 55, 1818, provides,

1st. That every act of the legislature of any one of the U. S. or territories certified by the secretary and having the *seal* of such state or territory affixed, shall be deemed *authentic* and receive full faith and credit when offered in evidence in any court &c.

2d. The records and judicial proceedings of the several courts of or within the U. S. or Territories thereof, shall be admitted &c. by the attestation or certificate of the clerk or prothonotary and the seal of the court annexed, together with the certificate of the chief justice or one or more of the judges or presiding magistrate of either such court (as the case may be,) that the person who signed such attestation or certificate was at the time of subscribing the clerk or prothonotary of such court and that such attestation is in due form of law &c. *chap.* 55. *R. C.* 1818.

## No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

*A.* Real estate on intestacy descends;

I. To the children equally.

II. If no children nor descendants, to the father.

III. If no father, to the mother, brothers and sisters in equal parts.

IV. If no father, mother, brothers or sisters, the estate is divided into moieties, one half going to the paternal and the other to the maternal kindred.

V. But the widow, of an intestate having no issue, and no father, mother, brothers or sisters is entitled to all his personal and half his real estate.

VI. For want of paternal or maternal kindred, the whole estate goes to the wife.

VII. And if he has no wife, then the estate is to be applied to the support of free schools in the county in which such property is situated. (1)

In dividing the estate among heirs, all property received by any of them previously, by way of advancement shall be *taken into view*, if such person claim his or her right of inheritance.

Illegitimate children, inherit from the mother, as legitimate would.

Antinuptial children, are legitimated by after marriage.

In respect to kindred of the half blood to the intestate, the statute is silent, and their right depends on the common law. See *Rev. Cod.* (1818) 183, 184.

## No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

*A.* Upon intestacy the surplusage of the personal estate goes:

I. Among the *children* equally, and their representatives.

II. If no children nor representatives of children, then one moiety to the *wife* and the residue is distributed to the *next of kin* to the intestate who are in equal degree and to those who legally represent them. (2)

80. How among collaterals?

*A.* But no representatives are admitted among collaterals, after brothers and sisters children. *Rev. Cod.* (1818) 144, 145.

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* (3)

On the subject of distribution of intestate's estates, it may be proper to mention a provision of our law rendered important by the large amount of property it is liable to embrace, in consequence of the peculiar situation of our citizens.

"When any person shall depart this life having entered any tract of land in any of the land offices of the U. S. in this state and shall not have paid the several instalments due or that may become due on the same, and shall not leave personal assets sufficient to pay the same, or leaving enough, but not in such situation that they can be applied to such payments in time to prevent a forfeiture of such land, it shall be lawful for the Ex'rs and Ad'mrs under the direction and order of the Associate

(1) It will be observed that my correspondent has not thought it necessary to state that the *issue* of children, or of brothers and sisters, or other collateral next of kin, are to take the parents' share by representation; indeed this is always to be understood: So also in the case V. where the widow takes by the statute half the real estate, it is doubtless in full of dower. Ed.

(2) It is seen under "Descents .V" that the widow takes all the personal estate, in the case there stated. Ed.

(3) This question is not answered; but if my correspondent is correct, the Indiana law is essentially different in regard to the *widow*, for it does not appear that she takes any personal estate if there be children or their representatives, whereas by the *Stat of Car.* and by all the laws of the several states which I have seen, the widow takes *one third* where there are children or lineal descendants; possibly there may be some oversight here. Ed.

Judges of the Circuit Court for the proper County, to sell at publick sale for the best price that can be had the tract or parcel of land so entered, and the person purchasing shall have the same interest in said land as such deceased had and no more, and such Ex'rs or Adm,rs shall convey the land so sold to the purchaser by assignment on the back of the Certificate or by any method of conveyance that now is or shall hereafter be pointed out by the laws of the U. S, and all such monies shall be considered in the same light as personal assets are and disposed of accordingly by such Ex'rs and Adm'rs. *Rev. Cod.* 1818.

No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

83. Are entails abolished; converted into fees; or otherwise modified &c?

84. How barred by the tenant?

*A.* Entails never existed in this state.

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* Dower and curtesy, are as at common law.

A widow is entitled to dower out of lands which her husband has purchased of the U. S. on credit, although the payments are not completed and the title has not passed from government, *if* the payment for the land is afterwards made from the husbands estate. *Acts of* 1820. *p.* 76.

No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

87. What savings &c?

88. Is there a saving in favour of foreigners or citizens of other states?

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

90. Is there any thing peculiar in your state on this head?

*A.* We have no statutory provision on the subject of *real* actions.

I presume the common law governs in all such actions where the subject of limitation is brought into view.

Ejectment is barred by 20 *years* peaceable possession.

91. What length of time bars recovery &c. in personal actions?

*A.* Debts by specialty, stand as at common law.

Trover; Assumsit; Detinue; Replevin; Trespass *quare clausum fregit;* Actions on the case; Debt; Account, are barred after 5 *years* from the cause of action accrued; Trespass, Assault, Wounding and Imprisonment, after 3 *years*; Slander for words spoken, after 1 *year.*

92. What savings?

*A.* There are no savings, in personal actions. (1)

93. Are there any in favour of citizens of other states, or foreigners?

*A.* No distinctions are made.

No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

*A.* When goods and chattels cannot be found lands may be sold:

An absentee has no privilege. When the owner is resident, notice in writing or personal notice must be given to him by the sheriff 1

(1) Nor any I presume in ejectment; my correspondent mentions none. Ed.

month before he can distrain his goods &c.

95. Before a sale, is notice to be given &c?

*A.* Notice for 20 days is to be given by advertisment at the court house door, *and* publication in some publick newspaper of the state 3 weeks successively of the time and place of sale.

96. What officer is to give this notice?

*A.* The sheriff, who is collector of taxes ex officio.

97. In what manner &c.

*A. See preceding answers.*

98. If a sale takes place, is the deed absolute?

*A.* The sheriff gives a certificate to the purchaser, specifying the quantity sold and for what sum in presence of 2 witnesses; this vests all the right of the delinquent in the purchaser and his heirs; entitles him to demand partition, and to appropriate in every respect the property but *not until after 2 years* from the time of sale.

The certificate is admitted to record at the expiration of two years and deemed and taken from thence, as an absolute conveyance.

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

*A.* Land may be redeemed within the 2 years on payment or tender by the delinquent or owner to the purchaser, of the amount paid for it, with 100 *per cent. per annum* additional.

If the purchaser does not live in the county, the owner may deposit the money with the county treasurer, and then on giving public notice of this in the nearest newspaper, redemption is effected as fully as if tendered personally.

The sales are entered at the office of the clerk of the circuit court of the respective counties, where the lands lie.

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

*A.* Lands are ordered when not sold on the first exposure for want of buyers, to be re-exposed; but there is no provision for vesting them in the state.

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* Without a personal acquaintance with some officer, or recommendation of others that can be depended on, no man ought to trust the payment of his taxes, to officers.

The safest course would be to employ some individual in the county where the lands lie whose integrity and capacity can be relied on, to act as an agent for the payment of taxes and direct him to give notice of his agency to the sheriff and collecting officers. See *laws of Indiana*, 1818, *p.* 265, 266, 267.

## No. XI. MISCELLANEOUS.

### BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* There is no statutory provision in regard to the first branch of this question. In special cases by application to the chancellor an injunction would be granted.

The debtor may be holden to bail under our laws, and I presume on like principles as regulate bail in civil cases, elsewhere.

LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?
*A.* We have no special provision, but it is every days practice; and where they relate to lands, it would be proper to acknowledge or prove them as deeds should be.

Any instrument except deeds of land, may be recorded, on paying to the officer his legal fees.

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?
*A.* Aliens in this state, may hold and transmit real estate as *citizens*, after having declared their *intention* to become citizens in pursuance of the laws of the U. S.

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?
*A.* No local acts have been passed to alter the right, as understood and practised in england.

106. May guardians be appointed by will: does the common law regulate &c?
The judges of probate are directed by law, to "have due regard to the direction of last wills and to the true intent and meaning of testators in all matters and things that shall be brought before them respecting the same" unless some flagrant objection should exist, the judges would unquestionably appoint the person nominated in the will.

Guardianship here, is partly regulated by statute leaving much to common law.

PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?
*A.* Yes.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?
*A.* The first question is doubtful.

In default of personal estate to satisfy debts, the lands of an intestate may be sold by an order of the probate court, and I presume as a matter of course they can be sold on judgments against executors and administrators.

JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?
*A.* Our statute takes away the right of survivorship, and the parties hold as tenants in common.

SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?
*A.* Generally, it is unchanged; but *see No.* 135.

111. Is a scroll &c. equivalent to wax &c?
*A.* In all instruments, it is equivalent.

BASTARDS.

112. Are bastards subject to common law disabilities?

*A.* Partially they are; the right of inheritance on the part of the mother excluding many of the common law disabilities. *See "Descents."*

113. Are antinuptial children, legitimated by marriage of the parents?

*A.* They are. *See "Descents."*

ALLUVION.

114. Does the common law in respect of alluvion prevail?

*A.* Yes.

FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c. entitled to several fishery in front of his land?

116. Is this so by statute, or usage?

*A.* We have no statute regulations on this subject.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

*A.* It is believed so.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. *(called the stat. of frauds,)* or similar provisions, adopted in your state?

*A.* Similar provisions exist in this state.

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?

*A.* This question may be answered, affirmatively.

120. Is the English law of uses and trusts, in force?

*A.* As also this.

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?

*A.* The common law regulates.

USURY. INTEREST.

122. What is the rate of interest?

*A.* Six *per cent,* is the statute interest.

123. What provisions against usury?

*A.* We have no penal laws against usury; but when suit is brought on a usurious contract for the loan or use of money, the defendant has a right to plead the usury specially, and on plea substantiated or adjudged good on demurrer, the whole amount of interest charged is *deducted* from the principal, and the plaintiff recovers the balance.

If the interest exceed the principal, the excess constitutes a debt of record against the plaintiff, and judgment is rendered for the defendant. *Rev. Cod.* 1818, 236, 237.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* Book accounts are not evidence of debt.

125. Is interest recoverable on book debt?

*A.* As to interest on book accounts, it is left to the discretion of the jury.

The custom of merchants in different places, is always allowed to be given in evidence.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes

negotiable; and generally governed by the law of England?
*A.* They are.

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted in the English law, to entitle him to recover?
*A.* The like rules must be observed.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?
*A.* I believe not. It is however the usual practice.

129. Is there any peculiar practice in your state, on this subject?
*A.* None.

130. What damages are recoverable, upon the protest of foreign bills of exchange?
*A. Fifteen* per cent. if drawn on persons living *out* of the U. S. and *ten* per cent, if drawn on persons living out of the state and *in the U. S.*

DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?
*A.* Divorces may be granted *a vinculis*, by the circuit court on libel or petition filed.

The causes are, where the party had a husband or wife at the time of solemnizing the second marriage; for impotency or adultery in either party.

For the husband, where his wife shall have voluntarily left his bed and board with the intention of abandonment for two years, or been condemned for felony in any court of record in the U. S.

For the wife, where the husband shall have left her in the same manner, or abandoned her and lived in adultery with another woman, or been condemned for felony &c.; or where his treatment of her is extremely barbarous and inhuman.

The party offending, is not released from the bands of matrimony.

It is conceived that the party making the application must be a resident, though the law is silent on that point.

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?
*A.* Yes.

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A.* Our law on this head is similar to the English law.

Justices of the peace issue distress warrants for any amount, and they are the only officers who can issue them.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A.* Yes.

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?
*A* Choses in action as well as bills of exchange &c. are assignable.

The assignee may sue in his own name, and the assignor is always *liable over* on the assignees having used due diligence against the maker or obligor, unless expressly stipulated to the contrary.

136. Is the common law in respect of choses in action, adopted?
*A.* The common law principle is unchanged; other, than as in the preceding answer.

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?
*A.* Our law is the same.

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?
*A.* Where the decree is for money, as other judgments.
In the foreclosure of mortgages, the court orders the land sold.
The sheriff executes the process.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?
*A.* There is no statutory provisi on on the subject, and I am not aware that any particular practice has received the sanction of our courts.

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?
*A.* None but town lots at the new seat of government (Indianapolis;) these have been ordered for sale at public auction.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation?
*A.* They are read in our courts, without restriction. (1)

(1) The foregoing replies were principally, received previous to October 1821. The gentleman who sent them expressed his fears, that some of them might soon become inapplicable by reason of new laws, or alterations in those which then prevailed:

He thought it would be prudent for me to intimate the probability of this, for the reasons stated in his note.

It is certainly to be expected—that changes will take place greater or less in all places; and this renders it the more necessary to resort to some method—of giving publicity to them when they do happen.

In regard however to most of the subjects of general consequence to which these questions relate, they are not likely to undergo, especially in the older states, any great and certainly not very sudden innovations. In future, an annual *supplement* will be issued, not only comprizing intermediate changes, but extending to other subjects, within the range of this department of the Law Register.

I cannot do better however in reference to my correspondent's suggestion than to insert his paragraph on this point; he observes, "with regard to some of our laws it appears to me proper to subjoin a very few remarks. It is unfortunate for our state and may be considered so for other parts of the western country, that we are *overburdened* with legislation. Our laws, some of them of a fundamental character are extremely fluctuating. It is very doubtful for instance whether on the publication of your Register, our *execution law* will be the same that I have cited, or any thing like it. Last year we had a *property law;* the year before executions were endorsed by law 'that *current bank paper* would be received in satisfaction of them, or a suspension of twelve months was allowed.' What the advocates for "Relief" may incorporate with the Laws next winter, it is impossible for the wit of man to conjecture or anticipate. I shall be pardoned therefore I trust for submitting an intimation, that justice to yourself and correspondents might render proper some *notification*, that would prevent your subscribers and the citizens of the United States generally from expecting an accuracy, which annual Legislation, at least in this part of the country will never allow."

# APPENDIX.

## Rules of the Supreme Court of Indiana.

1. *The* oldest judge in commission is president of the Supreme Court, and in his absence the next oldest in commission shall preside for the time being.

2. *When* the judges deliver separate opinions, *(seriatim)* the junior judge shall proceed first, and so on in order.

3. *The* president shall superintend matters of order in the Court House.

4. *When* writs of error issue, a *sci. fa.* to the defendant in error to hear errors, shall issue at the same time and shall be returnable at the same time the writ of error is returnable.

5. *On* the return of the writ of error, and *sci. fa.* served, errors shall be assigned within the three first days of the term. Joinders in error shall be filed within three days thereafter, if the term should last so long and if not, then on the last day of the term, otherwise the errors shall be taken to be confessed and there shall be judgment accordingly; unless the Court by the consent of parties direct otherwise.

6. *In* cases of appeal, errors shall be assigned as on writ of error, otherwise error shall be considered waved and proceedings shall be had accordingly; and joinder to error in appeal shall be made *instanter*, otherwise the error assigned shall be taken to be confessed and judgment shall be given accordingly, unless the Court give further time.

7. *As* soon as there is a joinder in error, each party shall furnish to each judge a statement of the case and the points he relies on.

8. *All* motions shall be in writing signed by counsel, and filed of record.

9. *The* parties may by leave of the court, set their causes for argument on any given day, or the court may set a cause for argument. And when a cause is called as set for hearing by the clerk, by the parties aforesaid, or by the court, if either or both parties do not proceed with the argument, the court will take the cause to be submitted and will proceed accordingly.

10. *Each* attorney employed in a cause shall mark his name to the cause, otherwise he shall not be heard on the argument of the same.

11. *Whenever* any alteration is made in an entry of the clerk, a *memorandum* thereof shall be made in the margin and signed by the president of the court.

12. *At* the end of each term and immediately preceding the adjournment of the court, the court shall make a *memorandum* in the book of judgments and proceedings; which memorandum shall state the number of pages containing the proceedings of that term, and shall state the number of the page of the Book where the same ends. The clerk of this court, shall send one copy of these Rules to the clerk of the 1st. Judicial District, and to the clerk for the 2d, and one to the clerk of the 4th. Judicial District.

13. *The* clerk of the Supreme Court shall on the first day of each term deliver to each judge, a copy of the record in each cause in which there was an assignment of errors at the preceding term, or which may have been filed in his office ten days before the term.

14. *The* statement of points relied on, to be furnished by counsel to each judge, shall be delivered on the first day of each term.

15. *In* all cases where the *sci. fa.* is returned not executed, and the defendant in error shall enter a voluntary appearance on the first day of the term to which the *sci. fa.* is returnable, the plaintiff in error shall assign his errors within the three first days of such term, and where the defendant in error shall appear after the first day of such term, he shall give notice of such appearance to the plaintiff in error who shall assign his error within three days after such notice given.

16. *All* writs of error in which a *scire facias* shall be returned executed on the defendant, or defendants shall enter a voluntary appearance on the first day of the term to which such writ is returnable, shall be argued at such term, unless for cause shewn, the court shall grant a continuance to either party.

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# MASSACHUSETTS.

# STATE LAW

AND

# REGULATIONS.

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1821, 2.

# MASSACHUSETTS.



## No. I. STATE OFFICERS.

1. Who is Governor of your state &c.?
*A. John Brooks*; residence, Medford; styled "the Governor of the Commonwealth of Massachusetts;" title "His Excellency," (1) tarm of office one year; elected by the people; (2)—salary, $3666, 66, (or £. 1100, Mass. currency.)

2. —— Secretary of state &c.?
*A. Alden Bradford*; residence, Boston; term of office, one year; chosen, by joint ballot of the Senators and Representatives in one room.

3. —— Chief justice of the supreme court of law, &c.?
*A. Isaac Parker*,—Chief Justice of the Supreme Judicial Court; residence, Boston; term of office, during good behaviour; but he may be removed by the governor with the consent of the council, upon the address of both branches of the legislature;—appointed by the governor, with the advice and consent of the council; salary, $3500.

4. —— Clerk of the superior or supreme court, &c.?
*A. Clerks* of the "Supreme Judicial Court" for the counties of Suffolk and Nantucket, *John Tucker* and *John Callender*, both of Boston.
County of Middlesex, *Abraham Biglow* of Cambridge.
—— Norfolk, *Horatio Townsend* Dedham,
—— Plymouth, *John B. Thomas*, Plymouth.
—— Bristol, *James Sproat*, Taunton.
Counties of Barnstable and Dukes-County, *Abner Davis*, of Barnstable.
—— Worcester, *Abijah Bigelow*, of Worcester.
—— Hampshire, *Solomon Stoddard jr*, Northampton.
—— Franklin, *Elijah Alvord*, Greenfield.
—— Hamden, *John Ingersoll*, Springfield.
—— Berkshire, *Charles Sedgwick*, Stockbridge. (3)

(1) "Commander in chief of the army and navy, and of all the military forces of the State, by sea and land."

(2) The qualification of voters is fixed, by an amendment to the constitution proposed by the late convention in Massachusetts and adopted by the people.

(3) "These clerks are appointed by the Justices of the Supreme Judicial Court, and hold the office during their pleasure. The same persons are also clerks of the inferior courts in the counties in which they respectively reside, namely the Court of Common Pleas and Court of Sessions; but in the county of Suffolk there is no court of sessions. *Vid. answ. No.* 30."

[The Supreme Jud. Court does not hold a term in the counties of Nantucket and Dukes-county. In these counties therefore there are distinct clerks of the inferior courts, appointed however by the justices of the sup. jud. court. The clerk of the courts in Nantucket is *Benja-*

5. —— Attorney General: &c.?
*A. Perez Morton;* residence, Dorchester; holds his office during the pleasure of the governor and council; appointed by the governor with the advice and consent of the council; salary $2000.—(1)

6. When, and where, is the annual meeting of the legislature?
*A. Boston* is the seat of government. The legislature first assembles there, the *last wednesday in May.*

UNITED STATES OFFICERS.

7. Who is District judge, &c.?
*A. John Davis;* residence, Boston. Only one district.

8. —— Clerk of the District court &c.?
*A. John W. Davis;* residence, Boston.

9. —— District Attorney, &c.?
*A. George Blake;* residence, Boston.

10. —— Marshal, &c.?
*A. Samuel D. Harris;* residence, Boston.

11. What Justice of the S. court of the U. S. holds the circuit in your state, &c.?
*A. Mr. Justice Story* (Joseph,) holds the Circuit Courts.

New-Hampshire, Rhode-Island, Massachusetts and Maine, compose the circuit.

12. At what times and places, are District courts of the U. S. held, &c.?
*A.* On the *third tuesday of March; fourth tuesday in June; second tuesday in September,* and *first tuesday in December,* at Boston; (besides special courts holden at any time, at the discretion of the judge.)

13. —— Circuit courts &c.?
*A.* On the *15th of May* and *15th of October;* at Boston.

LAWS—LAW BOOKS.

14. What number of volumes, does the compiled body of your Statute law consist of, &c.?
*A.* The *compiled* body of the Statute Law of a public nature, is contained in 4 volumes, viz:

"The laws of the commonwealth of Massachusetts, *passed from the year* 1780, (when the constitution was adopted) *to the end of the year* 1800, *with the constitutions of the United States of America, and of the Commonwealth prefixed. To which is added an appendix, containing acts and clauses of acts, from the laws of the late Colony, Province, and State of Massachusetts, which either are unrevised or respect the title of real estate; 2 vols.* (I. II.) *Published by order of the General Court.*"—1801.

An index to both volumes is annexed to each.

"The laws of the commonwealth of Masachusetts; *from November* 28, 1780. *to February* 28, 1807. *with the constitutions of the United States of America and of the Commonwealth, prefixed,* 3 *vols. To which is added, at the end of the 2d vol. an appendix, containing acts and clauses of acts, from the laws of the late colony, province, and state of Massachusetts, which either are unrevised or respect the title of real estate. Published by order of the General Court.*" vol. III. 1807. The index extends to all the three volumes; this is a continuation of the above mentioned 2 *vols.*

(1) Solicitor General, *Daniel Davis,* of Boston; term of office, mode of appointment and salary, the same as in the case of the atty. general. An act was passed last Feby. (1821) the object of which is to abolish one of these offices as soon as a vacany shall take place in either.

*min Gardner,* of Nantucket; in Dukes-county *Cornelius Marchant,* of Edgarton.]——*This part in* [ ] *is inserted from the M. S. but owing to changes since I received it—may not be correct. Ed.*

"The publick and general laws of the commonwealth of Massachusetts; *from February* 28, 1807, *to February* 16, 1816. *Published by order of the legislature. vol.* IV. 1816.

An index to this volume only is annexed; this is a continuation, and forms the body of our statute publick laws up to 1816.

The *private* acts have also been compiled in 3 *volumes*—viz.

"Private and special statutes, *of the commonwealth of Massachusetts from the year* 1780, *to the close of the session of the General Court, begun and held on the last wednesday in May A. D.* 1805. *With an appendix, containing such statutes, of the above description, passed before the year* 1780, *as are referred to in acts passed since, and including the temporary acts, made perpetual March* 7, 1797." 3 *vols.* 1805. "Index in each referring to all."(1)

It should be mentioned likewise, that by a resolve of the legislature of *Jan.* 15, 1812, the "Hon. *Nathan Dane, William Prescott* and *Joseph Story Esquires*" were appointed "a committee, at the expense of the commonwealth, to collect the *charters and the publick and general laws of the late colony* and province of Massachusetts Bay," and to cause them to be printed.

A volume was published accordingly with the following title.

"The Charters and General Laws of the Colony and Province of Massachusetts Bay, *carefully collected from the publick records and ancient printed books. To which is added an appendix, tending to explain the spirit, progress and history of the jurisprudence of the state; especially in a moral and political view. Published by order of the General Court.* 1 *vol.*" 1814.

This volume is frequently cited by the name of "Ancient Charters &c," and sometimes "Colony and Province Laws."

Various other editions of the laws have been published from time to time. (2)

(1) The two first volumes of the *general* laws have been reprinted in 1807, with some corrections and additional marginal references, with a title page and index like those of vol. 3d. In other respects this edition is intended to be a copy of the first; the same paging is observed.

The volumes above described are those most commonly cited in referring to the statutes; as they are in most general use.

The publick laws would be cited thus,—for example, 2 "*Mass. Laws*—or *Mass. Stat.*" 802; The private thus,—3 "*Mass. Spec. Laws*, 100."

In speaking of them in our courts we commonly say, such a volume and page of "the laws" or "the special laws," omitting "Massachusetts." If a different edition is cited, it is necessary to particularize the edition. The statutes are also referred to, by the year and day of the month when they were enacted, and by the political year and chapter.

This last method has been uniformly observed in the last 14 *vols.* of the *Mass. Term Reports*; in accordance with a *resolve* of the legislature passed *Jan.* 20, 1808, directing "that the acts passed by the same legislature, between the general election" [the last wednesday of May,] "of any one year, and the next succeeding general election, shall be deemed *chapters*, and numbered in a series arithmetically progressing from the first to the last, so passed by the same legislature.

It happens however that the statutes are not numbered as chapters, in either of the volumes above mentioned; not even in the *4th vol.* of the general laws, which was printed so many years after passing the resolve.

In the pamphlets published after every session of the legislature, in which the publick and private acts are printed promiscuously, according to their respective dates, the acts are numbered as chapters according to the resolve.

(2) The following advertisement appeared (*Sept.* 20, 1821,) in the Boston Daily Advertiser: "*Wells & Lilly* have almost ready for the press a Revised edition of the *Statutes of this commonwealth* with a new and complete index to the whole work attached to each volume. Statutes repealed or altered will be noticed, with references to the statutes containing the alterations; the titles and dates of the special statutes will be given. The proof sheets will be compared with the originals in the office of the Secretary of State."

15. Can the publick laws in pamphlets, be procured, &c?

*A.* The note below contains the information required in this question. (1)

16. Is there any Digest of the state laws &c?

*A.* White's Digest; "*being, a compendium and digest of the laws of Massachusetts. By William Charles White,* counsellor at law." Published 1809, 1810, and 1811. 4 *vols.* generally bound in two.

17. Are there any Reports of cases in your state courts, &c.?

*A.* Williams's Reports, "*being, reports of cases argued and determined in the supreme judicial court of the state of Massachusetts. From Sept.* 1804 *to June* 1805 *both inclusive. By Ephraim Williams Esq.*" 1 *vol.* Published 1805.

Tyng's Reports; "*being a continuation of reports in the same court from March* 1806, *to October* 1820. *By Dudley Atkins Tyng Esqr. Counsellor at law.*" 15 *vols.* Published, between 1808 and 1821. The first *vol.* by Mr. Tyng is called the 2d. vol. being in continuation of Williams's 1st. *vol.* of the term reports. (2)

(1) The *publick* laws are not printed by themselves, in pamphlets, but as before mentioned, promiscuously with the *private* acts. The printer to the state publishes a certain number of copies for the use of the commonwealth, which are distributed among the members of the legislature, judges &c. and cannot be procured by a private individual; besides those printed for the state, the printer tells me he usually strikes off 50 more copies for sale.

Some of the late pamphlets may be obtained of *Russell & Gardner,* Editors of the Boston Commercial Gazette," who have in fact executed the Printing for the state, under a contract with Benjamin Russell, editor of the Columbian Centinal, who is the *state printer.*

The laws of the last *January* session (1821,) are not to be purchased; Russell & G. having by mistake printed only 10 extra copies, all of which have been disposed of.

The state frequently changes its printer; so that there is but little inducement to strike off many extra copies of the laws.

(2) Provision was first made by the legislature *March 5th* 1804, for the appointment of a *Reporter* of the decisions of the Supreme Judicial Court. By this act the appointment was vested in the supreme *executive,* (Governor;) the reporter to be sworn to the faithful discharge of his duty and removable at pleasure: His salary was fixed at $1000, annually and the profits of the work. The money paid by persons admitted as attornies in that court to constitute a fund, for the payment of this salary. (3 *Mass. Laws* 227.)

This act (at first for 3 years,) was continued for limited periods, until *Feb.* 2, 1815, when it was continued without limitation. (4 *Mass. Laws.* 445.)

*Ephraim Williams, Esq.* was first appointed Reporter under the act, and published *vol.* 1, and *Dudley Atkins Tyng Esq.* succeeded him, and published the other 15 vols.

They are commonly called the "Massachusetts Term Reports;" and contain from 500 to 700 pages each. The retail price is $5, 50, a *vol.* but the booksellers make a discount, proportionable to the *No. of vols.* purchased. They may be had in any of the book-sellers shops in Boston.

The following is a summary of the times of publication, contents &c. of these reports.

*Vol.* 1. From Sep. 1804, to June 1805. *Pub.* 1805.

2. From March 1806 to June 1807; and a *supplement* containing, "some few decisions of the same court" of a prior date. *Pub.* 1808.

3. From June 1807, to the end of the year, with a *supplement. Pub.* 1808.

4. Containing the cases of 1808. *Pub.* 1809.

*Vols.* 5 to 12, inclusive, were all published at Newburyport, between 1808 and 1816, some of the *vols.* with and some without supplements.

A *2d. edit.* of the 1st. *vol.* with a few notes and references to the 10 following *vols.* and also to some english and american reports, was published in 1816, by a gentleman of the Bar. The index enlarged, and the original paging preserved in the margin.

Most if not all the other *vols.* above mentioned, have been reprinted at Exeter in N. Hampshire in 1818, 1819; but without any new references or other improvements, except it may be in type or paper.

We have no other *reports* of any particular authority in this state; but some of the following may be worth recording.

"Trial, of *William Wemms, James Hartezan, William M'Cauley, Hugh White, Matthew Kilroy, William Warren, John Carrol, and Hugh Montgomery, soldiers in his majesty's 29th Reg. of foot, for the murder of Crispus Attucks, Samuel Gray, Samuel Maverick, James Caldwell, and Patrick Carr, on monday evening the 5th of March* 1770, *at the Superior court of judicature, court of assize and general gaol delivery held at Boston, the 27th day of November* 1770, *by adjournment, before the Hon. Benjamin Lynde, John Cushing, Peter Oliver, and Edmund Trowbridge, Esquires, justices of said court.*" 1 *vol.* 1770. *Published by permission of the court. Taken in short hand by John Hodgson.*

Another account of this trial, was published in a small *vol.* in 1807. By *Belcher and Armstrong, Boston.*

*Vol.* 13. Contains the cases for the year 1815 *Pub.* 1817, by Cummings and Hilliard, *University Press, Cambridge.*

*Mess. Cummings and Hilliard* in this *vol.* announce, that they have purchased the copy right of this and the subsequent volumes, and that complete sets of the Massachusetts Reports may be had at their book store *No.* 1, *Cornhill, Boston.*

*Vols.* 14, 15, 16, bringing the reports to *Oct.* 1820, appeared from the same press in 1818, 1819, and 1821.

The *supplements* to several volumes of these reports, contain much interesting and valuable matter.—A summary is subjoined.

The *supplement* to *vol.* 2, consists, of several *cases* determined in the *Supreme Judicial court* prior to the appointment of a reporter (*Mar.* 1804,) and a table showing the *names* of the Justices of the Superior court of Judicature, &c. of the Province of Massachusetts Bay from the organization of the colonial government under the charter of William and Mary until its termination in 1775; and the names of the Justices of the same court, and of the Supreme Judicial Court, from that period until the appointment of *Theophilus Parsons Esq.* in 1806.

The *supplement* to *vol.* 3, contains, a number of *cases* prior to the 1*st. vol.* of the reports (1804.)

The *opinions* of the Justices of the Supreme Judicial Court on certain questions referred to them by the senate of Massachusetts in the year 1791, "relating to the time when bills or resolves should be laid before the governor for approbation in order to have the force of law."

The *opinions* of the Justices on a question proposed to them by the governor in 1807, viz; "whether the constitution of this commonwealth authorises the inhabitants of any of the unincorporated plantations in the state to give in their votes for governor and lieutenant governor."

A *reading* upon the provincial statute of Massachusetts Bay, "for registering of deeds and conveyances;" by the late *Hon. Edmund Trowbridge*, one of the judges of the superior court of judicature, &c.

The *supplement* to *vol.* 7, contains, the *opinion* of the judges on a question proposed to them by the House of Representatives in 1811; "whether aliens are rateable polls &c. and whether in determining the number of representatives which any town should be entitled to send, the representation should be predicated on the number of rateable polls including such resident aliens &c."

The *supplement* to *vol.* 8, contains, the *opinion* of the Justices on certain questions submitted to them by the governor in 1812, viz; 1st. "If commanders in chief of the militia of the several states have a right to determine, whether any of the exigencies contemplated by the constitution of the U. S. exist, so as to require them to place the militia, or any part of it, in the service of the U. S. at the request of the president, to be commanded by him, pursuant to acts of congress."

2d. "Whether, when either of the exigencies exist authorising the employing of the militia in the service of the U. S.—the militia thus employed can be lawfully commanded by any officer but of the militia, except by the President of the U. S."

To this succeeds "a Treatise on *Mortgages;*" by the late *judge Trowbridge.*

The *supplement* to *vol.* 10, contains, "a sketch of the *character of the late Ch. Just. Parsons,* exhibited in an address to the grand jury, &c. by *Isaac Parker, Esq.* one of the associate justices, &c. now ch. just. of the S. J. C." also "a *letter* from the Reporter respecting Ch. Just. Parsons."

The *supplement* to *vol.* 11, contains, "a sketch

"Trial of Thomas O Selfridge, *Attorney at Law, before the Hon. Isaac Parker Esquire, for killing Charles Austin, on the public exchange, in Boston, August 4th.* 1806. *Taken in short hand, by T. Lloyd Esq. Reporter of the debates of congress, and George Caines Esq. late reporter to the state of New York. And sanctioned by the court, and reporter to the state.*" 1 *vol.*

The Militia Reporter; "*containing the trials of Capt. Joseph Loring, jun. on the charges of Gen Winslow; Capt. Joseph Loring jun. on the charges of Maj. Davis; Capt. Amos Binney on the charges of Maj. Osgood; Capt. Thomas Howe on the charges of Maj. Messinger. Taken from authentic documents. For the information of the officers of the militia*" 1 *vol.* 1810

Prescott's Trial; "*being a report of the trial by impeachment of James Prescott, esquire, Judge of the probate of wills, &c. for the county of Middlesex, for misconduct and maladministration in office, before the senate of Massachusetts in the year* 1821. *With an appendix, containing an account of former impeachments in the same state. By Octavius Pickering and William Howard Gardiner, of the Suffolk Bar.*" 1 *vol.* Boston. 1821.

18. Is there any Digest of cases in your state courts, &c.?

*A.* "Bigelow's Digest; "*being a digest of the cases argued and determined in the supreme judicial court of the commonwealth of Massachusetts, from Sept.* 1804, *to Nov.* 1815, *as contained in the twelve first volumes of the reports.*" *By Lewis Bigelow, counsellor at law;*" 1 *vol.* 1818.

19. Are there any Treatises on the law, in your state &c.?

*A.* The County and Town Officer; "*or an abridgement of the laws of the province of the Massachusetts Bay, relative to county and town officers. By a gentleman.*" 1 *vol.* 1768. (1)

An Essay; "*on Common and Feu-*

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of the character of the late *Ch. Just. Jno. Sewall*, by the Hon. Judge Parker."

The *supplement* to *vol.* 12, contains, "a sketch of the life and character of the *Hon. Daniel Dewey* deceased, late one of the Justices &c. *by the same.*"

The *supplement* to *vol.* 13, contains, "certain *Regula Generales* of the court."

The *supplement* to *vol.* 14 contains, "an act for giving further *remedies* in equity;" and the "*rules* of the court for the regulation of the practice in chancery."

The *opinion* of the Justices on the constitutional questions "of filling vacancies in the council in 1784;" and the *opinion* of the Justices in 1787, "upon the right of the legislature to commute the punishment fixed by law after sentence."

The *opinion* of Judge Trowbridge, "on a case before the superior court of judicature in 1768."

"Several cases taken from notes of the *Hon. Wm. Cushing*, formerly ch. just. &c."

The *supplement* to *vol.* 15 contains the *opinion* of the Justices &c. on a question submitted to them by the house of representatives in 1815, viz; "whether a town, having by the constitution a right to send a representative, or representatives, to the general court, can constitutionally and legally vote not to send a representative, and whether such vote would be binding on a minority of voters, dissenting therefrom in such town."

(1) I have comprehended in the list of Massachusetts publications sent to me in *answ.* to this question, all those which my correspondents comprised in their answer to No. 23.—These questions in effect being the same.

It is proper to observe also, that they are arranged according to the time of publication, taking no notice of any, but the last, where there is more than one edition.

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The *opinions* of the Justices in many of the above cases were given in pursuance of a provision in our constitution, that "each branch of the legislature, as well as the governor and council, shall have authority to require the opinions of the justices of the Supreme judicial court upon important questions of law, and upon solemn occasions."

By the 9th article of the amendments recently proposed in the convention, called for revising the constitution, "the governor, and the two branches of the legislature respectively, shall not hereafter be authorised to propose questions to justices of the S. J. C. and require their opinions thereon."

This amendment has however been rejected by the people; probably owing to a provision in the same article, for the greater independence of the judiciary.

*dal Law.—By John Adams, ambassador plenipotentiary from the United and independent States of North America to their High Mightinesses the States General of the United Provinces of Holland."* 1782. (1)

The Constitutions; "of the several independent States of America; *the declaration of independence; the articles of confederation between the said states; the treaties between his most Christian Majesty and the United States of America; and the treaties between their High Mightinesses the States General of the United Netherlands and the United States of America.—Published originally by order of Congress.—The second edition."—Boston,"* 1 *vol.* 1785.

Debates, Resolutions and other proceedings; "*of the convention of the commonwealth of Massachusetts, convened at Boston, on the 9th of January 1788, and continued until the 7th of February following, for the purpose of assenting to and ratifying the Constitution recommended by the Grand Federal Convention.—Together with the yeas, and nays on the decision of the grand question.—To which the Federal Constitution is prefixed."* 1 *vol.* 1788.

Debates &c. [as above]; "*To which the federal constitution is prefixed; and to which are added, the amendments which have been made therein."*—1 *vol.* 1808.

An Answer; "*To Paine's Rights of Man.—By John Q. Adams, Esq."*—London 1793. (2)

Sullivan's Land Titles; "*being the history of land titles in Massachusetts. By James Sullivan L. L. D. Attorney General of that commonwealth."* 1 *vol.* 1801.

(1) Printed in a collection of State Papers from p. 80 to p. 100—London 1782, 8vo.

(2) Published originally in the Columbian Centinel.

Story's Pleadings; "*being a selection of pleadings in civil actions subsequent to the declaration, with occasional annotations on the law of pleading. By Joseph Story."* (3) 1 *vol.* 1805.

Chancery Jurisdiction; "*being an essay on the establishment of a chancery jurisdiction in Massachusetts."* 1 *vol.* 1807.—or about that year.

The Civil Officer; "*or the whole duty of sheriff, coroners, constables and collectors of taxes. With an appendix of forms."* 1 *vol.* 1809.

The Embargo Laws; "*with the message from the president, upon which they were founded.—To which is added an appendix, containing Mr. Gallatin's circulars;—form of certificate granted by the Governor of Massachusetts to the importers of flour;—law decision in the federal circuit court of South Carolina;—law for enforcing the embargo;—the Berlin decree and other French decrees growing out of it;—the British orders in Council, and other orders connected with them;—the Spanish decrees conforming to Buonaparte's;—and the law interdicting commerce between the U. S. and Great Britain and France."*—1 *vol.* 1809.

Dickinson's Digest; "*being a digest of the powers and duties of sheriffs, coroners, constables, and collectors of taxes. By Rodolphus Dickinson, attorney at law."* 1 *vol.* 1810.

The Massachusetts Justice; "*being a collection of the laws of the commonwealth of Massachusetts, relative to the powers and duty of a Justice of the Peace.—Alphabetically arranged. To which are added, under the proper heads, a variety of forms, grounded on said laws.—The whole intended for the use of those who practice in the office of a justice, to assist them in the vari-*

(3) Now one of the Justices of the S. Court of the U. S.

*ous duties thereto belonging.—With an appendix, containing extracts from sundry laws of the United States, and other useful matter.—To all which is added an index.—By Samuel Freeman, Esq. compiler of the Town officer, Probate auxiliary, and American Clerk's Magazine. Third edition, much improved.*" 1 *vol.* 1810.

Poor Law; "*being a summary of the laws of Massachusetts relative to the settlement, support, employment and removal of paupers. By Jonathan Leavitt Esq. counsellor at Law.*" 1 *vol.* 1810.

Dickinson's Compilation; "*being a compilation of the laws of Massachusetts, comprising the title of Assessors, Auctioneers, Clerks, Commissioners of Sewers, Districts, Engines and Enginemen, Fences and Fence viewers, Ferries and Ferrymen, Field drivers, Fire and Fire wards, Health committees or officers, Hog reeves—Measurers of wood and bark, Militia, Moderators, Overseers of the poor: Parishes and precincts, plantations, proprietors of common and general fields, proprietors of common and individual real estate, proprietors of social libraries, sealers of weights and measures, surveyors of highways, surveyors of lumber, surveyors of private ways, towns, treasurers, and tything-men.—With an appendix containing the legal forms connected with those subjects. By Rodolphus Dickinson, attorney at law, compiler of a law tract intended for civil officers.*" 1 *vol.* 1811.

Livermore on Principals and Agents; "*being a treatise on the law relative to principals, agents, factors, auctioneers and brokers.—By Samuel Livermore, Esq. counsellor at law.*"—1 *vol.* 1811.

The Probate Directory, "*or assistant to Probate courts, executors, administrators and guardians, being the laws of the commonwealth of Massachusetts respecting the estates of testators, intestates, and wards. To which are added a variety of forms for the use of probate courts and such persons as may have business to transact therein. Together with a comprehensive alphabetical index to the laws and the forms.—By Samuel Freeman Esq. late Register, but now Judge of the court of probate for the county of Cumberland. Third edition enlarged and improved.*" 1 *vol.* 1812.

A Treatise on Courts Martial and Military Law:—"*containing an explanation of the principles which govern courts martial and courts of inquiry under the authority of an individual state, and of the United States in war and peace.—The powers and duties of individuals in the army, navy and militia, and the punishments to which they may be liable respectively for violations of duty.—The necessary forms for calling, assembling and organizing courts martial and all other proceedings of said courts.—By Isaac Maltby, Brigadier General in the 4th. Massachusetts Division, and author of Elements of War.*"—1 *vol.* 1813.

The Civil officer; "*or the whole duty of sheriffs, coroners, constables and collectors of taxes—Second edition.—To which is added, A Digest of the principal decisions in the supreme judicial court of Massachusetts relative to the powers of said officers. Also, several important statutes respecting the duties of civil officers.*" 1 *vol.* 1814.

American Clerks Magazine; "*being a valuable assistant to every man; or the american clerk's magazine, containing the most useful and necessary forms of writings which commonly occur between man and man, under the name of acquittances, agreements, assignments, awards, bargains, bills, bonds, complaints, conveyances, covenants, decla-*

*rations, deeds, feoffments, fine and recovery, gifts and grants, indentures, leases, lease and release, letters of attorney, mortgages, notes, pleas, petitions, probate matters, receipts, releases, sales, surrenders, wills, writs &c. and other instruments.—The whole of which are calculated for the use of the citizens of the United States, and are made conformable to law.—By Samuel Freeman, Esq. compiler of the Town officer, Probate auxiliary and Massachusetts Justice 7th edition revised and enlarged"* 1 *vol.* 1814.

**Considerations**; "*on an Insolvent Law.*" 1 *vol.* 1814.

**Expatriation**; "*being a review of a Treatise on expatriation, by George Hay, Esquire, attorney of the U. S. for the District of Virginia.—By a Massachusetts Lawyer.*" 1 *vol.* 1814.

**The Town Officer**; "*or the power and duty of selectmen, town clerks, town treasurers, overseers of the poor, assessors, constables, collectors of taxes, surveyors of highways, surveyors of lumber, fence viewers, field drivers, measurers of wood, and other town officers, as contained in the laws of the commonwealth of Massachusetts. With a variety of forms for the use of such officers. To which is prefixed the constitution of said Commonwealth, and of the United States; and thereto is added the power and duty of towns, parishes and plantations—a plain and regular method of keeping town accounts—and a table of crimes and punishments. Also an appendix containing some inspection and other laws at large; with other useful matter. By Samuel Freeman Esq. author of the Massachusetts Justice, Probate Directory, and American Clerks Magazine, eighth edition.*" 1 *vol.* 1815.

**The Overseer's Guide**; "*or a history of the laws of Massachusetts respecting the settlement, support, employment and removal of paupers. With notes and references to adjudged cases.*" 1 *vol.* 1815.

**Militia Laws**; "*of the United States and of the Commonwealth of Massachusetts; to which are added, judicial decisions on the same, and a discussion of an important constitutional question*" 1 *vol.* 1815.

**Oliver's Practical Conveyancing**; "*being a selection of forms of general utility, with notes interspersed. By Benjamin Lynde Oliver jun. counsellor at law.*" 1 *vol.* 1816.

**State Papers and Public Documents**; "*of the United States from the accession of George Washington to the Presidency,* (1) *exhibiting a complete view of our foreign relations since that time.—Second edition. Published under the patronage of congress. Including confidential documents, now first published.*" 10 *vols.* 1817.

*(Two more volumes have been published, coming down to* 1818.*)*

**Dickinson's Justice**; "*being a digest of the common law, the statute laws of Massachusetts, and of the United States, and the decisions of the supreme judicial court of Massachusetts, relative to the powers and duties of justices of the peace; to which is subjoined an extensive appendix of forms. By Rodolphus Dickinson, attorney at law, compiler of a work upon the duties of sheriffs &c.*" 1 *vol.* 1818.

**By-Laws of Boston**; "*being the by-laws and orders of the town of Boston, passed at several legal town meetings, and duly approved by the court of sessions; together with Rules and Orders passed by the selectmen. The rules and regulations of the Board of Health. Also sundry laws of the commonwealth, and other important information relating to the town of Boston.*" *Published under the direction of the selectmen.* 1 *vol.* 1818.

(1) *March* 4, 1789.

Alden's Abridgement; "*being an abridgment of law with practical forms in two parts. Part I. An abridgment of Blackstone's Commentaries, Massachusetts statute laws, and Massachusetts term reports.—Part II The Justice's guide, the conveyancer's guide, the sheriff's guide, the coroner's guide, the executor's, administrator's and guardian's guide, the town officer's guide, the petitioner and complainant's guide, the referee's guide and the juror's guide, By Cyrus Alden, Esq. counsellor at law.*" 1 *vol.* 1819.

Anthon's Precedents; "*being american precedents of declarations, collected chiefly from manuscripts of Chief Justice Parsons and other accomplished pleaders in the state of Massachusetts, digested and arranged under distinct titles and divisions, and adapted to the most modern practice. With a prefixed digest of rules and cases concerning declarations.—To which are added the most accurate and approved english precedents of declarations, with extensive explanatory notes; and also an elementary treatise on pleading, together with the most accurate forms of pleas, replications, rejoinders, surrejoinders, demurrers &c. with explanatory notes from Chitty's treatise on pleading and other approved books of entries.—By John Anthon Esquire, counsellor at law.—Third edition with corrections*" 1 *vol.* 1821.—*(commonly called Precedents of declarations.)*

Journal of Debates and Proceedings; "*in the convention of Delegates, chosen to revise the constitution of Massachusetts, begun and holden at Boston, November 15th.* 1820, *and continued by adjournment to January 9th.* 1821.—*Reported for the Boston Daily Advertiser.*"—1 *vol.* (1)

White's View, &c; "*being a view of the jurisdiction and proceedings of the courts of Probate in Massachusetts, with particular references to the county of Essex. By Daniel Appleton White,*" (2) 1 *vol.* 1822.

Fessenden on Patents; "*being an essay on the law of patents for new inventions.—By Thomas Green Fessenden, counsellor at law.*" *The second edition* 1 *vol.* 1822.

20. —— Foreign law books republished in your state, &c.?
*A. See note below.* (3)

(1) Out of print.

(2) Judge of Probate in that County.

(3) In reply to this question, my correspondents have given a long and minute list of transatlantick and domestick Law Books republished in Massachusetts; with their titles, prices &c. many of them, with notes and references to other foreign and American works.

For reasons mentioned at a former page (126, *N.* 1.) it was my design to omit them entirely at present, but—on reflection I am induced to subjoin in this note an abstract of the names &c. of those republications.

In publishing a *general* law catalogue, (for which I am preparing materials,) the information conveyed in reply to this question, will furnish me with a most exact account of all these publications in Massachusetts; the number is very great, and the selection of the most valuable character, as will appear by the list below.

I should here also mention, that in the notices taken of the *American* works, I have omitted to mention the places of publication, the number of pages, and prices, all which are stated with great precision in the MS. now before me. I shall avail myself of all these particulars, in compiling the general catalogue. Ed.

"*Foreign Law Books republished in Massachusetts.*"

| | |
|---|---|
| Abbot's | Law of merchant ships and seamen; with annotations by Joseph Story Esq. counsellor at law. 1 *vol.* 1810. |
| Advice | On the study of the law; with additional notes for the American student. 1 *vol.* 1811. (This is by *Wm. Wright* —the last english edit. 1815.) Ed. |
| Beccaria | On crimes; with a commentary. By M. D. Voltairc. 1 *vol.* 1809. |
| Blackstone's Commentaries. Edited by Jno. Williams Esq. 4 *vols.* 12mo. 1799. | |
| Same | With notes and additions; by Edward Christian Esq. 4 *vols.* 1818. |
| Barnewall & Alderson's Reports in B. R. years 1817, 18. 1818, 19. By Richard | |

**21. —— Reports of Cases in the district or circuit courts of the *U. S.* in your state, &c.?**

*A.* Gallison's reports; "*being reports of cases argued and determined in the circuit court of the U. States for the first circuit, containing the cases determined in the districts of New Hampshire, Massachusetts and Rhode Island. By John Gallison counsellor at Law 2 vols.*" (1)

Mason's Reports; "*being cases determined in the same circuit.—By William P. Mason counsellor at law.*" 1 *vol* (2)

Fletcher and Peck; "*being a copy of the record in the case Robert Fletcher vs. John Peck; decided at the circuit court of the United States for the first circuit, held in Boston within and for the District of Massachusetts on the 20th day of Oct. A. D.* 1807." *Pub.* 1808.

Davis's Opinion; "*being an opinion of the District court of Massachusetts, in the case of Natterstrom adm'r of*

(1) *Vol.* 1. Contains cases determined in the years 1812, and 1813, and was prepared and published by Mr. Gallison from the minutes of his predecessor in the office of Reporter to the Circuit Court. *Pub.* 1815.

*Vol.* 2. Contains cases determined in the years 1814 and 1815.—*pub.* 1817.

They are generally called—"Gallison's Reports."

(2) This *vol.* contains the cases determined in the years 1816, 1817, 1818.—Called "Mason's Reports."—*Pub.* 1819.

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Vaughn Barnewall and Edward Hall Alderson. 2 *vols.*

**Burlemaqui's** Principles of natural and political law. By J. L. Burlamaqui. 2 *vols.* 1792.

**Burrow's** Reports, B. R. from 1756 to 1772. *temp.* Ld. Mansfield. By James Burrow, Knight &c. 5 *vols.* 1808. Premium Edit.

**English Liberties,** Containing Magna Carta &c. &c. By H. Care; continued by W. N. 5th Ed. 1721.

**Chitty's** Treatise on the Law of Nations, relative to the legal effects of War on the commerce of belligerents and neutrals. By Joseph Chitty Esq. 1812.

**Chitty's** Treatise on bills of exchange &c. with the addition of American cases. By Joseph Story Esq. 1809.

**Chitty's** Treatise on the *same*, from last Lond. Edit. with notes and references to American cases. 1 *vol.* 1819.

**Christian's** Notes to Blackstone's Commentaries, adapted to all the editions *vol.* 5. 1801.

**Comyn's** Treatise on the law relative to contracts not under seal, with additions notes and references. By Samuel Comyn Esq 2 *vols.* 1819.

**Cowper's** Reports B R. *Hil.* 1774 to *Trin.* term 1778 both inclusive, with notes and references to subsequent reporters. By Henry Cowper Esq. 2 *vols.* 1809.

**Jones** On Bailments. By William Jones Esq. 1796.

**Kyd's** Treatise on bills of exchange &c. with additions. 1798.

**Lawes's** Treatise on pleading in assumsit, with the addition of American cases. By Joseph Story Esq. 2 *vols.* 1805.

**Maule & Selwyn's** Reports, B. R. years 1813, 1814, 1815, 1816. by George Maule and Wm. Selwyn Esqrs. 4 *vols.* 1819. *vol.* 5 in the press.

**Marshall's** Treatise on Insurance. By Samuel Marshall Esq. 2 *vols.* 1805.

**Montesquieu's** Spirit of Laws. By M. D. Secondat Baron de Montesquieu. 2 *vols.* 1802.

**Park's** System of Marine Insurance. By Allan Park Esq. 1 *vol.* 1800.

**Phillips's** Treatise on the law of Evidence. By S. March Phillips Esq; with notes and references to American authorities, by an eminent Counsellor at Law. 2 *vols.* 1822. (1 vol. published in N. Y.)

**Pothier's** Treastise of Maritime contracts, of letting to hire, by Robert Joseph Pothier; with notes and a life of the author by Caleb Cushing. 1 *vol* 1821.

**Saunders's** Reports B. R. tem. Car. ii. By Edmund Saunders, Knight &c. with notes &c. by John Williams Esq. 2 *vols.* 1816.

**Vattel's** Law of Nations. By M. D. Vattel. 1 *vol.* 1805.

**Yelverton's** Reports, *temp.* latter end of Q. Eliz. and first 10 years of K. James, with notes, references &c. by Theron Metcalf Esq. 1 *vol.* 1820.

*Taylor vs. Ship Hazard, respecting wages due to the representatives of a seaman hired by the month and dying on the voyage.—By John Davis judge of that court*" 1809. (1)

22. Is there any Digest of cases in those courts, &c. ?

*A.* There is no digest (2)

23. Have any books been composed, in your State, &c. ?

*A. See answer No.* 19.

ATTORNIES—COUNSELLORS.

24. Is there any distinction in the profession of Attorney and Counsellor, &c. ?

*A.* In the Supreme Judicial Court of Massachusetts and in the Circuit Court of the United States for the first circuit, there is a distinction between counsellors and attornies.

The following *Rule* shows the distinction in the court first mentioned. "All issues in law and in fact, and all questions of law arising on writs of error, *certiorari*, and *mandamus*, on special verdicts, on motions for new trials, and in arrest of judgment, shall be argued only by the *counsellors* of this court. And the counsellors of this court may practice as attornies" (6 *Mass. Rep.* 385.)

The *Rule* of the Circuit Court of the U. S. is as follows;—"No person, unless at least a counsellor of this court, shall be permitted to argue any questions of law or fact; but counsellors may practise as attornies." *Rules of Circ. Court, Rule* 9.

In addition to the differences contained in the Rules quoted above, it is required that a person should practise law *two* years after his admission as an attorney at either of these courts, before he can be admitted as a counsellor. (6 *Mass. Rep.* 385.) *Rules of Circuit Court, Rule* 6.

In the inferior courts of the commonwealth and in the District Court of the U. S. for this District, no distinction exists between counsellors and attornies.

25. By whom are attornies or counsellors admitted, &c. ?

*A.* The Statute of *Nov.* 4, 1785, provides "that no person shall be admitted an attorney of any court in this commonwealth, *unless* he is a person of good moral character and well affected to the constitution and government of this commonwealth, and hath had opportunity to qualify himself for the office, and hath made such proficiency as will render him useful therein."

This provision is explained by *Stat. Mar.* 6, 1790, which enacts, that *any* person of a "decent and good moral character who shall produce in court a power or letter of attorney, specially for that purpose, from any person whomsoever, shall have full authority though his principal be absent, to prosecute and defend any suit or matter, wherein his principal shall be concerned, to final judgment and execution; and to plead, implead or manage the same case as fully as if such person so authorized, was an attorney of such court, and admitted and sworn in usual form as prescribed by law, and agreeably to the rules of such court." (3)

(1) This opinion (delivered in 1809,) is in 2 *Hall's Amer Law Journ.* 359.—*and in Month. Antbol. June* 1809, *p.* 359. Other opinions of Judge Davis, have occasionally been published in the newspapers.

(2) *Mr Davis* the clerk of the district court, has given us for you, the *rules* of the circuit court which we transmit.—The same rules are used in the district court, when applicable.

(3) No party is allowed to manage his cause, by more than two attornies. *Stat. Nov.* 4, 1785. § 2.

*Students* at law are first admitted *attornies*, at the court of *Common Pleas*.

Formerly each county had a court of Common Pleas; afterwards circuit courts of Common Pleas were established, each having jurisdiction over two or more counties; and recently the system of Courts of common Pleas has undergone a new organization, as will be seen under the head of *Courts*. These courts were authorized by statute to make rules for the admission of attornies, and as they acted independently of each other, their rules differ in some respects.

It is presumed however, that they all agree in requiring such an education as the courts respectively considered equivalent to having a liberal education and regular degree, at some publick college, and afterwards pursuing the study of the law in the office of a *counsellor* of the Supreme Judicial Court for *three* years; for this is recognized in a Rule of the Supreme Judicial Court as being a suitable education to entitle a person to admission at the Court of Common Pleas, (6 *Mass Rep.* 382.)

As the late statute has established one Court of Common Pleas for the whole Commonwealth, it is to be expected, that uniformity will be introduced into the rules respecting the admission of attornies at that court in the several counties.

At present, in some counties the student submits to an examination before a committee of the *Bar* of the county; if the examination is satisfactory to the committee, the Bar recommend him for admission.

In Suffolk co. the student is not examined, and he receives his recommendation from the *Standing Committee* of the Bar; but if the person applying for a recommendation has not been graduated at any university, the Standing Committee may, by the Rules of the Bar, require him to submit to an examination "as to scientifick, literary, classical and legal attainments."

The Bar Rules are different from the rules of the courts, being such as are framed and adopted by a voluntary association of the gentlemen of the profession in any county.

Should a recommendation be refused to a student, he may make aplication to the court, and upon a hearing of the merits of the case, the court will admit him or not, according to its discretion.

If the refusal to recommend is owing to a non-compliance on the part of the student, with any Bar Rule, the court will consider whether the Rule is a reasonable one, and if not, will disregard it.

If the court of Common Pleas unreasonably refuse to admit an attorney, the Supreme Judicial Court will upon examination admit him as an attorney of the Supreme Judicial Court; by virtue of which he will, according to the Rules of the Court of Common Pleas in some, perhaps all of the counties, be enabled to practise in the Court of Common Pleas.

In the County of Suffolk, an attorney of the Court of Common Pleas is permitted to practise before any court held in the county, except the Supreme Judicial Court and the Circuit Court of the U. S. We presume this is the case in the other counties.

Whether an attorney admitted in one county shall practise in another into which he has removed, depends upon the rules of the court and of the Bar in this last county.

With respect to the rules of the Bar, however it is a question of feeling and expediency only; for if an

attorney is willing to encounter the inconveniencies resulting from the ill will of his professional brethren, he may disregard their rules and be excluded from their association.

Upon the admission of an attorney, the clerk of the court administers to him the oaths of allegiance to the Commonwealth and to the United States and the oath of office. In the United States courts the two last oaths only, are administered. The oaths are written in a book, to which the attornies subscribe their names as they are successively admitted. The clerk makes a minute of their admission on his docket, which is afterwards entered at large in his records.

26. On what conditions, &c. from other states, &c.?

*A.* This question is answered so far as it relates to the Supreme Judicial Court, by the following rule of that court:—"Any person who shall have been admitted an attorney of the highest judicial court of any other state in which he shall dwell, and afterwards shall become an inhabitant of this state, may be admitted an attorney or counsellor of this court, subject to the discretion of the justices thereof, after due inquiry and information concerning his moral character and professional qualifications."

In the inferior courts no uniform practice prevails.

A rule of the Bar in the county of Essex requires, that any gentleman who removes from another state into that county, and who has not been a regularly admitted practitioner in the highest court of judicature in the state from which he comes, shall propose to submit to an examination by a committee of the Bar, before he shall be admitted to practice in the Court of Common Pleas, with the approbation and consent of the Bar; and he will not be entitled to an examination unless he has been a student and practitioner, at least *four* years next preceding the time of his applying for admission.

By a subsequent vote of the Bar, if a person has been admitted to the highest court in another state, he must study *one* year in Essex county after such admission, before he can be recommended to the Court.

The Rules of the Court of Common Pleas in the same county, are silent on this subject.

In Suffolk, he must have studied *one* year in the office of a counsellor within the county, and must produce evidence of such classical and professional study as are required from other candidates.

Probably in most of the other counties, no rule exists, either of the Court of Common Pleas or of the Bar, in relation to the admission of attornies from other states; the court being guided by its discretion according to the particular circumstances of each case, reference being had to the qualifications required in gentlemen making similar applications, who have studied or practised law in Massachusetts. (1)

COURTS.

27. What are the names of the several courts in your state, &c.?

*A.* The court of "*a Justice of the peace*" familiarly termed a "Justice Court." "*Police Court*" called also, with reference to its civil jurisdiction, "The Justices' Court for the

(1) With respect to the circuit Court U. S. it will perhaps be best to quote the seven first rules of that court, (or to refer to them if Mr G. publishes all these Rules together) as they have each a bearing on this point.

County of Suffolk," "*Court of Sessions*;" "*Court of Probate*," "*Municipal Court for the city of Boston*;" "*Court of Common Pleas*," and "*Supreme Judicial Court*," which is likewise the Supreme Court of Probate.

"*Courts martial and courts of inquiry*," are occasionally held under the militia laws, and the Senate sometimes sits, as "*a high court of impeachment*."

28. Their style, &c.?

*A.* "Justice of the Peace," "Justices of the Police Court," "Justices of the Court of Sessions," "Judge of Probate,"(1) "Judge of the Municipal Court for the city of Boston;" "Justices of the court of Common Pleas;" "Justices of the Supreme Judicial Court; or of the Supreme Court of Probate, according to the nature of the case.

29. The extent of their several territorial jurisdictions, &c.?

*A.* "*A Justice of the Peace*," has jurisdiction throughout his county *except* in the county of Suffolk. (*See remarks on the Police Court.*)

The office of Justice of the Peace *throughout* the state is conferred, rather by way of compliment, on a few of the more distinguished men.

"*The Police Court*," has criminal jurisdiction in the city of Boston; and under the appellation of "The Justices' court for the County of Suffolk," it has civil jurisdiction over Boston and Chelsea, which together compose the County of Suffolk.

"*Court of Sessions*," throughout their respective counties.

"*Courts of Probate*," throughout their respective counties.

The "*Municipal Court*," throughout the county of Suffolk.

The "*Court of Common Pleas*," as recently organized by *stat. Feb.* 14, 1821, has jurisdiction throughout the state; but a court is held within and for each county by one or more of the Justices, at the several times prescribed by statute.

The "*Supreme Judicial Court*," has jurisdiction throughout the state; but its terms are held within and for the several counties respectively; with the exceptions, that a *law* term is held at Plymouth and Taunton alternately, for the counties of Bristol, Plymouth, Barnstable and Dukes-county; at Northampton, for the counties of Hampshire, Hampden and Franklin; law and *nisi prius* terms at Boston, for the counties of Suffolk and Nantucket; and a *nisi prius* term at Barnstable, for the counties of Barnstable and Dukes-county.

30. Which have original jurisdiction, &c.?

*A.* Justices of the Peace; Police Court; Courts of Sessions; and Courts of Probate.

I. "*Justices of the Peace.*"

By the *stat. Mar.* 12, 1808, it is provided, that all *civil* actions, wherein the debt or damages does not exceed *twenty* dollars (and wherein the title of real estate is not in question) shall and may be heard, tried, adjudged and determined by any justice of the peace, within his county; and that no action shall be sustained in any Court of Common Pleas where the damage demanded does not exceed twenty dollars, unless by appeal from a justice of the peace; *saving* such actions wherein the title to real estate may be concerned; and if upon any action ori-

(1) "Of wills and for granting letters of administration on the estates of persons deceased having goods chattels rights or credits in the county of"—(abbreviated, Judge of the Probate of Wills, &c. in the county of———; familiarly termed "Judge of Probate."

ginally brought before the Court of Common Pleas, judgment shall be recovered for no more than twenty dollars debt or damage; in all such cases the plaintiff shall be entitled for his costs, to no more than one quarter part of the debt or damage recovered.

This last clause does not apply to actions, in which the title to real estate is concerned, (2 *Mass. Rep.* 462; nor to cases, where the plaintiff's demand is reduced by a demand filed and allowed by way of set-off; (8 *Mass. Rep.* 536.)

In an action of trespass *quare clausum fregit* before a justice of the peace, no evidence which may bring the title of real estate in question is admissible under the general issue; and if the defendant pleads the title of himself or any other person in justification, the justice must order him to recognize to enter the action at the next Court of Common Pleas within the same county; if he refuses, judgment will be given against him as upon a default.

Upon a return of *non est inventus* upon an execution issued by a justice of the peace, the same justice may issue a *scire facias* against bail, although the sum of the debt and costs on the original execution exceed twenty dollars.

A justice of the peace has also authority within his county to take *recognizances* for the payment of debts, without any limitation as to the amount, and if any part of the sum acknowledged to be due remains unpaid after the time set in the recognizance for the payment of it, the same justice of the peace may within *three* years after that time issue an execution, *alias* and *pluries*, against the body and estate real and personal of the conusor.

The execution may be made to run into any county in the commonwealth. This is a ministerial and not a judicial proceeding. *Stat. Mar.* 19, 1782.

The general powers of justices of the peace in *criminal* cases are described in the *stat. Mar.* 16, 1784, which provides, that it shall be within the power and be the duty of every justice of the peace within his county, to punish by such fine as is by the statute law of the commonwealth provided, all assaults and batteries that are not of a high and aggravated nature; and to cause to be stayed and arrested all affrayers, rioters, disturbers and breakers of the peace, and to bind them by recognizance to appear at some higher court, and to require them to find sureties for their good behaviour in the meantime.

Justices of the peace are likewise to "examine, into all homicides, murders, treasons and felonies done and committed in their counties, and commit to prison all persons guilty or suspected to be guilty of manslaughter, murder, treason, or other capital offence," and to hold to bail all persons guilty or suspected to be guilty of lesser offences which are not cognizable by a justice of the peace; and to require sureties for the good behaviour of dangerous and disorderly persons; and to take cognizance of all other crimes, matters and offences which by particular laws are put within their jurisdiction.

The fines which may be imposed by a justice of the peace are usually small, never exceeding *twenty* dollars.

An *appeal*, (1) lies from a justice

(1) In Boston before the judicial powers of its justices of the peace were transferred to the Police Court, an appeal lay in criminal cases to the Municipal Court. It seems questionable whether any provision has been made for an appeal from a justice of the peace in Chelsea in criminal cases. The Municipal Court ought to be the court of appeal.

of the peace to the Court of Common Pleas; except in prosecutions for fines under the militia laws, where there is no appeal unless the forfeiture adjudged exceeds ten dollars exclusive of costs.

II. "*Police Court.*" (of Boston.)

This court went into operation on the first of June 1822. It consists of three Justices with an annual salary. A court is held daily by one or more of the Justices, at stated hours, and at other times when necessary, "to take cognizance of all *crimes*, offences and misdemeanors whereof Justices of the peace may take cognizance by law, and of all offences which may be cognizable by one or more of said Justices according to the by-laws and regulations which may be established by the proper authority of the *city* of Boston."

All warrants issued by said Justices, or either of them, or by any justice of the peace within the city of Boston, are returned before the Police Court; and no process returnable before a justice of the peace residing in the town of Chelsea, except for causes of complaints arising in Chelsea, can be served in the city of Boston.

III. "*Justices Court for the county of Suffolk.*"

This Court is held by one or more of the Justices of the Police Court on two several days in each week, and as much oftener as may be necessary, and has original exclusive jurisdiction and cognizance of all *civil* suits and actions, which formerly might be determined before any justice of the peace within and for the County of Suffolk.

An *appeal*, lies from the Justices of the Police Court, in criminal cases, to the Municipal Court, and in civil, to the Court of Common Pleas.

IV. "*Court of Sessions.*"

The Court of Sessions in each county is composed of a chief Justice and two associate Justices, besides two special Justices, who are to act only when the standing Justices are from any cause unable to hear and determine any matter pending before them.

This Court has jurisdiction relative to the erection and repair of gaols and other county buildings, the allowance and settlement of county accounts, the estimate, apportionment and issuing warrants for assessing county taxes, granting licenses, laying out, altering and discontinuing highways, fixing the limits of gaol yards, regulating gaols and houses of correction, &c. &c.

The Court of Sessions for the county of *Suffolk* was abolished by the act establishing the Police court, and the whole of its jurisdiction, so far as respects the town of Chelsea, transferred to the Court of Common Pleas.

With respect to the *city* of Boston, the Court of Common Pleas has all the powers and duties which the court of Sessions had "with regard to streets and ways, and with regard to all other suits, processes and proceedings whatsoever in which a trial by jury may be had or required;" and the mayor and aldermen have many of its other powers.

The Judge of Probate for the County of Suffolk, the Judge of the Municipal Court, and Justices of the Police Court, form a "Board of Accounts."

In general, there is no *appeal* from the Court of Sessions; in cases where an appeal is allowed, it lies to the Supreme Judicial Court.

V. "*Probate Courts.*

The statute of *Feb.* 24, 1818, which revises former acts, provides that

there shall be some able and learned person in each county of the commonwealth "for taking the probate of wills, and granting administrations on the estates of persons deceased, being inhabitants of, or resident in the same county, at the time of their decease, or having died without the commonwealth, and leaving estate of any kind within the same; for appointing guardians to minors, and other persons; for examining and allowing the accounts of executors, administrators, or guardians; and for such other matters and things as the Courts of Probate, within the several counties aforesaid shall by law have cognizance and jurisdiction of."

The judge of probate has authority to appoint trustees in certain cases, and to remove executors, administrators, guardians and trustees; to license guardians to transfer stock; to cause partition to be made among heirs and devisees of real estate, or to assign it to one or more when partition cannot be made; to license executors, administrators and guardians to sell real estate for the payment of debts and legacies; to make an allowance of personal estate to the widow when the estate of the deceased is not sufficient to pay his debts, or when it is sufficient with but little surplus left; to make a distribution of an intestate's real and personal estate; in some cases to appoint commissioners to assign dower; and various other things, relating to the settlement of estates and the disposition of property in the hands of guardians.

An *appeal*, lies to the Supreme Judicial Court as Supreme Court of Probate. The statute prescribes the course of proceeding in claiming and prosecuting an appeal. (*See ans. to No.* 65.)

31. —— partly original, and partly appellant &c.?

*A.* The Municipal Court; Court of Common Pleas; and Supreme Judicial Court.

VI. "*The Municipal Court for the city of Boston.*"

This court was established by *stat. Mar.* 4, 1800, and is held by one judge.

It is provided by the statute, that this court "shall have cognizance of all *crimes* and offences committed within the town of Boston which are cognizable in the court of *General Sessions of the Peace;* (1) and cogni-

(1) This Court, frequently called the "Court of Sessions," was held by the justices of the peace in their several counties.

It has been superseded by other courts, but an account of the jurisdiction which it possessed will be of use to the reader in enabling him to understand better, the powers of the courts to which its jurisdiction has been transferred.

We therefore extract the following passage from the opinion of the Court in *Commonwealth vs. Knowlton*, (2 Mass. Rep. 534;) and the more willingly, on account of the view which it presents of the Common Law of Massachusetts.

"The Court of Sessions, to whose jurisdiction in criminal causes the Court of Common Pleas has succeeded, by statute of March, 1804, was erected by the statute of July 3d. 1782, and it is impowered to hear and determine all matters relating to the conservation of the peace, and such offences as are cognizable by them at common law, or by acts of the legislature. If by common law be understood strictly the common law of *England*, those words cannot have any effect; for the sessions being created by statute cannot have any jurisdiction, but what is given it by some statute. But, if these words import the common law of the commonwealth, they have an extensive operation and are easily understood. Our ancestors, when they came into this new world, claimed the common law as their birth right, and brought it with

zance of all crimes and offences against the *by-laws* of the said town; of frauds, deceits, monopolies, forestalling, regrating, thefts and nuisances."

Offences against the by-laws of Boston may be within the cognizance of the Police Court likewise. *(Vid. ante. p.* 490.*)*

A subsequent statute of *Feb.* 27, 1813, enacts that the Municipal Court "shall have original jurisdiction concurrent with the Supreme Judicial Court, of all *crimes* and offences arising or happening within the County of Suffolk, not capital." In practice, no indictment for a crime not capital is originally tried before the Supreme Judicial Court, unless particular circumstances render it necessary.

The State Prison and its precincts, so far as respects crimes and offences committed within them; are deemed to be in the County of Suffolk, as well as in the County of Middlesex where they are in fact situated. *(Stat. June* 16, 1813.*)*

An *appeal*, lies to the Supreme Judicial Court, in cases, not brought before the Municipal Court by appeal.

VII. The "*Court of Common Pleas.*"

This court has original and exclusive jurisdiction of all *civil* actions, except those of which justices of the peace (or the Justices' Court in the County of Suffolk) have original jurisdiction, and except also, some few cases in which the Supreme Judicial Court have original jurisdiction.

Its *criminal* jurisdiction is the same as that formerly possessed by the court of general sessions of the peace, extended to some other cases by particular statutes made since the transfer. *(See the preceding note.)*

In the county of *Suffolk*, it has only civil jurisdiction. *(See the remarks on the Court of Sessions, and Municipal Courts.)*

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them, except such parts as were judged inapplicable to their new state and condition. The *common law, thus claimed*, was the common law of their native country, *as it was amended or altered by English statutes* in force at the time of their emigration.

Those statutes were never re-enacted in this country, but were considered as incorporated into the common law.

Some few other English statutes, passed since the emigration, were adopted by our courts, and now have the authority of law derived from long practice.

To these may be added some ancient usages, originating probably from laws passed by the legislature of the Colony of the *Massachusetts Bay*, which were annulled by the repeal of the first charter, and from the former practice of the colonial courts, accommodated to the habits and manners of the people.

So much therefore of the common law of *England* as our ancestors brought with them, and of the statutes then in force, amending or altering it; such of the more recent statutes as have been since adopted in practice; and the ancient usages aforesaid, may be considered as forming the body of the common law of *Massachusetts*, which has submitted to some alterations by the acts of the provincial and state legislatures, and by the provisions of our constitution.

From these principles we may conclude, that the sessions in *England*, having at the time of the emigration, jurisdiction of all *trespasses*, (except perhaps forgery and perjury, See 2 *East's Rep.* 18,) which were offences against law, when the statute of 34 *Ed.* iii. *c.* 1. was passed, giving the sessions (among other things) the cognizance of all trespasses: our court of common pleas, as successor of the sessions, has jurisdiction of the same trespasses by the common law of the commonwealth: and that it has jurisdiction of no other trespasses, unless derived expressly from some statute."

An *appeal*, lies to the Supreme Judicial Court in civil actions, where the debt or damages demanded exceed the sum of *one hundred* dollars, unless the parties have agreed that the judgment of the Court of Common Pleas shall be final; and in criminal cases, not brought before the court of Common Pleas by appeal.

An action may be removed into the Supreme Judicial Court, by a bill of exceptions to any opinion, direction or judgment of the Court of Common Pleas in any matter of law, whether the debt or damages demanded are more or less than one hundred dollars. (1)

VIII. "*Supreme Judicial Court.*"

The jurisdiction of this court is in general of an appellate nature.

It has original and exclusive jurisdiction in cases of divorce and alimony, and in suits on probate bonds. It may grant licence to guardians to sell the real estate of wards, in order to put the proceeds at interest, and may also authorize guardians or trustees, when they have not otherwise the power, to invest personal property in real estate or some publick fund.

Where the application of executors, administrators or guardians is for license to sell real estate for the payment of *debts and legacies*, the jurisdiction of the Supreme Judicial Court, Court of Common Pleas and court of Probate is original and concurrent; except, that the judge of Probate has not authority to license the sale of more than is sufficient for these purposes; if therefore by a sale of part of the estate the residue will be injured, leave to sell the whole or so much as will be beneficial to the parties concerned, must be obtained of one of the other courts.

By the *Stat. Feb.* 10, 1818, the Supreme Judicial Court has "power and authority to hear and determine in *equity*, all cases of trust arising under deeds, wills, or in the settlement of estates; and all cases of contract in writing, when a party claims the specifick performance of the same, and in which there may not be a plain, adequate and complete remedy at law; and the bill or complaint in such cases may be inserted in a writ of attachment or original summons, returnable to the same court, and such writs may be served on the adverse party as other writs of attachment or original summons are by law to be served, or the same may be otherwise brought according to the proceedings in the courts of chancery,"—provided "that the cases of contract to which this act shall apply, shall be to such only as shall be hereafter made in writing."

In regard to *criminal* jurisdiction, it is provided by *Stat. July* 3, 1782, that the Justices of this court "shall take cognizance of all capital and other offences and misdemeanors whatsoever of a public nature, tending either to a breach of the peace, or the oppression of the subject, or raising of faction, controversy, or debate, (*or*) to any manner of misgovernment; and of every crime whatsoever that is against the publick good; and shall by virtue of their office, be severally conservators of the peace throughout the commonwealth."

Particular statutes, have transferred the cognizance of some of the smaller offences to the inferior courts exclusively.

In capital crimes and others of great enormity the jurisdiction of

(1) The Court of Common Pleas consists of a *Chief Justice* with a salary of twenty one hundred dollars, and three *Associate Justices* with a salary of eighteen hundred dollars each.

this court is exclusive, except in the county of Suffolk, where the Municipal Court has concurrent original jurisdiction in all cases not capital.

Writs of *certiorari* and of error, go from this court to the inferior courts.

It has power also by the statute last cited, to "issue all writs of prohibition and *mandamus*, according to the law of the land, to all courts of inferior judiciary powers, and all processes necessary to the furtherance of justice and the regular execution of the laws."

Indictments for a capital offence, motions for new trials, questions of law on statements of facts agreed by the parties, or special verdicts, and all issues in law are heard and determined by the court when held, by *three* or more of the Justices; in other cases any one or more of them may hear and determine.

In practice, the *nisi prius* terms are usually held by one Justice: any party aggrieved may file a bill of exceptions to his opinion, direction or judgment, to be heard and determined by a full court, held by three or more of the Justices.

The arraignment, assignment of counsel and other things preparatory to a capital trial, may be performed when only one justice is sitting.

32. —— appellant jurisdiction only, &c.?

*A.* None.

33. Which are courts of equity, and which of law, &c.?

*A.* There is no court of equity distinct from the courts of law.

In addition to what has been said in relation to the equity powers of the Supreme Judicial Court, it may be remarked, that by *Stat. Nov.* 4, 1785, "in all causes brought before the Supreme Judicial Court of this commonwealth, or before any court of common pleas, to recover the forfeiture annexed to any article of agreement, covenant, contract, or charter-party, bond obligation or other specialty, or for forfeiture of real estate upon condition, by deed of mortgage or bargain and sale with defeasance, when the forfeiture, breach, or non-performance shall be found by jury, by the default or the confession of the defendant, or upon demurrer, the *court* before which the action is, shall make up judgment therein for the plaintiff to recover so much as is due according to equity and good conscience."

This provision does not repeal the clause in *Stat. Feb.* 21, 1785, which enacts that no chancery shall be allowed in prison bonds for the liberty of the yard. (9 Mass. Rep. 221.)

A mortgagor or person claiming under him, may have his bill in equity to redeem, originally triable in the Supreme Judicial Court, or Court of Common Pleas.

34. What methods are used to carry up judgments &c.?

*A. See the preceding answers under this head.*

MISCELLANEOUS.

35. Who is State Printer, &c.?

*A.* A contract is made every year with some printer to do the printing of the legislature. The present contract is made with *Benjamin Russell*, of Boston, editor of the Columbian Centinel.

Any printer of a newspaper who publishes in his paper the acts and Resolves of the Legislature for a year, is entitled to receive *sixteen dollars and two thirds* from the treasurer of the commonwealth.

36. Who is the principal *Bookseller* at the seat of Government?

*A.* Messrs. *Wells and Lilly*, and *Messrs Cummings and Hilliard.*

**No. II. CONVEYANCE BY DEED, &c.**

1. What is the kind of Deed most in use in your state &c. is it that of bargain and sale?

*A.* The kind of deed most in use in Massachusetts is little else than a translation of the *vetus carta feoffamenti*, omitting the *reddendum* and adding covenants, that the grantor is lawfully seized in fee of the granted premises, that the premises are free from all incumbrances (if that is the case, and if not, the incumbrances are specified and excepted from the covenant) and that the grantor has good right to convey. A clause of release of dower is added when necessary.

The better opinion is, that this deed when acknowledged and recorded, operates rather as a feoffment with livery of seizin than as a bargain and sale.

It is in fact precisely like neither in its operation; and it will sometimes have the effect of a feoffment, and sometimes of a bargain and sale.

In (6 *Mass. Rep.* 32.) Parsons Ch. J. remarks, "a conveyance of land by deed may here be considered as any species of conveyance necessary to effect the intent of the parties to the deed, and not repugnant to the terms of it." *See the notes in Oliver's Conveyancing p.* 154 *et seq.* (1)

2. Does the legal possession pass without livery, &c.?

*A.* It is enacted by *stat. Mar.* 10, 1784, *sect.* 4, "that all deeds or other conveyances of any lands, tenements or hereditaments, lying within this commonwealth, *signed and sealed* by the party or parties granting the same, having good and lawful right or authority thereunto, and *acknowledged* by such grantor or grantors, before a *justice of the peace in this state*, or before a justice of the peace or *magistrate* in some *other* of the United States of America, (or in any *other* State or Kingdom wherein the grantor or vendor may reside at the time of making and executing the deed,) and *recorded at length* in the registry of deeds in the county where

(1) Perhaps Mr. G will think the following form of our common warranty deed, a better answer to this question.

"Know all men by these presents, that I, A. B. of M. in the county of E. yeoman, in consideration of——dollars to me paid by C D. of——, the receipt whereof I do hereby acknowledge, do by these presents give, grant, bargain sell and convey unto the said C. D. his heirs and assigns, a certain parcel of land situate in M. aforesaid, bounded and described as follows, viz, (describe the land) together with all the privileges and appurtenances, to the said land in any wise appertaining and belonging. To have and to hold the above granted premises to the said C. D. his heirs and assigns, to his and their use and behoof forever. And I, the said A. B. for myself, my heirs executors and administrators, do covenant with the said C D. his heirs and assigns, that I am lawfully seized in fee of the afore granted premises; that they are free from all incumbrances; that I have good right to sell and convey the same to the said C. D. as aforesaid; and that I will, and my heirs executors and administrators shall warrant and defend the same to the said C. D. his heirs and assigns forever, against the lawful demands of all persons.

And S. the wife of the said A. B. in consideration of ten cents to her paid, the receipt whereof she doth hereby acknowledge, doth hereby release to the said C. D. his heirs and assigns all her right and title of dower in the aforesaid granted premises.

In testimony whereof I, the said A. B. and S. my wife have hereunto set our hands and seals this——day of——A. D.——.

Signed, sealed and delivered in presence of us, E. F. } A. B. (Seal.)
G. H. } S. B. (Seal.)

such lands, tenements or hereditaments do *lie*, shall be valid to pass the same without any other act or ceremony in the law whatsoever.

And no bargain, sale, mortgage or other conveyance in fee simple, fee tail, or for term of life, or any lease for more than seven years from the making thereof, of any lands, tenements, or hereditaments, within this commonwealth, shall be good and effectual in law to hold such lands, tenements or hereditaments, against any other person or persons but the grantor or grantors, and their heirs only, unless the deed or deeds thereof be acknowledged and recorded in manner aforesaid: *Provided nevertheless*, that when any grantor or lessor as aforesaid shall go beyond sea, or be removed out of this government, or be dead, before the deed or conveyance by him executed, shall be acknowledged as aforesaid, in every such case the *proof* of such deed or conveyance, made by the oath of one or more of the *witnesses* whose names may be thereunto subscribed, before any *court* of record within this commonwealth, shall be equivalent to the party's own acknowledgment thereof before a justice of the peace as aforesaid.

*Sect.* 5. *And be it further enacted*, that if any grantor or lessor of any lands, tenements or hereditaments, shall *refuse* to acknowledge any bargain, sale, mortgage or other conveyance as aforesaid, it shall be lawful for such grantee or lessee to leave a *copy* of such deed or lease, compared with the original by the register, in the register's office, and such copy so left shall be deemed sufficient caution to all persons against purchasing or extending execution thereon for the space of *forty* days from the time of leaving such copy. And any *justice of the peace* in the same county, after such refusal, at the request of the grantee or lessee, his heirs executors, administrators or assigns, may issue a summons for such grantor or lessor to appear, (if he see cause) at a certain time and place therein mentioned, to hear the testimony of the *subscribing witnesses* thereunto; which summons shall be served by the proper officer, seven days at the least before the time therein assigned for proving the deed; and at such time and place, whether the grantor or lessor be present or not, it being made to appear by the oath of one or more of the witnesses thereunto subscribed, that they saw the said grantor (or lessor) voluntarily sign and seal the deed, and that they subscribed their names as witnesses thereunto at the same time; such proceedings, and a certificate thereof under the hand of the justice annexed to the deed, (wherein the presence or absence of the party shall be noted) shall be equivalent to the acknowledgment of the grantor before a justice of the peace: *Provided* that nothing in this act shall be construed, deemed or extended, to bar any widow of any vender or mortgager of lands or tenements from her dower or right in or to such lands or tenements, who did not join with her husband in such sale or mortgage, or otherwise lawfully bar or exclude herself from such dower or right."

3. In the creation of estates in fee, or fee tail, are technical words necessary, &c.?

*A.* Yes.

4. Is the construction of common assurances, governed by the rules of common law; or by the intent, &c.?

*A.* By the rules of common law.

5. Are attesting witnesses &c. required to conveyances?

*A.* Witnesses are perhaps not essen-

tial to the validity of a deed. It is however the universal practice in this state to have deeds attested by two witnesses. Such attestation is advisable, as well for proving the deed, when the making of it is denied, as for procuring it to be recorded where it has not been acknowledged. (*See answer to No.* 2.)

A deed to bar an entailment, must be attested by *two* or more witnesses. (*Stat. Mar.* 8, 1792.)

6. Must the deed be sealed?

*A.* Yes.

7. Is a scroll sufficient?

*A.* The question has never been decided by our court, whether a scroll is equivalent to a seal.

It is more safe therefore to make use of a seal, and this is the universal practice. (*See answer to No.* 3.)

8. Are the common law requisites for the perfection of Deeds &c. altered in any particulars, in your state?

*A. See answer to No.* 2.

9. Is it necessary to the validity of a Deed as between the parties &c. that it should be acknowledged by the grantor, or proved by the witnesses, and be recorded?

*A. No.* (*See answer to No.* 2.)

10. As against bona fide subsequent purchasers and mortgagees; must the prior deed or mortgage to affect them, be recorded: within what period: in what office: will notice of the prior title, though unrecorded, bar the second incumbrancer?

*A.* A deed not recorded, is not good against a subsequent *bona fide* purchaser; but notice of the prior conveyance, although the deed is unrecorded, will bar the second incumbrancer.

Notice may be express or implied, and open and exclusive *possession* of the grantee is considered by our courts as sufficient notice.

No time is prescribed for putting a deed on record.

The acknowledgment is intended to authorize the recording; which is done, in the office of the register of deeds for the county, in which the land conveyed is situated.

11. May a feme covert convey estate held in her own right, and her dower in the husband's estate, &c.?

12. Is this done by joining with him in the conveyance, &c.?

*A.* A *feme covert* of lawful age, may convey her own land either absolutely or in mortgage by *joining* in a deed with her husband, and she may release her right to dower in her husband's land either by joining with him in his deed, or subsequently by her separate deed, reciting or referring to the former conveyance of her husband as a consideration.

An acknowledgment by the husband alone will be sufficient, although it is certainly proper that all the grantors in a deed should acknowledge it.

13. Is a private examination of the feme necessary, &c.?

14. What officers may take this examination, &c.?

15. What is the form of a certificate by the officer, where a feme covert acknowledges the execution, &c?

*A.* No examination of a *feme covert* is necessary.

16. To bar the feme of dower in the husband's estate; is her joining in the deed, and making such acknowledgment, necessary in all cases, &c.?

*A.* To bar the *feme* of dower in the husbands estate it is necessary in *all* cases, that she should release her right according to the rules men-

tioned in the answer to Nos. 2. and 12. (1)

17. Generally, is there any thing peculiar in respect to dower in your state?

*A.* "The widow, of any citizen of the United States who may have been, or who shall be an alien at the time of intermarriage with such citizen, shall be entitled to dower in her husband's estate in this commonwealth, in the same manner as those who are now by law entitled to dower." (*Stat. Feb.* 23, 1813.)

A widow is not entitled to dower in wild lands, not connected with a cultivated farm. (15 *Mass. Rep.* 164.)

A woman divorced for the cause of adultery (which is a *vinculo*, in this state) committed by the husband, is entitled to dower in the same manner as if he was naturally dead. (*Stat. Mar.* 16, 1786.)

18. What Officers in your State are authorized, to take acknowledgments and proofs of deeds and mortgages?

*A. Justices of the Peace;* and *Courts of record. (See answer to No. 2.)*

When a grantor or lessor refuses to acknowledge his deed, a Justice of the peace may take the proof of it, and give a certificate. (*Stat. Mar.* 10, 1784, *sect.* 5. *See No.* 2.)

In a deed to bar an *estate tail*, the grantor may acknowledge it before the Supreme Judicial Court in any county, or the court of Common Pleas in the county where the land lies, as well as before a justice of the peace. (*Stat. Mar.* 8, 1792.)

We are not aware of any reason for making this distinction, between deeds for this purpose and those in other cases.

19. What is the form of a certificate by such officer, when the grantor acknowledges the execution?

*A.* "*Massachusetts!*

*S.——ss.——day of——A. D.——Then the said A. B. personally appeared* (or appeared by C. D. his attorney) *and acknowledged the foregoing instrument to be his free act and deed, before me,*

E. F. *Justice of the Peace.*"

20. What is the form when the execution is proved before him, by the deposition of the subscribing witnesses?

*A.* "*Massachusetts!*

*S——ss. I hereby certify, that on this——day of——E. F. and G. H.* (or E. F. one of) *the witnesses whose names are subscribed to the foregoing deed, appeared before me the subscriber, one of the justices of the peace for the said county of S—— and made oath that they* (or he) *saw the above named L. M. sign and seal the foregoing deed, and that they subscribed their names as witnesses thereunto at the same time: The said L. M. being present* (or the said L. M. although duly summoned according to law, was not present) *when they* (or he) *took the said oath.*

N. O. *Justice of the Peace.*"

Proof in Court.

"*Commonwealth of Massachusetts! S——ss. At* [the court] *begun and holden at &c. on &c.*

*Be it remembered that on the —— day of —— in the year of our Lord —— in proper person appeared A. B. before the said* [Court] *and made solemn oath, that he was present and did see C. D. sign seal and deliver the foregoing instrument and did subscribe his name as a witness thereto at the execution thereof; it being made to appear to the said Court by the tes-*

(1) No. 16. has no reference to jointure or forfeiture of dower:—if there is any ambiguity in the generality of the answer, Mr. G. will make exceptions of jointure and forfeiture.

*timony of* —— [or it being alleged] *that the said C. D. is deceased* [out of this government &c.]

E. F. *Clerk. &c.*"

It may be well to prove the death &c. of the grantor, but it does not seem to be necessary; indeed, if this certificate stopped at the words "execution thereof" it would probably be sufficient; the party taking upon himself the risk of being able to prove, that he was justified in making the application to the court.

21. Must the grantor or witness subscribe the acknowledgment, or deposition?

*A.* No.

22. Is the certificate to be under the seal, as well as the hand of the officer?

*A.* It is not necessary nor usual.

23. If a quaker is witness, what is the form of affirmation by your law?

*A.* "I, A. B. do solemnly and sincerely affirm &c. under the pains and penalties of perjury." or "made solemn and sincere affirmation under the pains &c, that &c."

24. If a grantor, mortgagor, or witness, is in another state or territory, what officers in such other state &c. may take the acknowledgment of the grantor, or deposition of the witness, to the execution?

*A. See the 4th sect. of Stat. quoted in answer to* No. 2.

25. Where the officer is of another state &c. what proof or instrument must be made or annexed to his certificate, showing he is such officer &c?

*A.* The certificate itself of the acknowledgment, is sufficient warrant for the *recording*, and would be *prima facie* evidence on a trial that the person taking the acknowledgment held the office he assumed.

Deeds are proved by the subscribing witnesses *(on the trial)* when their testimony can be had. The acknowledgment is no proof, and serves only as a warrant for recording.

26. If grantors or witnesses are dead, removed from the state, or cannot be found; is there any provision in those cases for secondary proofs, &c.?

*A.* The case of the grantor's death before acknowledgment, where one of the subscribing witnesses is living, is provided for in *4th sect. of Stat.* quoted in answer to No. 2.

Where the witnesses also are dead, the *Stat. June* 28. 1787 provides as follows; "That in all cases which have or may hereafter happen, where the grantor or grantors of any deed shall be deceased before the deed or conveyance by him executed, shall be acknowledged, and the witnesses whose names may be subscribed thereto are also deceased, that the proof of the hand writing of the grantor or grantors, *and* of the subscribing witnesses thereto, made by the oath of *two* witnesses before any *court* of record within this commonwealth, shall be equivalent to the parties' own acknowledgment thereof before a justice of the peace, as in and by the said act (*Stat. Mar.* 10, 1784) mentioned: *Provided*, That it shall be made to appear to the satisfaction of the Justices of the court, before whom such proof shall be made, that the grantee or grantees mentioned in such deed or conveyance, have in the lifetime of the grantor or grantors, taken actual possession of the real estate conveyed by such deed; and that the said grantee or grantees, or some person or persons claiming under him or them, have continued such actual possession quietly, to the time when such application shall be made to such court, for the purposes aforesaid." (1)

(1) Our statutes have merely, directed, how deeds shall be proved, in default of ac-

27. If the grantor and witnesses are in a foreign country, and living or dead, is there any provision for taking an acknowledgment or proof in such country?

*A.* We have no other provisions on this subject than those contained, in the answers to No. 2, and No. 26.

28. Are deeds and mortgages recorded, evidence; by whom are copies exemplified?

*A.* Copies of records, are certified by the Register of deeds, and are evidence *prima facie*, where the originals do not belong to the party offering the copies, or are not within his control.

29. In what order, do mortgages take preference of each other?

30. Is any time allowed after execution, within which the mortgage being recorded, a subsequent mortgage gains no priority by first registering?

31. May deeds of mortgage, be acknowledged and proved in like manner in and out of the state, recorded and have like competency in evidence, as absolute deeds &c?

*A.* What has been observed previously of absolute, deeds applies in these respects to deeds of mortgage. (*See No.* 2. 9. 10. *&c.*)

32. In regard to the execution of deeds and mortgages in your state, is there any other thing to be observed, &c.?

*A.* No.

## No. III. JUDGMENT, (EXECUTION) &c.

33. Do judgments bind real property, and may it be sold on execution in your state?

34. From what time is a judgment (or decree in equity,) a lien on real estate, against alienation of the debtor, &c.?

35. What is the order of priority among judgment creditors, in respect of lands?

36. Does a judgment bind, after acquired land?

37. In respect of chattels, has the first judgment, or first execution delivered, the preference?

38. In respect of chattels, may the debtor alienate, before execution delivered?

39. Is a prior judgment in an Inferiour court, a lien on lands without its jurisdiction, &c.?

40. Is there any Court in which a Judgment will bind the lands, in every county?

41. Can execution be taken out at once, in every county, &c.?

42. Can execution issue immediately after judgment, against real estate of the debtor, and that be sold without any previous appraisment &c. and on what conditions as to payment?

43. In such case, is a Deed made and delivered to the party, before acknowledgment of it by such officer in court, or confirmation by the court, valid: If fraud or irregularity, is there any summary redress?

44. Before real estate can be sold on execution, must it be appraised and sale delayed, until it brings the appraised value, or some proportion, &c.?

45. Is there any writ of levari facias, elegit, extent, &c. in your state?

48. May the debtor redeem land sold on execution, &c.?

*A.* In Massachusetts no one class of debts has any priority over others,

knowledgment, to warrant the *recording* of them. Where they are disputed on a plea of *non est factum*, they are proved according to common law by the subscribing witnesses or the next best legal evidence.

and the debtor may alienate his real or personal estate *bona fide* at any time, before it is *actually attached* upon an original writ, or upon execution,

The original writ in common use, (except against certain privileged persons who are not liable to arrest) is both *capias* and attachment, the officer being commanded to "attach the goods or estate and, for want thereof, to take the body" of the debtor; and if real or personal estate is attached upon the writ, it is held by the officer as security to satisfy the judgment which may be rendered in the action.

After 24 hours and within a year from the rendition of judgment in his favour, the plaintiff is entitled to an execution, which commands the officer "that of the goods chattels or lands" of the debtor, he cause to be paid to the creditor the amount of the judgment, and that he satisfy himself for his own fees; and for want of goods &c. he is commanded to commit the debtor to gaol.

If personal estate is taken upon execution, it is to be kept at the expense of the debtor for four days, and if not redeemed within that time it may be sold at publick vendue, having first been advertised forty eight hours before the expiration of the four days.

If the execution is levied upon land, the land must be *appraised* by three disinterested freeholders in the county, (chosen one by the creditor, one by the debtor, or if he neglect to do it, by the officer, and a third by the officer,) and set off by them by metes and bounds to satisfy the judgment and expenses of levy.

The officer delivers possession and seizen to the creditor; and the execution being returned with the doings thereon, and being recorded within three months after the levy in the registry of deeds for the county in which the land lies, makes as good title to the creditor as the debtor possessed.

The debtor has one year to *redeem* his land by paying the debt costs and interest; if it is not redeemed within that time, it rests absolutely in the judgment creditor.

If there are several attaching creditors, their executions are to be satisfied in the order of their attachments. If there is collusion between the creditor and debtor, or, if it appear by the return of the officer that his proceedings were irregular and not according to the provisions of the statute, the extent is merely void, and the creditor gains no title.

When goods or lands are attached upon the *original* writ, they must be taken in execution within thirty days (in the island of Nantucket sixty days, *Stat. Feb.* 28, 1807.) after the rendition of judgment; otherwise the lien acquired by the attachment is lost, and after-attaching creditors who levy their executions within the thirty days, will have the priority.

When the real estate cannot be set out by metes and bounds, the execution may be extended upon the rents and profits. (*Stat. Mar.* 17, 1784 *and Oct.* 30, 1784.)

46. Are there any laws, to delay or impair the remedy on execution, by suspension, appraisment, and a minimum fixed, &c. or constraining the creditor to receive other than lawful money &c.?

47. What security is required, that the property shall not be wasted, and be forth coming?

*A.* There are no such laws, except that if the creditor chooses to take real estate, it must as above mentioned, be set off on execution by ap-

praisement; the creditor however, is not obliged to receive real estate in satisfaction of his judgment.

49. May judgments on warrant of attorney, be entered in vacation?

50. Can judgments be entered on warrant of atty. before the debt is payable?

51. In such case, is the judgment an incumbrance, against a subsequent judgment for debts due, and followed by immediate execution?

*A.* No such proceeding is known.

A debtor may at any time enter into a *recognizance* before a *justice of the peace* acknowledging a debt due to his creditor, to be paid at some certain time named in the recognizance, and if the debt is not paid at the time specified, the justice is authorized at the request of the creditor, to issue an execution. (*See ans. to No.* 30. *under "courts of a justice of the peace."*)

52. If after sale and conveyance of land on execution, the judgment is reversed; does the estate revert, &c.?

*A.* As land cannot be sold, but is set off on execution, when the judgment is reversed, the creditor's title is lost.

53. Is the *Ca. Sa.* allowed in the first instance: are bail exonerated by surrender of the principal?

*A.* The execution may be served immediately upon the body of the debtor, if he does not expose personal property to satisfy the execution.

Bail are exonerated by surrendering their principal, at any time before judgment upon *scire facias* against them. But if the principal is not surrendered, until after a return of *non est inventus* upon the execution and *scire facias* issued, they must pay the costs that may have arisen upon the *scire facias*, before they can be discharged.

No *scire facias* can be served upon the bail, unless it is done within one year next after the entering up final judgment against the principal. (*St. June* 30, 1784, *and March* 7, 1804.)

Bail may also discharge themselves by committing the principal, before final judgment upon *scire facias*, to the common gaol in the county where the arrest was made or in that to which the writ is returnable, leaving with the prison-keeper an attested copy of the writ and the return within fifteen days after such commitment, giving notice in writing to the plaintiff or his attorney of the time and place of the commitment within fifteen days after it, and paying the costs of the *scire facias* if any has been issued. (*Stat. Feb.* 20, 1818.)

54. May the debtor be imprisoned for any sum; are none exempted, &c.?

*A.* A debtor may be imprisoned for any sum exceeding five dollars, exclusive of costs; (*Stat. Feb.* 28, 1811,) and if the debt recovered in any suit is less than five dollars, no subsequent suit upon the judgment will render the person of the debtor liable. (*Stat. Dec.* 14, 1816.)

Sheriffs are exempted from arrest on civil process, (*Stat. Mar.* 12, 1784;) members of the House of Representatives while attending the General Assembly, *eundo et redeundo*, (Const. ch. 1, *sect.* 3;) officers, non commissioned officers and privates in the militia during performance of military duty or election of officers, *eundo et redeundo*, (*Stat. Mar.* 6, 1810, *sect.* 11;) persons whose duty brings them to court, while attending, *eundo et redeundo*, (3 *Mass. Rep.* 288—6 *Mass. Rep.* 245, 264;) executors and administrators before judgment upon *scire facias* upon a suggestion of waste, (*Stat. March* 4, 1784;) trustees (garnishees) in foreign attachment before judgment on *scire facias*, (*Stat. Feb.* 28, 1795;) and persons who have

sworn out of gaol for the same cause of action, (*Stat. Nov.* 19, 1787, *June* 22, 1789 *and Mar.* 1, 1805.)

55. Is the Ca. Sa. regulated by the common law, &c.?

*A.* Yes. (*See ans. to No.* 53.)

56. Are any kinds of personal estate exempt from execution?

*A.* The following articles are exempted from attachment and execution;—the wearing apparel; beds, bedsteads, bedding and household utensils of any debtor necessary for himself, his wife and children—not exceeding one bed &c. for two persons and household furniture to the value of fifty dollars;—the tools of the debtor necessary for his trade or occupation; the bibles and school books in actual use in the family; one cow; one swine; (*Stat. Mar.* 13, 1806—15 *Mass. Rep.* 170 *and* 205;) six sheep, (not exceeding thirty dollars in value;) and two tons of hay for the use of the sheep and cow, (*St. Feb.* 26, 1814;) the uniform of officers, non commissioned officers and privates in the militia, (*St. Mar.* 6, 1810. *sect.* 11.)

Respecting tools of trade, *see* (5 *Mass. Rep.* 313,—13 *Mass. Rep.* 82.)

Promissory notes, private papers and account books, and articles which cannot be returned in the same plight, have been held not to be subject to attachment. (7 *Mass. Rep.* 123 *and* 438—9 *Mass. Rep.* 537 *and* 12 *Mass. Rep.* 510.)

## No. IV. INSOLVENT (LAW.)

57. Is there a standing insolvent law in your state, &c. Are any persons on account of the nature of the debt, &c. excepted out of it?

*A.* As early as the year 1763, under the Provincial Government, an act in the nature of an insolvent law was passed "for the relief of poor prisoners for debt" by which a debtor committed on execution might obtain his discharge, by taking a certain oath, commonly called the poor debtor's oath, unless the creditor was willing to pay for his support in prison at a fixed rate.

The same provisions substantially were re-enacted in 1787, except, that the creditor was no longer permitted to keep the debtor in prison on any condition after such oath, or, (in the case of persons legally excused from taking an oath,) after an affirmation of similar import under the pains and penalties of perjury.

This act, with some modifications, continues in force, and extends equally to all classes of debtors.

58. What time is required to effect a discharge: Is the claim for a discharge, determined by the court or a jury?

59. Must the debtor be actually in the gaol, or may he apply for the benefit of the law, at any time &c.?

60. Is there any thing peculiar in your insolvent law?

*A.* In pursuance of the provisions of said act, as now modified, whenever the debtor, being either actually in gaol, or within the limits, on execution, shall complain to his gaoler, that he has not property sufficient to support himself in prison, the gaoler shall apply to some justice of the peace within that county, who is thereupon required to issue a notification in writing under his hand and seal, signifying such prisoner's desire to take the benefit of said act, as well as the time and place appointed for the taking of the oath therein prescribed; which notification is to be served upon the creditor, his agent, or attorney, if either be within the Commonwealth, by the sheriff of the county or his deputy, at least thirty days before the time appointed for

the purpose aforesaid; and if the creditor live out of the commonwealth, and have no agent or attorney within the same, then the service is to be performed upon the clerk of the court, or the justice, by whom the said execution was signed.

At the time and place appointed, accordingly, *two* justices of the peace for that county, each of whom shall be of the *quorum*, are authorized to inspect the return of the notification, and if it appear to have been duly served, then to examine the prisoner touching his property.

For the purpose of this examination they have power to adjourn, not oftener than twice, nor for more than twenty four hours each time.

Written interrogatories may also be proposed by the creditor, or his representative, to which answer shall be made in writing, signed and sworn to by the prisoner, if required, and certified by the justices and delivered to the keeping of the creditor, if required.

After this examination, should the justices be satisfied of the truth of the prisoner's statement concerning the insufficiency of his estate, they are to administer the prescribed oath, (or affirmation) which is in substance "that he (the prisoner) has not any estate sufficient to support him in prison, nor to pay prison charges, except the goods and chattels by law exempted from attachment and execution; and that he has not disposed of any property in trust, or done any other act with intent to defraud his creditors." Upon this the gaoler receives a certificate from the justices, that the creditor was duly notified, that the debtor has not, in their opinion, sufficient property to support himself in prison, and that they have, with due caution, administered the oath (or affirmation) aforesaid.

The prisoner is then set at liberty, and discharged forever from all liability to future imprisonment for the same cause of action; but any *property* he may then have, or may thereafter acquire, is still answerable; and if he shall be convicted of having sworn (or affirmed) falsely, he shall not only be liable to the pains and penalties, of wilful perjury, but shall receive no benefit from his said oath or affirmation. (*See* under No. 54 a provision respecting debts not exceeding five dollars.)

No. v. WILLS, &c.

61. Are lands and freehold interests devisable at the pleasure of the testator, and to the entire disinherison of his children or issue &c.?
*A.* Yes.

But it must appear in the will, that a child (or his legal representatives,) has not been accidently forgotten by the testator; otherwise, the law assigns the child (or his representatives) the same share in the parent's estate which he could have claimed, if no will had been made.

The letter of the statute requires that a legacy should be given to the child; but our court has construed the act according to the intention of the Legislature. (*Stat. Feb.* 6, 1784. 3 *Mass. Rep.* 17.)

Provision is made for advancements, as well where a child is omitted in the will, as where the parent dies intestate. (*Stat. Feb.* 6, 1784. *Stat. Mar.* 12, 1806.)

62. What formalities of execution, are essential to a will of lands &c?
*A.* Those parts of our statute of wills (*Feb.* 6, 1784) which prescribe the formalities to be used in making and revoking wills of real estate, and in repealing wills of personal estate,

are copied from the provisions on the same subject in the English Statute of Frauds, (Car. ii.) without any material alteration or addition, *except*, that by our statute the attesting witnesses in *each* case are required to be *credible*. *(Bac. ab. Wills. Let. D.)*

Our court has decided that the word *credible* here signifies *competent;* and that it is sufficient if the witnesses are competent at the time of attesting.

Should any subsequent event render them incompetent, they will be from that time rendered incapable, of course, to testify in any court to the validity of the will, but it will still be considered as having been duly attested at the time of execution.

A person named executor in a will, is if he be neither a devisee nor legatee, a competent subscribing witness, but if after the testator's death he accepts the trust, he renders himself thenceforth incompetent to testify in favor of the will, on an appeal to the Supreme Court of Probate for the purpose of setting it aside, because if the will be overthrown the executor may be compelled to pay costs.

In such a case, the will must be proved as will be explained in the *answer* to No. 66.

Sealing of wills, though not essential, is usually practised in this state. *(4 Mass. Rep.* 462.*)*

63. What formalities are required, in the revocation of wills of land?

*A. See ans.* to 62. *(Bac. ab. Wills. Let. D.)*

64. Are the provisions of the 29 C. ii. c. 3. adopted in regard to the execution of wills of land &c?

*A.* Those provisions in our statute which relate to nuncupative wills, to testamentary words, and to wills of soldiers and mariners are copied in substance from the 19, 20, 21, 22 and 23d. sections of the *Stat. of Frauds*, except, that the sum of fifty pounds (§166, 66,) is substituted for the sum of thirty pounds named in the English statute, and that the following clause is substituted in place of the last part of the 21st *section* in that statute, which relates to the probate of nuncupative wills, viz. "unless process shall have first issued to call in the widow and other person or persons principally interested, if resident within the government, to the end they may contest the same if they please." *(Bac. ab. Wills. Let. D.)*

It is also provided by our statute of wills;—1. That a posthumous child, not provided for in the will, shall have the same share in the estate, as if the testator had died without a will.

2. That if a child, or any other relation, to whom real or personal property is devised, shall die in the life time of the testator, the devise or legacy shall go to the lineal descendants of such relation.

3. That the widow may wave a provision made for her by will, and claim her dower, but shall not have both, unless it plainly appears that such was the intention of the testator.

4. That no instrument purporting a disposition of both real and personal estate, and not so executed as to pass the former, shall be approved and allowed as a will of personal estate only.

It has also been said by our court, that the principle applies with equal force to a will originally defective and ineffectual as to any material *part;* each devise and bequest being in some measure the condition of every other, especially if the estate is distributed among children. (12 *Mass. Rep.* 534.)

5. That all property not devised or bequeathed by the will, shall be

distributed as if no will had been made.

6. That legacies &c. left to subscribing witnesses shall be void, and that creditors whose debts are charged on lands, shall be good subscribing witnesses; and these, as well as the following provisions are expressed nearly in the same manner, as in *St.* 25, *Geo.* ii.

7. That payment to a devisee or legatee or a release or refusal by him, shall qualify him to testify to the execution of the will. (1)

8. That if a legatee who is a subscribing witness shall have died before he shall have received, refused or released the legacy, he shall be deemed a legal witness to the execution of the will.

That no such legatee or devisee shall after testifying, receive his devise or legacy, or any compensation therefor.

65. Before what court, or officer, are wills of lands and personalty, exhibited for proof: does the proof in the probate court, affect the right of the heir to question its execution at law as to land?

*A.* Wills are exhibited for proof before the Probate Court.

The heir or any person aggrieved by the decision of the Judge of Probate, may *appeal* to the Supreme Court of Probate. Such appeal must be claimed within one calendar month from the decision, decree, &c. and shall be proceeded upon at the next session of the Supreme Court in the same county, which shall be holden after thirty four days from the time of claiming the appeal.

In the meantime the following steps must be taken.

Within ten days after claiming such appeal, security for prosecuting must be filed in the probate office. Within ten days after such security is given, the appellant must file his reasons of appeal in the Probate Court appealed from. Fourteen days at least, before the said session of the Supreme Court, he must serve the adverse party or parties with an attested copy of such reasons: *Provided* that a person out of the United States and who has no sufficient attorney within the Commonwealth at the time of the decision of the Judge of Probate, shall have one month after returning or appointing an attorney, to claim and prosecute his appeal. (*Stat. Feb.* 24, 1818, *sect.* 7.)

It is provided by the same statute, *sect.* 8. that if an aggrieved party omit to appeal in due season, the Supreme Court, at any time within a year from the decision of the Judge of probate may, upon petition for an appeal and

(1) The *Stat.* 25 *Geo.* ii. *c.* 6, provides, *sect.* 1, that if any person *shall* attest the execution of any will which shall be made *after June* 24*th*, 1752, a legacy to him shall be void and he shall be a witness; and *sect.* 3, that if any person *hath* or *shall* attest the execution of any will already made or which shall be made *before* the same *June* 24th, he may be a witness if his legacy has been paid, &c

Our statute enacts generally *sect.* 2, that if any person *hath* or *shall* attest the execution of *any* will, a legacy to him shall be void and he may be a witness; and *sect.* 13, that if any person *hath* or *shall* attest the execution of *any* will, he may be a witness, if his legacy has been paid, &c.

There seems therefore to be an inconsistency in our statute, arising from the omission of the particular day, which in the English statute restricts the operation of the two provisions.

Our statute omits likewise the clause which enacts, that the witness shall retain the legacy paid him, although the will shall be adjudged to be void; no doubt the witness could however retain it.

after due notice to parties interested, grant an appeal, upon its appearing that the petitioner has not lost his appeal by his own neglect, and that justice requires a revision of the decision of the Judge of Probate.

66. Is the execution proved by the witnesses, or oath of the executors, or both, in the first instance?

*A.* The execution of the will is proved by the attesting witnesses; who, if the will is contested, shall all be called, provided it be required by the contesting party.

If either of the witnesses is dead, or become incompetent, or beyond the control of the court, the will must be proved by the rest, and in default of these, by the next best evidence that can be found.

67. In what office is the will and inventory registered: are office copies evidence?

*A.* The will and inventory are registered in the office of the Register of Probate: Office copies are evidence.

68. What formalities are required, to wills of chattels?

*A.* None, except as to testamentary words and nuncupative wills. (*See ans. to No.* 64. & *Bac. ab. Wills Let. D.*)

69. Are any number of subscribing witnesses, or the signature or seal of the testator, required; or is a will of personals provable by the rules of the common law &c?

*A.* A will of personal estate, must be proved before the Court of Probate. (*By the rule of common law. Ed.*)

70. May executors, or administrators having letters in another state, sue in your state?

*A.* No.

71. If not, what is to be done to enable them to sue?

*A.* The executor or any person interested in a will proved without the state, whether in another state or in another country, may produce a *copy* of it and of the *probate* under the seal of the foreign court in which it was proved, before the Judge of Probate of any county where the testator had real or personal estate whereon the will may operate, and request to have the same filed and recorded; which the Judge, after notice and hearing all parties may order to be done; and he may then take bonds of the executor, or may grant administration with the will annexed of the testator's estate, and may settle all the testator's estate lying in this state, as he might have done had the will been originally proved before him.

If a person die intestate in a foreign country or in another state, and leave property in this state, administration must be taken out here and bond given, with sureties who are inhabitants of this commonwealth.

The personal property of such deceased, after paying his debts, shall be distributed according to the laws of the State where he is a subject.

Administration however, may be taken out here of all his property in this State by any person interested, whether administration has been previously taken out elsewhere or not.

The person who first takes out administration here shall give notice of the fact, and no administration afterwards granted in this State shall be valid.

This administration, may be granted by the Judge of Probate in any county where the deceased has left estate, and shall extend to all his property lying within the State.

72. Are exemplifications of wills and testaments, by the proper officer in other states, evidence in your courts &c?

73. How are foreign wills and

testaments proved in your state, &c? *A.* The *copy* of any will and of the *probate* thereof under the seal of the court where it has been allowed, whether in one of the United States or in any foreign state or kingdom, may be filed and recorded in the Probate office in any county, where the testator had real or personal estate on which the will may operate; and it will then be of the same force and effect, as an original will filed and recorded in the same Probate office. (*Stat. June* 29, 1785.)

We have no peculiar laws, respecting the authentication of foreign deeds and judgments.

In (8 *Mass. Rep.* 273.) the *affidavit* of J. D. who swore that he applied to the reputed clerk of the foreign court for a copy of the record of a judgment, that he assisted the clerk in comparing the copy with the record, and in affixing the seal of the court to the copy, and saw the same clerk attest the copy by putting his name to it, was held a sufficient verification of the record.

For the mode of authenticating the *records* of other *states*, see the Laws of the U. S. 2 *vol.* 102. 3 *vol.* 621. *Biorens Edit.*

### No. VI. DESCENTS.

74. How do inheritances in fee simple descend upon intestacy, among lineal heirs?

75. How among collaterals?

76. How, in respect of the half blood: does the common law govern?

77. Does the common law prevail on descents, in any cases, and what?

78. Is there any thing peculiar in your law of descents?

*A.* It is provided by our *Stat. Mar.* 12, 1806.

I. That inheritances in fee simple, or for the life of another, shall descend, (where they are not lawfully devised) in equal shares to the intestate's children, and to the lawful issue of any deceased child by right of representation:

II. And when the intestate shall leave no issue, the same shall descend to his father:

III. And when there shall be no issue nor father, the same shall descend in equal shares to the intestate's mother, if any, and to his brothers and sisters and the children of any deceased brother or sister by right of representation:

IV. And if the deceased have no issue, father, brother or sister, then the same shall descend to his mother, if any:

V. But if there be no mother, then to his next of kin in equal degree; the collateral kindred claiming through the nearest ancestor, to be preferred to the collateral kindred claiming through a common ancestor more remote; and the degrees of kindred, in all cases, to be computed according to the rules of the Civil Law:

VI. And when there shall be no kindred, the same shall escheat to the commonwealth for want of heirs; *saving* always to the intestate's husband his tenancy by the curtesy; and to his widow, her dower at the common law, unless she be lawfully barred of the same. *Provided however*, that when any child shall die under age, not having been married, his share of the inheritance that came from his father or mother, shall descend in equal shares to his father's or mother's other children then living respectively, and to the issue of such other children as are then dead, if any, by right of representation.

And *provided further*, that when the issue or next of kin to the intestate, who may be entitled to his es-

tate by virtue of this act, are all in the same degree of kindred to him, they shall share the same estate equally, otherwise they shall take according to the right of representation.

Brothers and sisters of the half blood, and, if deceased, their children by right of representation, share equally with those of the whole blood; *except* where the first proviso above makes a difference. (12 *Mass. Rep.* 490.)

The statute of 11 *and* 12 *of Will.* iii. c. 6, providing that natural born subjects may make their titles by descent through alien ancestors, was adopted in Massachusetts. (2 *Mass. Rep.* 179.)

### No. VII. DISTRIBUTION ON INTESTACY, (OF PERSONALTY.)

79. Upon intestacy, how is the surplusage of personal property distributed?

80. How among collaterals?

81. Are the 22nd and 23rd Car. ii. c. 10, and 29 Car. ii. c. 30, called the Statutes of distribution &c. adopted?

*A.* The surplusage of personal estate is distributed, according to the rules regulating the descent of real estate; *except*, that the husband of the intestate is in all cases entitled to the whole of the residue; and if the intestate leaves a widow and issue, the widow is entitled to one third, or if no issue, to one half, or if no kindred, to the whole of said residue. (*Stat. Mar.* 12, 1806, *sect.* 2.)

Where there is neither husband, widow, nor kindred, the whole of the residue escheats to the Commonwealth. (*Ibid.*)

Alienage, is no impediment to a person's claiming a distributive share. (*Ibid. sect.* 4.)

All gifts or grants of real or personal estate made by the intestate to a child or grandchild, which shall be expressed in the gift or grant, or charged by the intestate in writing, or acknowledged by the child or grandchild in writing, as made for an advancement of the portion of such child or grand-child, shall be estimated in the partition and distribution of the estate, and taken by such child or grand-child towards his share at the value expressed, charged or acknowledged, if any value be so expressed charged or acknowledged, otherwise at the value thereof when given. (*Ibid. sect.* 3.)

### No. VIII. ENTAILS, DOWER, CURTESY, &c.

82. May entails be created, as under the Stat. *de donis*—and with the same incidents, in respect of being barred; dower; curtesy; waste &c?

*A.* Entails of real estate may be created as under the stat. *de donis*, and with the same incidents, in respect of being barred &c; but they may be barred so easily, that it would be nugatory to create them.

83. Are entails abolished; converted into fees; or otherwise modified &c?

*A.* Entailed estates are liable for the debts of the tenant in tail, before and after his decease; and they may be barred by deed. (*See No.* 84.)

In other respects they remain as by the English law.

84. How barred by the tenant?

*A.* They may be barred by fine and common recovery; but fines have never been used in this state.

In addition to these modes of barring, it is provided by (*Stat. Mar.* 8, 1792,) that it shall be lawful for any person seized and possessed of land in fee tail, being of full age, by *deed*

duly executed before *two* or more credible subscribing witnesses, *acknowledged* before the Supreme Judicial Court in any county, or the Court of Common Pleas in the county where such land lies, or before any Justice of the peace in this Commonwealth, or before a justice of the peace or magistrate in some other of the United States, or in any other state or kingdom wherein the grantor may reside at the time of making and executing the deed, *and recorded* in the record of deeds for such county, for a good or valuable consideration, *bona fide*, to convey such land in fee simple.

This statute, does not enable the tenant in tail to bar the entailment merely, without alienating the land, nor to convey any other estate than a fee simple. (*5 Mass. Rep.* 65.)

The statute of *Feb.* 18, 1805, enacts, that in all cases where an estate tail in remainder, with all remainders and reversions expectant on the determination thereof, might be barred by a common recovery, by the tenant of the freehold and remainder man joining therein, the same shall be as effectually barred by the deed or deeds (executed, acknowledged and recorded as required by the former act,) of the tenant of the freehold and of the remainder man, as by suffering a common recovery; and the person or persons to whom such deed or deeds shall be so made, shall hold to such uses as may be therein expressed in the same manner as though such uses had been so expressed in the deeds made, declaring the uses for which such common recovery might have been suffered.

85. Is the widow entitled to dower; and the husband to curtesy; as by the common law?

*A.* Yes, in general; but respecting dower, see answers, from No. 11, to 17 inclusive.

### No. IX. LIMITATION OF SUITS.

86. What length of adverse possession of lands is a bar &c?

*A.* A writ of right, upon the possession or seizin of an ancestor or predecessor, must be brought within *forty* years next before the teste of the writ.

A writ of entry upon disseizin done to an ancestor or predecessor, or any action possessory upon the possession of an ancestor or predecessor, must be brought within *thirty* years next before the teste of the writ, or bringing such action. (*Stat. Mar.* 2, 1808.)

No action can be maintained upon the demandant's own seizin or possession, above *thirty* years before the teste of the writ. (*Stat. July* 4, 1786.)

Writs of *formedon in descender, formedon in remainder, formedon in reverter*, must be commenced within *twenty* years next after the title or cause of action descended or fell:

And no person, unless by judgment of law, can make any entry into lands, but within *twenty* years next after his right or title first descended or accrued. (*Ibid.*)

87. What savings &c?

88. Is there a saving in favour of foreigners or citizens of other states?

*A.* When any person entitled to any of the above mentioned writs of *formedon*, or to make an *entry* into lands, shall, at the time the right or title first descended, accrued or fell, be, *within the age of twenty one years, feme covert, non compos mentis, imprisoned*, or *beyond seas*, or *out of the limits of the United States*, such person may bring such suit or make such entry, at any time within *ten*

years next after the expiration of the said twenty years and not afterwards. (*Ibid.*)

89. Are the general principles of English law, on the bar of these statutes, adopted in your state?

*A.* Yes.

90. Is there any thing peculiar in your state on this head?

*A.* Where an action is brought to recover land which the tenant, or person under whom he claims, has had in actual possession for *six* years, and on which he has made improvements, if a verdict is found for the demandant, the value of the land without the improvements, and the value of the improvements may be ascertained by the jury; and the demandant may elect, to take the land and pay the tenant for the improvements, or to abandon the land and receive the value of it without the improvements.

The statute provisions are minute. (*Stat. Mar.* 2, 1808, *Mar.* 2, 1810, *Feb.* 22, 1820.)

91. What length of time bars recovery &c. in personal actions?

*A.* The limitation of actions for the recovery of debts due by specialty, remains as at common law.

All actions of trespass *quare clausum fregit;* all actions of trespass; detinue; trover or replevin for goods or cattle; all actions of account and upon the case, other than such accounts as concern the trade of merchandize, between merchant and merchant, their factors or servants (except actions upon the case for slander;) all actions of debt, grounded upon any lending or contract, without specialty, and for arrearages of rent; and actions of assumpsit; must be commenced within *six* years next after the cause of action accrued.

Actions of trespass of assault, battery, wounding, imprisonment, or any of them, within *three* years next after the cause of action; and actions upon the case for words within *two* years next after the words spoken: (*Stat. Feb.* 14, 1787.)

An action between the original parties to a witnessed promissory note is excepted out of the statute, and left as at common law.

If judgment be reversed for error, or arrested after verdict for the plaintiff, he may have a new action within *a year* after such reversal or arrest of judgment. (*Ibid.*)

When the writ purchased shall fail of a sufficient service or return, by any unavoidable accident, or by the default, negligence or defect of the officer to whom it is directed, or shall be abated, or the action shall be avoided by demurrer, or otherwise, for informality of proceedings, a new action may be commenced and pursued at the *next* court of Common Pleas of the county in which trial of the cause may be had, or within three months next after the court whereto such former writ was returnable, or wherein judgment of abatement or other avoidance of the suit has happened. (*Stat. Feb,* 27, 1794.)

An action of the case, or of debt grounded upon any lending or contract or for arrearage of rent, which might have been, or may be, sued and prosecuted by or against any person within thirty days next before his decease, may be sued by or against his executor or administrator within *two* years after the grant of letters testamentary or of administration, and not afterwards, if otherwise barred by the statute of limitations. (*Ibid.*)

Actions against sheriffs for the misconduct and negligence of their deputies, must be commenced within

*four* years next after the cause of action. (*St. Mar.* 8, 1797.)

*Scire facias* must be served upon the bail, within *one* year next after entering up final judgment against the principal. (*Stat. June* 30, 1784.)

Actions against an executor or administrator, must be brought within *four* years after his giving bond at the Probate office; *provided*, legal notice has been given of his appointment, and provided the claim be due within that term.

If the demand will not become due until after that term, the creditor may either file his claim in the probate office and the executor or administrator will be directed to retain assets, unless the heirs or devisees give sufficient security for the executor or administrator to respond such demand; or if he does not file his claim as aforesaid, he may have his remedy against the heirs or devisees, within *one* year from the time of its becoming due. (*Stat. Feb.* 14, 1789.)

But this statute will not bar any action against an executor or administrator with the will annexed, for the recovery of a legacy, bequest, gift or annuity accruing by virtue of any last will and testament. (*Ibid.*)

92. What savings?

*A.* Except as to claims against the estates of deceased persons, actions against sheriff's for the misconduct or negligence of their deputies, and *scire facias* against bail, there are *savings* in favour of infants, *femes coverts*, persons imprisoned, or beyond sea, without the United States, or *non compos mentis*; who may bring either of the actions before mentioned, within the term set and limited for the bringing such action, reckoning from the time that such impediment shall be removed;—and if any person shall be out of the commonwealth at the time any of the last mentioned causes of action shall accrue against him, without having left property therein that could, by the common and ordinary process of law, be attached, the statute of limitations will not begin to run in his favor until after his return into this government: (*St. Feb.* 13, 1787.)

93. Are there any in favour of citizens of other states, or foreigners?

*A.* No; except as above.

## No. X. TAXES.

94. May lands be sold for the payment of taxes: has an absentee any privilege?

95. Before a sale, is notice to be given &c?

96. What officer is to give this notice?

97. In what manner &c.

98. If a sale takes place, is the deed absolute?

99. If not, what time is allowed to redeem, and on what terms: at what place or office, are the sales entered?

100. Do lands on which taxes are not paid, in any case vest in the state: and then how and in what time to be redeemed?

101. What officer in any county, ought a non-resident desirous of keeping his taxes paid, correspond with for that purpose: or what is most prudent for him to do?

*A.* 1st. Where no person appears to discharge the taxes on the unimproved lands of *non-resident* proprietors, or improved lands of proprietors living out of the State, the collector shall advertise in the public newspaper of the printer to the General Court [Legislature] for the time being, *three weeks* successively, the names of all such proprietors if known, with the sum of the taxes

assessed on their lands respectively, and the time and place of sale; and where they are not known he shall in like manner publish the sum of the taxes on the several rights, numbers of lots or divisions; he shall post the same advertisement in some conspicuous place in the town or plantation where the lands lie, and in three of the adjoining towns, at least, for the term of three weeks previous to the time appointed for the sale.

If no person shall appear thereupon to discharge the taxes and all necessary intervening charges, then the collector shall (after waiting two hours from the time appointed for the sale) sell to the highest bidder, so much of the land as shall be sufficient to discharge the taxes and the necessary intervening charges.

2d. The collector shall execute a deed to the purchaser, but the land shall be reconveyed to the proprietor on paying within *two years*, the sum the land sold for with interest at ten per cent and all necessary intervening charges.

3d. The purchaser will be liable for damages, if he makes any strip or waste before the time of redemption has expired. (*St. Mar.* 16, 1786.)

4th. If a non-resident proprietor shall authorize any person dwelling in the town, district or plantation where his lands lie, in writing, to pay the taxes, and such written authority is lodged with or recorded by the clerk of such town &c. which the clerk is required to do on payment of one shilling, the lands shall not be advertised without demand first made on such person nor until two months afterwards. (*St. Feb.* 28, 1795.)

5th. If an owner of real estate shall remove out of the town, district, &c. where such real estate lies after the same is assessed, and shall not leave sufficient personal property to pay the assessment, and shall neglect for three months after his removal to pay the same, or if any person not an owner, shall be taxed for real estate in his possession, and the collector is unable otherwise to collect the assessment, such part of the real estate as shall be necessary to pay the assessment and charges may be sold in the manner before described. (*St. Mar.* 16, 1786.) (1)

(1) In Massachusetts, improved land is to be taxed upon six per cent of its value and unimproved land two per cent; that is, unimproved land is taxed but one third as much as improved, in proportion to the value. This is now altered in Maine.

The most burdensome taxes in newly settled towns, are those raised for the making and repairing of highways.

The inhabitants of every town may raise such a sum of money as they may think proper, to be expended on the highways; to be assessed on the polls and ratable estate, personal and real, of the inhabitants, residents and non-residents of the town.

The surveyors of the highways are to give the inhabitants six days notice of the times and places they shall appoint, for providing materials and labouring; and every person has a right either to pay the surveyor in money, or to work on the roads, to the amount of his tax, in person or by substitute, with his oxen, horses, cart and plough, at such prices as the town shall affix to such labour. When any person is deficient, his tax is to be put into the next assessment of a town tax, and must be paid in money. (*St. Mar* 5, 1787.)

As the towns have the right of fixing the prices of labour, it is sometimes customary, where there is much land owned by non-residents, to allow very high prices, so that the value of the labour done by the inhabitants is much less than the sums assessed upon them, and if the non-resident pays in money, he pays much more than his proportion.

The proper way for him to proceed is, by means of an agent in the town, to hire persons to work out his taxes.

No. XI. MISCELLANEOUS.
BAIL, &c.

102. May debtors *pendente lite*, be restrained from alienating &c. Is the debtor liable to be holden to bail, &c?

*A.* The purchaser of an original writ of attachment and *capias* may direct the officer to make a nominal attachment,—to attach sufficient property to respond the judgment,—or to arrest the body of the defendant.

In the first mode of service the officer returns that he has attached a chip, &c. the property of the defendant, and given him a summons in hand (or left a summons at his last and usual place of abode, as the case may be.)

This summons informs the defendant concisely, that an action has been brought against him by the plaintiff, before such a court, &c. It is attested in the same manner as the writ and is given to the officer by the plaintiff.

In the second mode, the officer actually attaches sufficient property if he can find it, and serves the defendant with a summons as above.

This property cannot be alienated so long as the attachment continues; but the defendant cannot be restrained from alienating any other property, although the officer may not have attached enough to respond the judgment.

For the last mode of service, the officer receives the writ without a summons.

If the defendant, being arrested, would give bail, it must be by bond to the officer with a condition that the defendant shall appear and answer the plaintiff, and further that he shall abide the order and judgment of the court in the action, and shall not avoid.

This bond, thus given, when re-

Towns containing eight hundred inhabitants, may vote to have the highway taxes collected in the same manner as other town taxes are. (*Stat. Feb.* 20, 1819.)

*Highways in plantations unincorporated.* The inhabitants of such plantations who are empowered and required to assess taxes upon themselves, towards the support of government or to defray county charges, have the same powers and are under the same obligations as towns.

The proprietors of unincorporated places are obliged, each according to his interest, to keep the roads through them in repair, unless the Court of Sessions for the county shall deem it unreasonable; in which case it shall be done by the county, or partly by the county, and partly by the proprietors.

When application is made to the Court of Sessions to lay out a new highway through such tract, or for an order to repair an old one, they must cause the substance of such application to be published for three weeks successively in one of the newspapers printed in Boston, and such other paper as they shall direct, in order that the proprietors may appear at such time as the Court shall therein prefix, to show cause why such highway should not be laid out or amended. And if they do not show cause to the satisfaction of the court, that such highway should not be laid out made or amended at their expense, the court may order it to be done and an assessment to be made on such tract at so much per acre as they shall judge necessary. And the proprietors, if they hold in severalty, shall be assessed severally if they furnish the court with proper documents for that purpose.

The treasurer of the county shall cause the tax to be advertised in manner aforesaid, requiring it to be paid within six months from the first publishing of the advertisement, and notifying the proprietors that unless the same be paid, so much as shall be necessary will be sold at public vendue at a time and place to be expressed in the advertisement.

A time of redemption is allowed in the same manner, as for other land sold for taxes. (*St. Feb.* 28, 1797.)

turned, is so far a matter of record, that the plaintiff may sue out a *scire facias* on it in his own name against the bail.

The bail thus given, answers the same purposes as the bail *below* and the bail *above* at common law: and nothing is a breach of the condition of this bond, which is not also a breach of the condition of the recognizance of the bail. (*2 Mass. Rep.* 484.)

The officer for his own protection should require two sufficient sureties, but a bond with only one would not be void. (*See answer to No.* 53.)

LETTERS OF ATTORNEY.

103. Is there any provision for the proof &c. of letters of Attorney, made in other states or foreign parts, for the conveyance of lands &c. in your state?

*A.* We have no statute provision on this subject.

The letter of attorney authorizing a conveyance of land, is usually recorded with the conveyance itself.

ALIENS.

104. Do aliens stand on the footing of the common law, in respect of taking by descent, or purchase: may they in any case hold real estate, as in mortgage?

*A.* Aliens stand on the footing of the common law in these respects; except that alien widows are entitled to dower by *St. Feb.* 23, 1813. (See *conveyance No.* 17.)

ADMINISTRATION. GUARDIANSHIP.

105. Is the right of administration regulated as in England by the 31 Edw. iii. c. 11. and 21 H. viii. c. 5. or by local acts?

*A.* The right of administration, is regulated wholly by statutes of this commonwealth.

The widow or next of kin, being of age, or both, at the discretion of the judge of probate, are first entitled to administration.

After thirty days from the death of the intestate, in case the widow or next of kin refuse or neglect to take out letters of administration, being cited before the judge of probate for that purpose, if resident within the county, the judge of probate may commit administration to one or more of the principal creditors, and in case of their refusal, to such other person or persons as he shall think fit. (*St. Feb.* 24, 1818.)

106. May guardians be appointed by will: does the common law regulate &c?

*A.* Guardians are appointed by the judge of probate, who would be influenced by a testamentary appointment only as a recommendation. Their powers and duties, are regulated partly by the common law and partly by statute.

PAYMENT OF DEBTS BY EXECUTORS AND ADMINISTRATORS.

107. Is the law of England, in regard to the order of paying debts by ex'rs and adm'rs, in force &c?

*A.* Debts due to the United States, and to the commonwealth, the expenses of the last sickness, and the necessary funeral charges must be first paid.

The claims of other creditors are upon an equal footing, and must be paid off *pari passu*.

The only exception to this is, in the case of mutual demands between a deceased insolvent and his creditors. These demands must be liquidated and balanced, and the ba-

lance only, placed on a level with the last mentioned class of claims.

108. May ex'rs and adm'rs give a preference by confessing judgments; Are lands sold on judgment against ex'rs or adm'rs?

*A.* Executors and administrators cannot give a preference, by confessing judgment.

Lands of deceased persons are sold for the payment of debts, only by special license and order of court for that purpose obtained by the executors or administrators. But if an executor or administrator neglects to satisfy an execution, it may be levied on the real estate in the possession of heirs, devisees, or their alienees.

### JOINT-TENANCY.

109. Is Joint-tenancy in land, as at common law, &c?

*A.* The *St. Mar.* 9, 1786, after reciting that estates in joint-tenancy are often created unintentionally instead of estates in common, and that the latter estates are more beneficial to the commonwealth and consonant to the genius of republics, enacts that joint-tenancy shall not be created by implication of law, but only by words clearly indicating such to have been the intention of the party conveying; such as, that the grantees, feoffees, devisees or bargainees shall hold jointly, or as joint-tenants, or in joint-tenancy, or to them and the survivor or survivors, &c.

The incidents to such an estate are the same, as at common law.

### SEALS.

110. Is the common law, in regard to the effect of instruments sealed, and not under seal, in force?

*A.* No alteration is made by statute in the common law, with regard to the effect and operation of sealed instruments.

111. Is a scroll &c. equivalent to wax &c?

*A.* There has been no decision in this commonwealth upon the point, what shall constitute a seal.

They are however very seldom of wax. A small piece of paper annexed with a wafer or paste is generally used, as well by our courts of judicature, as in the common transactions by specialty between individuals, and as the seals of corporations, &c.

### BASTARDS.

112. Are bastards subject to common law disabilities?

*A.* Yes.

113. Are antinuptial children, legitimated by marriage of the parents?

*A.* No.

### ALLUVION.

114. Does the common law in respect of alluvion prevail?

*A.* Yes.

### FISHERIES.

115. Is the owner of lands bordering on a river where the tide flows and reflows, &c entitled to several fishery in front of his land?

*A.* The property in the fish in all bays, coves and rivers, so far as the sea ebbs and flows, belongs to the public; but if the legislature does not appropriate this property, the towns may dispose of the same within their respective limits; and if neither the legislature nor towns appropriate the same, any citizen may take and dispose of the fish, provided

he does not trespass on the land of others. (*St.* 1641, 4 *Mass. Rep.* 140.)

116. Is this so by statute, or usage?

*A.* It seems to be a part of the common law of the state, that the town may appropriate the fish, if not appropriated by the legislature:

The power of appropriation only not meeting with the wishes of many towns, acts have been passed authorizing them, not only to fix the times and manner of taking the fish, but also the places, and the disposition of them when taken; and to sell the exclusive right of fishing; and this authority is guarded by pecuniary penalties. (*ibid.*)

A several fishery therefore in such waters, whether in front of one's land or in another place, must be derived from a grant of the legislature or of the town.

FRAUDULENT CONVEYANCES.

117. Are the 13. and 27. E. against fraudulent conveyances in force in your state: or similar acts?

*A.* The statutes of 13 *and* 27 *Eliz.* against fraudulent conveyances, are considered as being obligatory in this commonwealth.

STATUTE OF FRAUDS.

118. Is the 29. Car. ii. c. 3. (*called the stat. of frauds,*) or similar provisions, adopted in your state?

*A.* Provisions have been made by law for preventing fraud and perjury, similar to those of 29 *Car.* ii. 3.

USES.

119. Is 27. H. viii. called the *Stat. of uses,* (or similar provisions) in force?

*A.* The statute of uses being in force in England when our ancestors came over, they brought it with them as an existing modification of the common law, and it has always been considered a part of our law; consequently conveyances of lands, deriving their effect from the provisions of that statute, are legal in this state, as well as conveyances at common law.

120. Is the English law of uses and trusts, in force?

*A.* The English law of uses and trusts, is considered to be generally in force here.

The only statute provision is, that all grants, assignments, declarations or creations of trusts or confidences in lands or tenements (excepting such as arise or result by implication of law, or are transferred or extinguished by operation of law) shall be proved by some writing signed by the party creating the trust, or else shall be void and of no effect. (*St. Mar.* 10, 1784.)

BARON AND FEME.

121. Is the common law of baron and feme adopted: does the wife's chattels vest in the baron?

*A.* Yes.

USURY. INTEREST.

122. What is the rate of interest?

*A.* Six per cent per annum.

123. What provisions against usury?

*A.* All bonds, contracts, mortgages and assurances whatsoever whereupon or whereby usurious interest has been reserved or taken, are made void; and where usurious interest has been *received*, the value of the loan is forfeited and may be recovered by indictment or action of the case, one moiety to the use of the

commonwealth and the other moiety to the prosecutor. (1)

In a suit between the original parties to a contract, the bond, &c. shall be void, if the debtor shall swear that usurious interest is taken, reserved or secured by it, or that the creditor has received usurious interest upon the loan, unless the creditor will swear to the contrary.

Letting of cattle, or other usages of the like nature among farmers, or maritime contracts among merchants, as bottomry, insurance, or course of exchange, are excepted out of the statute. (*St. Mar.* 16, 1784.)

Our statute makes use in general of the phraseology of 12 *Ann. St.* 2. *c.* 16.

BOOK ACCOUNTS.

124. Are book accounts evidence in your state: for what things furnished &c?

*A.* A tradesman's books, are competent evidence to go to a jury in *assumpsit* for goods sold and delivered or for work and labour performed, not only when kept and sworn to by a clerk, but also when in the plaintiff's own hand writing and verified by his oath (4 *Mass. Rep.* 457;) a mode of proof, in the extent to which it has been carried, said to be peculiar to New England, if not confined to this State, and which has probably been in practice from the first settlement of the country. *ibid.* (2 *Mass. Rep.* 221.)

This usage has been extended to the admission of a book so verified, though kept in the leger form and into which the original charges were from time to time transferred from a slate (13 *Mass. Rep.* 427;) and even original memoranda of charges not kept regularly in the form of a tradesman's book, have been suffered to go to a jury. (2 *Mass. Rep.* 217.)

The court upon inspection are to judge of the competency of this kind of evidence, and the jury of its credit. (*ibid.*)

The books of one deceased are also admissible, although the charges contained in them cannot be verified by oath. (4 *Mass. Rep.* 458.)

125. Is interest recoverable on book debt?

*A.* In an action upon a book debt, interest is recovered from the time of the service of the writ.

BILLS OF EXCHANGE AND PROMISSORY NOTES.

126. Are foreign and inland bills of exchange and promissory notes negotiable; and generally governed by the law of England?

*A.* They are.

127. Must demand be made by the holder, and notice of non-acceptance or non-payment be given to the drawer or endorser, by the rules adopted n the English law, to entitle him to recover?

*A.* Yes.

128. Is a protest for non-acceptance or non-payment necessary, on inland bills and promissory notes?

*A.* A protest is not necessary on promissory notes, nor on inland bills payable within the state; and only for the purpose of recovering damages on inland bills, payable out of the State.

The statutes of *June* 19, 1819, and

(1) Prosecutions on penal statutes for the benefit of the prosecutor must be commenced within one year, and for the Commonwealth within two years after the offence committed, except in cases where a shorter time may be prescribed by any penal statute. (*St. June* 19, 1788.) The general provision applies to prosecutions under the statute of usury.

*June* 14, 1820 provide, that a person drawing or indorsing within this commonwealth a bill of exchange payable at any place without the commonwealth and within the United States and the territories thereof, which shall be *regularly protested* for non acceptance or non payment, shall in addition to the contents of the bill and to the costs and interest, be liable for damages at the following rates, viz: if the bill is payable in Maine, New Hampshire, Vermont, Rhode Island, Connecticut or New York, three per cent on the amount; if in New Jersey, Pennsylvania, Delaware, Maryland, Virginia or the District of Columbia, five per cent; if in North Carolina, South Carolina, or Georgia, six per cent; and if in any other of the United States or the territories thereof, nine per cent.

By the first of these statutes, damages at the rate of one per cent are allowed as above, on a bill of exchange or order for the payment of money, for one hundred dollars or upwards, payable at any place within the commonwealth distant seventy five miles or more from the place where the same is drawn or indorsed; but no protest is required.

129. Is there any peculiar practice in your state, on this subject?

*A.* A statute of *Feb.* 18, 1805, enacts, that all notes &c. payable to bearer or order under the amount of five dollars, shall be wholly in writing; if stamped or printed, to be utterly void; and the person who shall issue or pass the same, to pay a fine of four dollars to be recovered in an action upon the case, half to the use of the complainant and half to that of the poor of the town.

An explanatory act of *March* 16 following, describes the offence to be, issuing or passing notes &c. other than of some incorporated bank, on which less than five dollars is due, with intent that the same shall be circulated as currency; and raises the forfeiture to fifty dollars, to be recovered by indictment in the Sup. Jud. Ct. to the use of the Commonwealth; or in the Com. Pleas, to the use of the County; or by action of debt, to the use of any person who shall sue for the same.

A note of hand is not by the laws of this State entitled to grace, unless it be expressly made payable *with grace.* (4 *Mass. Rep.* 251.)

In this state "notes payable out of a *particular fund*, and notes for *specific articles*, have, as between the original parties, been usually declared on as cash notes strictly negotiable. So in an action by the endorsee against his immediate endorser.

This form of declaring is held to have become by long established usage, a part of our common law. (*See Chitty on bills* 39; *Story's Ed.*)

We have no other peculiarity except in relation to damages; for which *see* below.

130. What damages are recoverable, upon the protest of foreign bills of exchange?

*A.* Here, the usage is to allow the holder of the bill the money for which it was drawn reduced to our currency *at par*, and also the charges of protest with *American* interest on those sums, from the time when the bill should have been paid; and the further sum of one tenth of the money for which the bill was drawn, with interest upon it from the time payment of the dishonoured bill was demanded of the drawer.

But nothing has been allowed for re-exchange, whether it is below or at par.

This usage, says the late Chief Justice Parsons, is so ancient that

we cannot trace its origin: and it forms a part of the law merchant of the Commonwealth. (6 *Mass. Rep.* 161.)

DIVORCE.

131. Are Divorces, a vinculis granted in your state &c?

*A.* Divorces *a vinculis* are grantable in our State by statute, in case the *marriage were incestuous;* in case a *former wife or husband is found to have been alive at the time of a second marriage;* and also for *impotency,* or *adultery,* in either of the parties, unless both have been guilty.

All questions of divorce and alimony, are heard and tried by the Supreme Judicial Court holden for the County in which the parties live, and the decree of the same Court is final. The above are statute provisions. (1 *Mass. Laws,* 301.) Upon the construction of this statute it has been decided, that a libel could not be sustained where it appeared that the parties lived in another state at the time of the adultery committed, and that the libellant had afterwards moved into this state.

But it seems to have been held, that if the parties had dwelt within the County where the libel was filed before the adulterous act, and the wrongdoer had afterwards removed out of the County, (and of course if out of the State,) and committed the offence, that then the libel would be sustained. (3 *Mass. Rep.* 158. 6 *Ibid.* 263.)

ATTACHMENTS.

132. Do foreign and domestick attachments issue in your state, against absent, or foreign debtors?

*A.* The note below will present our answer to this question. (1).

(1) "An act to enable creditors to receive their just debts out of the effects of their absent or absconding debtors" was formerly in force in this Commonwealth, but is now superseded by our *trustee* process, as it is commonly called;—a process in the nature of foreign attachment, but more extensive in its application.

Domestic attachments, as practised in other states, (Pennsylvania for instance) are unknown here for obvious reasons.

By our law the creditor may in all cases attach property on mesne process, this being the usual method of compelling appearance, where the solvency of the debtor is at all doubtful.

A lien is thus created, which may be perfected by execution at any time within thirty days after judgment, so that priority of attachment has the effect of priority of judgment in England. This species of mesne process is believed to be peculiar to the New-England States, and probably originated in an order of the General Court of Massachusetts Bay, passed so long ago as *October* 1644, which provides, that "it shall be the liberty of every plaintiff to take out either summons or attachment against any defendant."

In addition to this it is provided by our trustee process, above spoken of, that any person entitled to an action founded on contract "against any person, or persons, other than bodies politick, or corporate, having any goods effects or credits so intrusted or deposited in the hands of others that the same can not be attached by the ordinary process of law," (namely that above mentioned,) "may cause not only the goods and estate of the person against whom such action lies to be attached in his own hands and possession, but also all his goods effects or credits so intrusted or deposited to be attached, in whose hands soever they may be found, by an original writ to issue under the seal of the Court of Common Pleas."

The form of our common writ of attachment is as follows, "We command you to attach the goods or estate of A. B. &c. to the value of —— and for want thereof to take the body" &c. The form of the trustee writ is

LANDLORDS AND TENANTS.

133. Is the law of landlord and tenant, in regard to distress for rent, similar to the English law?
*A.* The English remedy by distress for rent, is merged in our general law of attachment.

The landlord has no other remedy against his tenant for the recovery of rent, than the creditor in any other case against his debtor.

SET-OFF.

134. Is the law of set-off, similar to the English law, and that of other states?
*A.* Set-off is allowed by statute in any action for debt on simple contract, or promise in writing not under seal, and is admissible under the general issue.

An account of the defendant's demands however must be filed with the Clerk of the Court, or the Justice of the peace, before whom the writ is returnable, some days before hand.

The general principles of English law in regard to set-off, are applicable here.

CHOSES IN ACTION.

135. Are choses in action assignable: may the assignee sue in his own name: is there any liability of the assignor over, unless stipulated?
*A.* Choses in action are assignable, but the assignment is held to vest merely an equitable interest in the assignee, which courts of law will protect against the frauds of the debtor, or collusion between him and the original creditor.

The debtor must have notice of the assignment; to prevent his paying over the amount to any one else, and after such notice it seems an action

this, "We command you to attach the goods and estate of A. B. &c. to the value of —— and summon the said A. B. if he may be found in your precinct, to appear before our justices &c. to answer unto C D. &c. and whereas the said C D. saith, that the said A. B. has not in his own hands and possession goods and estate to the value of —— aforesaid, which can be come at to be attached, but has intrusted to and deposited in the hands and possession of E. F. &c. trustee of the said A. B. goods effects and credits to the said value, we command you therefore that you summon the said E. F. if he may be found in your precinct, to appear &c. to show cause, if any he has, why execution, to be issued on such judgment as the said C. D. may recover against the said A. B. in this action, (if any) should not issue against his goods effects or credits in the hands and possession of him the said E. F. and have you there this writ with your doings therein &c."

This writ may be served upon the principal, if a resident of the Commonwealth within three years, by attaching property, by reading the writ, or leaving an attested copy thereof, at his last and usual place of abode, and upon the trustee, (and each of the trustees if more than one) by reading the writ, or leaving an attested copy; and if the principal has not been resident as aforesaid, then a service made on such supposed trustee, or trustees, shall be deemed sufficient.

The goods effects and credits of the principal in the hands of the trustee at the time of the service, are thus bound to satisfy the judgment which the plaintiff may recover against the principal.

For the security of the principal, when out of the Commonwealth, it is provided that the action shall be continued two terms, in order that he may have notice; and if he does not eventually appear, any one of the trustees may appear and defend in his behalf.

If the supposed trustee shall at the first term come in and declare, that he had not, at the time of the service, any property of the principal in his hands, and shall submit him-

brought by the assignee must be in the name of the assignor.

As to the liability over of the assignor, we do not find any particular decision of our Courts.

136. Is the common law in respect of choses in action, adopted?

*A.* In a late case the Court remark "it will be perceived by attending to the judicial history of equitable assignments, contained in our reports, that there has been a gradual extension of the doctrine, according to the more full development of the principle on which it depends, which successive actions have presented. And it will be seen by a recurrence to the several cases decided, that they are all founded upon a fair application of the principles which have long governed the courts of law and chancery in Great Britain." (15 *Mass. Rep.* 486.)

LIFE ESTATES &c.

137. Are tenants for life, years, &c. entitled to the same rights, and subject to the same liabilities, as by the common and statute law of England?

*A.* They are. (*But see ante* 133.)

DECREES IN CHANCERY.

138. How are decrees in equity executed &c?

self to examination on oath, the Court being satisfied of the same shall discharge him with costs; but if he neglect to appear and answer, without reasonable cause shown, he shall be liable for all costs arising in the suit out of his own estate, unless recovered out of the property of the principal in his hands.

If the plaintiff fail of his action against the principal, costs may be recovered by the principal and each of the supposed trustees; but the discharge of all the trustees will not affect the liability of the principal in that suit, unless there have been no such service upon him as would have rendered him liable in an ordinary suit.

If the plaintiff recovers against the principal, and all the trustees have not discharged themselves on oath, execution is awarded against the goods &c. of the principal in the hands of the trustee, as well as against the body goods and estate of the principal.

If the execution against the goods &c. in the hands of the trustee be returned unsatisfied, a *scire facias* may be sued out, calling on him to show cause &c, and if he suffer himself to be defaulted, having never been examined on oath under the original process, judgment shall be rendered against him for the debt and costs.

Conviction of perjury in his answers subjects the trustee, besides the ordinary penal ties, to satisfy the whole judgment against the principal.

If the answer of the trustee disclose an assignment, the assignee may, if he pleases, become a party to the suit, and the validity of the assignment may be tried by the Court, or a jury, as the case may require; and in such trial the principal may be made a witness.

If the assignee neglect to appear, the attachment continues valid.

It is farther provided, that after the service upon one or more supposed trustees, the names of any other supposed trustees may be inserted in the writ, provided there has been no service on the principal.

And even after the principal has been committed on execution, the judgment creditor may attach his property in the hands of trustees, upon condition of discharging the body of his debtor.

An important exception in the statute is, that no person shall be considered or adjudged a trustee by reason of his having made, given, endorsed, negotiated, or accepted, any negotiable security whatever.

There have been many important decisions on this peculiar process of our law, as to what are goods effects or credits liable to attachment within the statute; how they must be situated to be so liable; who in respect of the authority by which they hold are liable as trustees; what assignment or payment of the debt will discharge the liability; &c.

*A.* By the statute giving further remedies in equity, the justices of the Supreme Judicial Court have authority to issue all such writs and processes, as may be necessary or proper to carry into effect the chancery powers thereby granted to them. *(See ante* 31, &c.*)*

But decrees for the payment of money, are executed like judgments at Common Law.

As to mortgages, they are usually foreclosed by making actual entry on the land, after condition broken, in the presence of two witnesses, and continuing in possession three years.

The only other mode of foreclosing is by a real action given by statute, in which the judgment is conditional, namely, that if the mortgagor do not pay such sum as the Court shall adjudge due within two months from the time of entering up judgment, with interest, then the plaintiff shall have his writ of possession.

This writ commands the sheriff, or his deputy, to give possession of the land, and also to satisfy the plaintiff of his costs, out of the goods, chattels, or lands of the debtor, and for default thereof to take his body.

There is no jurisdiction on the Chancery side of the Court in regard to the foreclosure of mortgages, though bills in equity are constantly brought to redeem.

INSOLVENT ESTATES.

139. In case the estate is insolvent, are creditors paid *pro rata*, &c?
*A.* They are, without preference, excepting that all rates and taxes, and debts due to the Commonwealth, and for the last sickness, and necessary funeral charges of the deceased are to be first paid. *(See No.* 107, 108.*)*

PUBLICK OR PROPRIETARY LANDS.

140. Are there any lands which belong to the *State:* how obtained by one desirous of purchasing: Is there any proprietary land, and how obtained?
*A.* There are public lands belonging to this State, situated in the State of Maine.

We have a land office where application is made by those desirous of purchasing, and deeds may be obtained from the Commissioners.

We have no proprietary lands.

ENGLISH LAW BOOKS.

141. Are *English* law books, allowed to be read in your State courts: if so, under what limitation?
*A.* English law-books, both reports and elementary treatises, are read without any limitation.

# APPENDIX.

Commonwealth of Massachusetts. } Suffolk and Nantucket, ss.

## SUPREME JUDICIAL COURT, 1818, March Term.

## RULES FOR THE REGULATION OF THE PRACTICE IN CHANCERY.

1. *In* suits and proceedings under the late statute for giving further remedies in equity, the court adopt, as the outlines of their practice, the practice of the English courts of equity, so far as the same is not repugnant to the constitution and laws of the commonwealth, nor to the rules which the court shall, from time to time, make for simplifying the proceedings and preventing unnecessary delay and expense.

2. *All* unnecessary prolixity and repetition in the pleadings shall be avoided. The bill shall contain a full, clear and explicit statement of the plaintiff's case, and conclude with a general interrogatory: But the plaintiff may, when his case requires it, propose specific interrogatories; and may allege, by way of charge, any particular fact for the purpose of putting it in issue.

3. *Upon* the general interrogatory contained in the bill, the defendant shall be required to answer fully, directly and particularly, to every material allegation or statement in the bill, as if he had been thereto particularly interrogated.

4. *The* original process to require the appearance of the defendant. (when the bill is not inserted in an original writ, as provided by the statute) shall be a subpœna in the form following.

Commonwealth of Massachusetts.

S. ss. To A. B. of *(addition)*

*Greeting.*

(L. S.) We command you that you appear before our supreme judicial court, next to be holden at within and for our said county of S. on the Tuesday of next, then and there to answer to a bill of complaint exhibited against you in our said court, by C D. of *(addition)* and to do and receive what our said court shall then and there consider, in this behalf. Hereof fail not, under the pains and penalties, in the law, in that behalf provided. Witness, J. P. Esquire, the day of in the year of our lord

E. F. Clerk.

The writ shall bear teste of the chief justice, or first justice, who is not a party to the suit; and shall be under the seal of the court, and signed by the clerk; it shall be served by the same officers, and in the same manner, as other original writs of summons are by law to be served.

5. *The* bill may be filed in the clerk's office, in vacation, and a subpœna shall thereupon issue of course, upon the application of the plaintiff or his solicitor, returnable at the then next term of the court. The subpœna in such case shall be served fourteen days at least before the day, on which it is returnable. When the bill is filed in term time, the court will order the subpœna returnable on a certain day in the same term, or at the ensuing term, as the case may require; but the defendant shall never be compelled to appear, nor subjected to any penalty for not appearing, unless the subpœna be served upon him, fourteen days, at least, before the day on which it is returnable.

6. *The* plaintiff may in all cases cause the defendant to be served with a copy of the bill, at the same time that the subpœna, or other original writ is served; and by the same officer by whom such writ is served; the copy to be delivered to the defendant, or left at the place of his last and usual abode, and to be attested by the clerk, unless the bill is inserted in a writ of attachment or summons, in which case the copy shall be attested, by the officer by whom the same is served—And when such copy of the bill shall have been duly served on the defendant sixty days or more, before the day on which the writ is returnable, the defendant shall be held to plead, demur, or answer on the return day of the writ, unless for good cause shewn, the court shall allow further time for that purpose.

7. *When* the bill is filed in term time, and a subpœna is issued returnable at the ensuing term, the defendant shall file his plea, demurrer, or answer, in the clerk's office at such time in the vacation, as the court shall order, not less than sixty days after service on him of the subpœna, and of an attested copy of the bill; provided that he be served with a copy of such order, at the time of the service of the subpœna. And when an answer is so filed, the plaintiff may file his replication in the clerk's office, in the same vacation; and upon giving notice of such replication to the defendant, not less than thirty days before the ensuing term, the parties may proceed to take the examination of their witnesses, so that the cause may be heard and determined at the ensuing term; or if the plaintiff shall elect to proceed to a hearing of the cause, on the bill and answer, he may give notice thereof to the defendant, not less than thirty days before the ensuing term, and the cause shall be then heard and determined accordingly.

8. *If* the defendant, being duly served with the subpœna or other original process, shall neglect to enter his appearance on the return day thereof; and if it shall appear to the court, by the return of the officer or otherwise, that he had personal notice of the suit, fourteen days, at least, before such return day; his default may be recorded, and the bill may be taken *pro confesso*.

9. The defendant's answer may be sworn to before any justice of the peace for the county where the defendant may be, and in such case it shall be enclosed and sealed by the justice, and returned unopened into the clerk's office. The answer may be then opened by the clerk for the inspection of the plaintiff, that he may reply or proceed thereon, as he shall be advised.

10. *All* testimony shall be by depositions, to be taken (if within the commonwealth) before any justice of the peace, being either a judge of any court of common pleas, a judge of probate, or a counsellor of this court, not interested, nor of counsel in the cause; and if without the commonwealth, the depositions shall be taken before commissioners to be appointed by the court, or by any justice thereof in vacation.

11. *The* examination of witnesses shall be had upon interrogatories to be filed in the clerk's office, by the party producing the witness, and upon such cross interrogatories, as may be filed by the adverse party. The party filing the interrogatories shall give notice thereof to the adverse party, or to his solicitor or counsel, seven days, at least, before taking out the commission, and one day more for every ten miles, that such party, or his solicitor, or counsel, shall live from the clerk's office; and when the witness to be examined, is within the commonwealth, the clerk shall issue, of course, a commission or order, with the title of the cause and of the court, in which it is pending, authorizing any of the magistrates mentioned in the preceding rule, to take the examination of the witness, upon the interrogatories annexed to the order.

12. *All* the notices required by these rules to be given to the plaintiff, may be given to his solicitor or counsel; and all such notices to be given to the defendant, if after he has entered his appearance, may be given to his solicitor or counsel.

13. *Whenever* it shall become necessary or proper to have any fact tried and determined by a jury, the court will direct an issue for that purpose, to be formed by the parties; containing a distinct affirmation of the points in question, and a denial, or traverse thereof; and the issue thus formed and joined will be submitted to a jury in the same court, in which the suit may be depending.

## Rules of the Supreme Judicial Court.

"SUFFOLK, ss. At the Supreme Judicial Court, begun and held at Boston, within the said County of Suffolk, and for the Counties of Suffolk and Nantucket, on the first Tuesday of March, in the year of our Lord, one thousand eight hundred and twenty.

Present, the Hon. Isaac Parker, Chief Justice.

The Hon. George Thacher, Charles Jackson, Samuel Putnam, Samuel S. Wilde, } Justices.

It is ordered, That all the rules of this court, excepting only those which relate to the admission of counsellors and attornies, and the rules for the regulation of the practice in chancery, shall be repealed from and after the first day of July next: and the following rules are established for regulating the Modes of Trial, and the Conduct of Business in this court, from and after the said first day of July.

1. *No* civil action shall be entered after the first day of the term, unless by consent of the adverse party, and by leave of the court; or unless the court shall allow the same, upon proof that the entry was prevented by inevitable accident, or other sufficient cause.

2. *In* all actions originally brought in this court, and in all actions brought by appeal from the courts of Common Pleas wherein the defendant may have reserved leave to plead anew, leave to plead double will be granted of course, on application to the clerk, and entered on his docket at any time within two days after the action is entered: the day of the entry to be reckoned as one day; and if any one or more of the pleas so filed, shall appear to the court to be unnecessary or improper, the same will be struck out, at the motion of the plaintiff or demandant: and no leave to plead double will be granted, after the expiration of the said two days, unless by consent of the plaintiff or demandant, or unless the court shall allow the same, upon proof that the party was prevented from making the motion, by inevitable accident, or other sufficient cause.

3. *Either* party may obtain a rule on the other, to plead, reply, rejoin, &c. within a given time to be prescribed by the court; and if the party so required, neglect to file his pleadings, at the time, all his prior pleadings shall be struck out, and judgment entered of nonsuit or default, as the case may require, unless the court, for good cause shewn, shall enlarge the rule.

4. *When* an action shall be continued with leave to amend the declaration or pleadings, or for the purpose of making a special plea, replication, &c. if no time be expressly assigned for filing such amendment or pleadings, the same shall be filed in the clerk's office, by the middle of the vacation, after

the term when the order is made; and in such case the adverse party shall file his plea to the amended declaration, or his answer to the plea, replication, &c. as the case may be, by the first day of the term to which the action is continued as aforesaid. And if either party neglect to comply with this rule, all his prior pleadings shall be struck out, and judgment entered of nonsuit or default, as the case may require; unless the court, for good cause shewn, shall allow further time for filing such amendment or other pleadings.

5. *In* all actions brought to this court by appeal, the defendant, or tenant, if he intends to plead specially, shall file his plea within two days after the action is entered, (the day of the entry to be reckoned as one) unless it shall appear to the court that the matter of the plea, or the circumstances of the case are such as to require a longer time; in which case the court will, on motion, assign a time for the filing of the plea: and if such plea be not filed within the time prescribed by this rule, or to be assigned by the court as aforesaid, the defendant will not be allowed to plead specially, but will be required to plead the general issue, or to file a general demurrer; and on failing so to do, he will be defaulted.

6. *If* a demurrer shall be filed at a time when the court is held by one judge only, and the same shall, be objected to by the adverse party, as frivolous, or immaterial, and intended for delay; and the counsel or attorney for the party demurring, shall nevertheless insist on such demurrer; and if on the hearing of the cause on such demurrer, the same shall appear to the court to be frivolous, or immaterial, and intended for delay; the counsel or attorney who so insisted on the demurrer, shall be struck off from the roll, and shall never afterwards be allowed to practise in this court; unless, upon good cause shown, the court shall think fit to restore him.

7. *Upon* the entry of every action or appeal, the name of the plaintiff's or appellant's attorney shall be entered at the same time on the clerk's docket, and in default thereof a nonsuit may be entered; and within two days after the entry of the action or appeal, the attorney of the defendant or respondent shall cause his name to be entered on the same docket, as such attorney, and if it be not so entered, the defendant or respondent may be defaulted. And if either party shall change his attorney, pending the suit the name of the new attorney shall be substituted on the docket for that of the former attorney, and notice thereof given to the adverse party. And until such notice of the change of an attorney, all notices given to, or by the attorney first appointed, shall be considered in all respects as notice to, or from his client, excepting only such cases in which, by law, the notice is required to be given to the party personally. Provided, however, that nothing in this rule contained, shall be construed, to prevent either party in a suit from appearing for himself, in the manner provided by law; and in such case the party so appearing shall be subject to all the same rules that are or may be provided for attornies in like cases, so far as the same are applicable.

8. *Amendments* in matters of form will be allowed as of course on motion;

but if the defect or want of form be shewn as the cause of demurrer, the court will impose terms on the party amending.

9. *Amendments* in matters of substance may be made, in the discretion of the court on payment of costs, or on such other terms as the court shall impose; but if applied for after joinder of an issue of fact or law, the court will, in their discretion, refuse the application, or grant it upon special terms; and when either party amends, the other party shall be entitled also to amend, if his case requires it. But no new count or amendment of a declaration will be allowed, unless it be consistent with the original declaration and for the same cause of action.

10. *All* depositions shall be opened and filed with the clerk, at the term for which they are taken; and if the action in which they are to be used shall be continued, such depositions shall remain on the files, and be open to all objections when offered on the trial, as at the term at which they were opened; and if not so left on the files, they shall not be used by the party who originally produced them: but the party producing a deposition may, if he see fit, withdraw it, during the same term in which it is originally filed, in which case it shall not be used by either party.

11. *The* court will grant commissions to take the depositions of witnesses without the state, and will appoint the commissioners: and either party may, on application to the clerk in vacation, obtain a like commission; which commission, in the latter case, shall be directed to any justice of the peace, notary public, or other officer legally empowered to take depositions or affidavits in the state or country where the deposition is to be taken, unless the parties shall agree on commissioners. And in each case, the depositions shall be taken upon interrogatories to be filed by the party applying for the commission, and upon such cross interrogatories as shall be filed by the adverse party, the whole of which interrogatories shall be annexed to the commission. And the party applying for the commission shall in each case file his interrogatories in the clerk's office, and give notice thereof to the adverse party, or to his attorney, seven days at least before taking out the commission, and one day more for every ten miles that such party or his attorney shall live from the clerk's office. And no deposition taken without the state by force of the statute in that case provided, and without such commission, shall be admitted in evidence, unless it shall appear that the adverse party or his attorney had sufficient notice of the taking thereof, and opportunity to cross examine the witness, or that, from the circumstances of the case, it was impossible to give such notice. And when a deposition shall be taken and certified by any person as a justice of the peace, or other officer as aforesaid, by force of such commission, if it shall be objected that the person so taking and certifying the same, was not such officer, the burden of proof shall be on the party so objecting; and if a like objection is made to a deposition taken without such commission, it shall be incumbent on the party producing the deposition to prove that it was taken and certified by a person duly authorized, according to the statute before mentioned.

12. *Depositions* may be taken for the causes and in the manner by law prescribed in term-time, as well as in vacation; provided they be taken in the town in which the court is holden, and at an hour when the court is not actually in session. But neither party shall be required during term-time to attend the taking of a deposition, at any other time or place, than is above provided, unless the court, upon good cause shewn, shall specially order the deposition to be taken.

13. *No* motion for a continuance, grounded on the want of material testimony, will be sustained unless supported by an affidavit which shall state the name of the witness, if known, whose testimony is wanted, the particular facts he is expected to prove, with the grounds of such expectation; and the endeavours and means that have been used to procure his attendance or deposition, to the end that the court may judge whether due diligence has been used for that purpose. And no counter affidavit shall be admitted to contradict the statement of what the absent witness is expected to prove; but any of the other facts stated in such affidavit may be disproved by the party objecting to the continuance. And no action shall be continued on such motion, if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit, and will agree that the same shall be received and considered as evidence, on the trial, in like manner, as if the witness were present and had testified thereto; and such agreement shall be made in writing, at the foot of the affidavit, and signed by the party, or his counsel, or attorney. And the same rule shall apply, mutatis mutandis, when the motion is grounded on the want of any material document, paper, or other evidence, that might be used on the trial.

14. *When* an action is continued at the motion of either party at the term when it might otherwise have been tried, the party making the motion shall pay to the adverse party all his costs incurred at that term, in procuring the attendance of witnesses; unless the continuance is ordered on account of some unfair advantage taken by the adverse party, or of some other fault of misconduct on his part; or unless when the party making the motion, shall have given notice thereof, with a statement of the grounds of such motion to the adverse party, or his attorney, in such season, before the sitting of the court, as might have prevented the attendance of the witnesses, or when it shall appear that the ground of the motion was not seasonably known to the party making it; and the costs thus paid shall not be included in the bill of costs of the party receiving them, if he should finally prevail in the suit.

15. *The* preceding rule will not prevent the court from imposing any other and additional terms on the party moving for a continuance when the justice of the case shall require it; neither shall it be construed to prevent the party to whom such previous notice may have been given, from procuring the attendance of his witnesses, if he shall think fit to oppose the motion for a continuance. And in such case, if the motion is granted, the costs for such witnesses shall be allowed in the bill of costs, for the said party, if he should finally prevail in the suit.

16. *The* court will not hear any motion grounded on facts, unless the facts are verified by affidavit, or are apparent from the record, or from the papers on file in the case, or are agreed and stated in writing to be signed by the parties, or their attornies, and the same rule will be applied as to all facts relied on, in opposing any motion.

17. *In* all cases in which money may be brought into court upon the common rule, as it is called, if the plaintiff shall not accept the same, and if upon the trial, the verdict shall be for the defendant, the plaintiff shall not be liable for any costs incurred before the time of bringing the money into court, but only for the costs incurred after that time; and the terms of the rule shall be altered accordingly.

18. *All* civil actions shall be heard and tried in the order in which they stand on the docket; unless the court shall, upon good cause shewn, postpone any trial to a time later than that in which it would come in course. Provided, however, that any one action may, with the consent of all the parties concerned, and with the leave of the court, be substituted for another action standing earlier on the docket; but in such case the said action which stood earliest shall take the place of the one which is substituted for it, and shall be tried when the latter would have come on in course, if no such change had taken place. And no cause will be continued, even by consent of parties, unless for good cause shewn.

19. *When* the court is held by one judge for the trial of causes by the jury, all motions for the continuance or postponement of any civil action shall be made on the first day of the term, or on the first day after the entry of the action, unless prevented by inevitable accident or other sufficient cause; or unless the cause or ground of the motion shall first exist, or become known to the party, after that day; in which cases the motion shall be made as soon afterwards, as it can be made, according to the course of the court; and whenever an action is continued on such motion, after the time above prescribed, the party making the motion shall not be allowed any costs for his travel and attendance for that term, unless the continuance is ordered on account of some fault or misconduct in the adverse party.

20. *Provided*, however, and it is further ordered, that when the court shall be held by one judge as aforesaid, in any law term, after the determination of the law questions, the first day of the sittings for the trial of causes by the jury shall be considered as the first day of the term, as to any thing contained in the preceding rule; and provided also, that in the County of Suffolk, such motion may be made within the first four days of the sitting of the court with the like effect as if made on the first day of the term, or of the sittings as aforesaid. But this rule shall not be construed to prevent the making of any such motion at any earlier time during the same term, when the party is prepared to make it.

21. *When* the court is held by one judge as aforesaid, in those counties, in

which the court is usually in session for the trial of causes by the jury, more than two weeks, all motions, reports of referees, petitions, and other like applications, shall be made and presented on the first day of the term, or at the opening of the court on the morning of each Monday during the term; and in those counties in which the court is not usually in session more than two weeks, all such motions and other applications shall be made on the first day of the term, or at the opening of the court on the morning of each day: provided that when the cause or ground of such motion or other application shall first exist or become known to the party, after the times in this rule appointed for making the same, it may be made, (if the case require it) at any intermediate time.

22. *When* a motion is made in relation to any civil action, at any of the times specifically appointed for that purpose in the preceding rule, no previous notice of the motion need be given to the adverse party; and if notice is not given, the court will allow him time to oppose the motion, if the case shall require it. But when such motion is made, at any intermediate time, according to the proviso in the preceding rule, the motion shall not be heard unless seasonable notice thereof shall have been given to the adverse party.

23. *When* the court is held by three or more of the judges, for the hearing and determining of questions and issues of law, as provided by the statute, all actions intended for argument shall be entered on a law docket to be kept for that purpose by the clerk; and if it is a new action of that term, it shall be entered on the law docket at the same time when, by the foregoing rules, it is to be entered on the general docket; and if a continued action, it shall be entered on the law docket, before the opening of the court, on the first day of the term. And no action shall be entered on the law docket after the times above appointed, unless it shall appear to the court that the entry was prevented by inevitable accident, or other sufficient cause.

24. *In* every case intended for argument, as aforesaid, copies of all the material papers shall be delivered to each of the judges at, or before the opening of the court on the first day of the term, or immediately upon the entry of the action on the law docket; and no action shall be so entered by the clerk, until the papers are prepared and ready to be delivered as aforesaid; provided that when the question arises upon special pleadings, a special verdict, a writ of error, or certiorari, it shall be sufficient to make out one complete copy of the material papers to be delivered to the chief justice, and abstracts of the same, to be delivered to each of the other judges; such abstracts to be made as to present fully the question intended to be argued; and when the question arises upon the answers of a trustee, one copy of the answers shall be deemed sufficient; unless when additional copies shall be ordered by the court.

25 *The* clerk shall enter on the law docket, all actions in which it shall appear from the record, or from his docket, that there is any question of law to be argued; and all such as either party shall request to have so entered,

provided the papers are prepared as above directed: and actions so entered within the times above limited in that behalf, shall be entered in the order in which they stand on the general docket; and if any are entered afterwards, by leave of the court, they shall be entered successively at the end of the law docket, and shall not be argued until they come on in course, on that docket; but all of them shall have their proper numbers prefixed, as they are numbered on the general docket.

26 *In* all cases of writs of error, or certiorari, issues of law on pleadings, facts agreed and stated by the parties, and trustee processes, it shall be the duty of the plaintiff or complainant, to cause the action to be entered on the law docket, and to furnish the papers for the court; and in all other cases the same shall be done by the party who moves for a new trial, or who holds the affirmative upon the question to be argued; but this shall not prevent the adverse party from making the entry and furnishing the papers, if neglected by him whose duty it is, as aforesaid. And when the party whose duty it is shall neglect to enter the action, or to furnish the papers as aforesaid, he shall not have any costs for that term.

27. *When* the papers of which copies are required as aforesaid, are filed in the clerk's office, it shall be his duty without delay, to make out such copies for the court; unless he shall be notified by the party whose duty it is to furnish the papers that the question of law is waved, or will not be argued: and when an abstract is sufficient, the attorney of the party shall make out the abstract to be copied by the clerk, or otherwise the clerk may make out a complete copy for each judge, the extraordinary expense of which shall be borne by such party, and the costs of the copies shall in every case be advanced by the party whose duty it is to furnish the same, unless they shall be received and paid for by the adverse party. And all such copies shall be written in a fair, legible hand, on one side only of each sheet, and with a convenient margin; and they shall be folded uniformly like the other files of the clerk, with the names of the parties, and the number of the action endorsed thereon. And the costs of such copies shall be taxed for the party prevailing in the suit, if he shall have furnished the same.

28. *In* cases submitted upon facts stated by the parties, or others in which the papers may not have been filed with the clerk, they may be copied by the party, whose duty it is to furnish the same as above directed; but they shall be written and prepared in the manner above prescribed, or they will not be received by the court.

29. *Each* civil action shall stand for argument in its order upon the law docket; and when called for argument, if neither party appear, it shall be struck off the law docket, and shall be considered as not having been entered thereon; and if one party only appears, he shall be heard ex parte, or the court will render judgment, on nonsuit or default, or such other judgment, as the case may require; but this rule shall not apply to libels for divorce, nor to

appeals from the probate court in which there may be any question or issue of fact.

30. *To* enable the court the better to understand the questions to be argued in each case, and to prevent unnecessary delay in the determination thereof, the clerks are required, in all cases, to transmit to the judges in vacation, copies of all papers made by them as aforesaid, as soon as may be after the copies are made out; and the parties who make out their own copies, are required to transmit the same in like manner; and no argument will be heard in any case till one day, at least, after the papers shall have been delivered to the judges, unless it be the first day of the term, or unless the court shall think proper, for special reasons, to dispense with this part of the rule.

31. *The* clerk shall be answerable for all records and papers filed in court, or in his office; and they shall not be lent by him, or taken from his custody, unless by special order of court, but the parties may at all times have copies. Provided, only, that depositions may be withdrawn by the party producing them, at the same term at which they are opened; and whilst remaining on the files they shall be open to the inspection of either party, at all seasonable hours.

32. *The* clerk shall make a memorandum on his docket, of the day on which any judgment is awarded, and if no special award of judgment is made, it shall be entered as of the last day of the term.

33. *In* order to enable the clerks to make up and complete their records within the time prescribed by law, it shall be the duty of the prevailing party in every suit, forthwith to file with the clerk, all papers and documents necessary to enable him to make up and enter the judgment, and to complete the record of the case; and if the same are not so filed within three months after judgment shall have been ordered, the clerk shall make a memorandum of the fact on the record; and the judgment shall not be afterwards recorded, unless upon a petition to the court at a subsequent term, and after notice to the adverse party, the court shall order it to be recorded. And no execution shall issue until the papers are filed as aforesaid. And when a judgment shall be recorded upon such petition, the clerk shall enter the same, together with the order of the court, for recording it among the records of the term in which the order is passed, with apt references in the index and book of records of the term in which the judgment was awarded, so that the same may be readily found; and the judgment when so recorded shall be and be considered in all respects as a judgment of the term in which it was originally awarded. And the party delinquent in such case, shall pay to the clerk the costs of recording the judgment anew, and also the costs on the petition, and the costs of the adverse party, if he shall attend to answer thereto.

34. *Whereas* the clerks in keeping their records in books, according to the ancient usage in this state, do sometimes begin to enter a judgment before they have all the papers necessary to complete the same, and thereupon

leave a blank in the book to be afterwards filled up; *it is ordered*, that no such blanks be suffered to remain for more than six months after the end of the term at which the judgment was rendered; and if the clerk, after beginning to enter a judgment as aforesaid, shall be prevented from completing the record for want of any necessary papers, as mentioned in the preceding rule, he shall make a memorandum of that fact, as above directed, in the blank space so left in the book, so that no one can afterwards interpolate the judgment therein.

35. *Whereas* it is made the duty of the judges of the several courts to inspect the conduct of their respective clerks with regard to the making and keeping of their records, *it is therefore ordered*, that the respective clerks of this court shall, on the first day of every term, exhibit to the court the then latest book of records in their respective offices, and such others as the court shall require; to the end that in case of any deficiency therein, the court may take the measures prescribed by the statute in such case, and such other measures as the case shall appear to them to require.

36. *No* cause shall be opened for trial, by the jury, until the fees due in that behalf are paid to the clerk; all other fees due to the clerk shall be paid as soon as they are by law payable; and if the clerk shall fail to demand and receive any such fees when payable as aforesaid, he shall be chargeable with all those, for which he is by law required to account to others, in like manner, as if he had actually received the same.

37. *On* indictments found by the grand jury, the clerk shall, ex officio, issue a capias without delay; and when default is made by any party bound by recognizance in any criminal proceeding, the clerk shall in like manner issue a *scire facias* thereon, returnable to the next term, unless the court shall make a special order to the contrary.

38 *Every venire facias* shall be made returnable into the clerk's office by ten of the clock in the forenoon of the first day of the term, and the jurors shall be required to attend at that time; excepting only, when in case of a deficiency of jurors, the court shall order an additional *venire facias* in term-time, in which case, the same shall be made returnable forthwith, or at such time as the court shall order.

39. *The* respective clerks of the several courts of Common Pleas, of the several circuit courts of Common Pleas, and of the Boston court of Common Pleas, in all cases in which judgment shall be rendered in those courts respectively, shall record at large the declaration or complaint, and all the pleadings of the parties, with all orders of the courts, and other proceedings in the cause.

40. *Bills* of costs shall be taxed by the clerk, upon a bill to be made out by the party entitled to them, if he shall present such bill, and otherwise upon a view of the proceedings and files appearing in the clerk's office; and

no costs shall be taxed without notice to the adverse party to be present, provided he shall have given notice to the clerk in writing, or by causing it to be entered on the clerk's docket, of his desire to be present at the taxation thereof And either party dissatisfied with the taxation by the clerk, may appeal to the court, or to a judge in vacation.

41. *When* an action is continued by the court for advisement, or under reference by a rule of court, costs shall be allowed to the party prevailing, for only one day's attendance and his travel, at every intermediate term.

42. *In* every writ of error, the plaintiff may file the assignment of errors, in the clerk's office before taking out the *scire facias*, in which case the same shall be inserted in the *scire facias*, and the defendant shall be held to plead thereto within the first two days of the return term, unless the court shall by special order enlarge the time.

## Rules of the Boston Court of Common Pleas.

SUFFOLK. ss. At the Boston Court of Common Pleas, begun and holden at Boston, within and for the County of Suffolk, on the *first Tuesday of July, in the year of our Lord eighteen hundred and twenty.*

*The Court established the following Rules.*

1. *No* person shall be permitted to practice as a counsellor and attorney of the Boston court of Common pleas, until he shall have been regularly admitted and enrolled as such.

All persons who have been regularly admitted counsellors or attornies of the supreme judicial court, and who are of regular and fair standing, and all persons who have been admitted as attornies of the court of common pleas for the county of Suffolk, and who are of regular and fair standing, are hereby admitted and enrolled as attornies of this court.

Any person, a citizen of the United States, of the age of twenty one years, and upwards, who may have received an education at any university, and shall have been a student for three years in the office of a practitioner in the highest court of Judicature in any of the United States, the last year of which shall have been spent in the office of a counsellor of the supreme judicial court of this county; or who, besides having a good school education, has devoted seven years to literary acquisitions, and spent three years at least in the office of a practitioner in the highest court of judicature in any of the United States, the last year of which, shall have been spent in the prosecution of the study of the law in the office of a counsellor of the supreme judicial court in this county; and any person who shall have been admitted to practice in any court of common pleas in any other county, and shall have practised therein two years at least;—or who shall have been admitted an attorney of the supreme judicial court in any other county, and whose moral character is fair, on the recommendation of the standing committee of the bar of this county, accompanied by the recommendation of the counsellor of this county in whose office he shall have studied, shall be admitted an attorney of this court.

2. *No* counsellor or attorney of this court shall, on pain of being struck from the roll, be bail in any cause pending in this court.

3. *A* list of all actions, intended for entry, shall be delivered to the clerk on or before the evening of thursday of the first week of each term, and shall be entered by him, and the new docket prepared for the examination of the gentlemen of the bar, and for entering of appearances, by nine o'clock in the forenoon of saturday of the same week; and no list of entries shall be received by the clerk after the evening aforesaid, nor any action be entered excepting by order of court, after the time aforesaid; and in all cases, in which actions shall be entered by order of court, after the time aforesaid, no attendance shall be taxed for the plaintiff previously to the time of entering such action; and if the defendant shall be defaulted, the first term, in any action so

entered, no appearance having been entered for him, no attendance shall be allowed to the plaintiff.

4. *On* the first day of each term, the continued docket shall be called, and a list of all actions intended for trial shall be made, and in all cases, which shall be set down for trial, the counsel for the plaintiffs, on or before saturday. of the first week of the term, shall deliver to the court, a short memorandum of the nature of each action, and generally how it arises, and what sum is demanded in damages, and the counsel for the defendants shall deliver as aforesaid a short memorandum of the grounds of their defences: And in all actions which shall be set down for trial, on the new docket like memoranda, shall be delivered to the court, within seven days from the time of calling the new docket, to the end that the court may see whether or not it has final jurisdiction of the causes to be tried, and to a certain extent, what number of causes it may be useful to assign for trial, on each day.—And in all cases, the party omitting to deliver to the court such memorandum within the term aforesaid, will be considered as waving his right to a trial, though he may be compelled to submit to one.

On tuesday of the second week, in each term, the new docket will be called, and a list of all actions intended for trial will be made.

5. *In* the memorandum required to be delivered by rule fourth, it will not be expected that the plaintiff will state in what manner he shall support his action, nor the defendant how he shall make out his defence. In a writ of entry it will be sufficient for the demandant to state the degree and shew the alienations or descents; in an action of debt, for the plaintiff to say debt on judgment, on bond, on statute, &c. &c. in assumpsit, to say on promissory note, for goods sold, or services rendered, &c. &c. in case, for torts, to say for slander, malicious prosecutions, trover, &c. &c. in trespass, to say for taking goods, quare clausum fregit, assault and battery, &c. &c. in replevin, to say for goods, of the value of. And for tenant in a writ of entry, it will be sufficient to say, never disseized, or state what he proposes to plead specially; in debt, to say no such record, not his deed, he owes nothing, &c. &c; in assumpsit, to say he never promised, and relies on proving payment, usury, infancy, statute of limitations, set off, &c. &c; in trespass and case, to say not guilty, special justification, &c. &c; and in replevin, to say non cepit or property in himself, or a stranger, &c.

6. *Oyer* of all deeds, &c. declared on, may be had on motion at the return term, but not afterwards, unless by special order of court.

7. *The* plaintiff may amend his writ, and declaration, or declare anew, for the same cause of acion, at the first term, without costs or continuance, before issue joined, but no amendment shall afterwards be made but upon terms.

8. *No* motion for double pleading shall be sustained after the first term, unless for good cause shewn.

9. *Either* party may obtain a rule on the other, to plead, reply, rejoin, &c. within a given time, to be prescribed by the court; and if the party so required, neglect to file his pleadings, at the time prescribed, all his prior pleadings shall be struck out, and judgment entered of nonsuit, or default as the case may require, unless the court for good cause shewn, shall enlarge the rule.

10. *If* in the same cause there be an issue in fact, and an issue in law, the issue in law shall be first argued and determined, unless the court, for good cause, otherwise direct.

11. *Motions* in arrest of judgment, or for new trial, shall be made in writing and the causes thereof shall be specified therein.

12. *No* attorney shall be permitted to deny the signature of any paper declared on, unless he shall satisfy the court that he has been instructed by his client so to do, or that he verily believes such signature not to be genuine, or unless he shall have given the adverse party reasonable notice thereof.

13. *No* papers or records filed in court, or in the clerk's office, shall be taken therefrom, unless by special leave of court, or by the agreement of parties in writing, filed in their stead.

14. *All* judgments and continuances shall be entered as of the last day of the term, unless where otherwise specially ordered by the court.

15 *Every* person summoned as a trustee, living within the county, when he enters his appearance, in the action in which he is so summoned, shall give notice thereof, to the counsel of the plaintiff, personally, or by leaving a notification at his office, if he keeps one within the county, advising him that he has entered his appearance in the action in which he is so summoned, and will be ready to answer such interrogatories as may be proposed to him on some certain day, not exceeding three days, from the time of such notice. And the declaration of any supposed trustee, inserted in his answer and sworn to, shall be sufficient to prove such notice.

16. *Any* person summoned as a trustee, shall not be entitled to any fees for attendance, until after he has appeared and given notice as aforesaid. And every person summoned as aforesaid, shall be entitled to fees for attendance, from the time of his appearance and giving notice as aforesaid, until he is discharged, excepting fees for attendance during the time, the cause may be continued, by order of court, for advisement.

17. *If* the trustee unreasonably neglect to answer interrogatories, the court upon motion of the plaintiff, will assign a day by which his answers shall be filed, or the trustee defaulted.

18. *If* the plaintiff shall discontinue his action against the trustee, on or be-

fore the second day of the term, such trustee shall be entitled to costs of his travel and three days attendance only.

19. *All* depositions shall be opened and filed with the clerk, at the term for which they are taken; and if the action in which they are to be used shall be continued, such depositions shall remain on the files, and be open to all objections when offered on the trial, as at the term at which they were opened; and if not so left on the files, they shall not be used by the party, who originally produced them; but the party producing a deposition, may, if he sees fit, withdraw it, during the same term in which it is originally filed, in which case it shall not be used, by either party.

20. *The* court will grant commissions to take the depositions of witnesses without the state, and will appoint the commissioners, and either party may, on application to the clerk in vacation, obtain a like commission; which commission in the latter case. shall be directed to any justice of the peace, Notary Public, or other officer legally empowered to take depositions or affidavits in the state or country where the deposition is to be taken, unless the parties shall agree on commissioners; and in each case, the deposition shall be taken upon interrogatories to be filed by the party applying for the commission, and upon such cross interrogatories as shall be filed by the adverse party, the whole of which interrogatories shall be annexed to the commission. And the party applying for the commission shall in each case file his interrogatories in the clerk's office, and give notice thereof to the adverse party, or to his attorney, seven days at least, before taking out his commission, and one day more for every ten miles, that such party or his attorney shall live from the clerk's office. And no deposition taken without the state by force of the statute in that case provided, and without such commission, shall be admitted in evidence, unless it shall appear that the adverse party or his attorney had sufficient notice of the taking thereof, and opportunity to cross examine the witness, or that from the circumstances of the case, it was impossible to give such notice. And when a deposition shall be taken and certified by any person as a justice of the peace, or other officer as aforesaid, by force of such commission, and it shall be objected that the person so taking and certifying the same, was not such officer, the burden of proof shall be on the party so objecting; and if a like objection is made to a deposition taken without such commission, it shall be incumbent on the party producing the deposition to prove that it was taken and certified by a person duly authorized, according to the statute before mentioned.

21. *Depositions* may be taken for the causes and in the manner by law prescribed in term time, as well as in vacation; provided they be taken in the town in which the court is holden, and at an hour when the court is not actually in session. But neither party shall be required during term-time to attend the taking of a deposition, at any other time or place than is above provided, unless the court upon good cause shewn, shall specially order the deposition to be taken.

22. *No* motion for a continuance, grounded on the want of material testi-

mony, will be sustained unless supported by an affidavit, which shall state the name of the witness, if known, whose testimony is wanted, the particular facts he is expected to prove, with the grounds of such expectation; and the endeavours and means that have been used to procure his attendance or deposition, to the end that the court may judge whether due diligence has been used for that purpose. And no counter affidavit shall be admitted to contradict the statement of what the absent witness is expected to prove; but any of the other facts stated in such affidavit may be disproved by the party objecting to the continuance. And no action shall be continued on such motion, if the adverse party will admit that the absent witness would, if present, testify to the facts stated in the affidavit, and will agree that the same shall be received and considered as evidence, on the trial, in like manner, as if the witness were present and had testified thereto; and such agreement shall be made in writing, at the foot of the affidavit, and signed by the party, or his counsel, or attorney. And the same rule shall apply, mutatis mutandis, when the motion is grounded on the want of any material document, paper or other evidence that might be used on the trial.

23. *The* court will not hear any motion grounded on facts, unless the facts are verified by affidavit, or are apparent from the record, or from the papers on file in the case, or are agreed and stated in writing and signed by the parties, or their attornies, and the same rule will be applied as to all facts relied on, in opposing any motion.

24. *In* all cases in which money may be brought into court upon the common rule, as it is called, if the plaintiff shall not accept the same; and if upon the trial, the verdict shall be for the defendant, the plaintiff shall not be liable for any costs incurred before the time of bringing the money into court, but only for the cost incurred after that time; and the terms of the rule shall be altered accordingly.

25. *All* motions, reports of referees, petitions, and other like applications, shall be made and presented at the opening of the court on the morning of each monday, wednesday and saturday during the term; provided that when the cause or ground of such motion or other application shall first exist or become known to the party, after the times in this rule appointed for making the same, it may be made, (if the case require it) at any intermediate time.

26. *When* a motion is made in relation to any civil action, at any of the times specifically appointed for that purpose in the preceding rule, no previous notice of the motion need be given to the adverse party; and if notice is not given, the court will allow him time to oppose the motion, if the case shall require it. But when such motion is made, at any intermediate time, according to the proviso in the preceding rule, the motion shall not be heard unless seasonable notice thereof shall have been given to the adverse party.

27. *The* clerk shall be answerable for all records and papers filed in court, or in his office; and they shall not be lent by him or taken from his custody,

unless by special order of court, but the parties may at all times have copies. Provided, nevertheless, that depositions may be withdrawn by the party producing them, at the same term at which they are opened; but whilst remaining on the files they shall be open to the inspection of either party, at all seasonable hours.

28. *In* order to enable the clerks to make up and complete their records within the time prescribed by law, it shall be the duty of the prevailing party in every suit, forthwith to file with the clerk, all papers and documents necessary to enable him to make up and enter the judgment, and to complete the record of the case; and if the same are not so filed within three months after judgment shall have been ordered, the clerk shall make a memorandum of the fact on the record; and the judgment shall not be afterwards recorded unless upon a petition to the court at a subsequent term, and after notice to the adverse party, the court shall order it to be recorded. And no execution shall issue until the papers are filed as aforesaid. And when a judgment shall be recorded upon such petition, the clerk shall enter the same together with the order of the court, for recording it among the records of the term in which the order is passed, with apt references in the index and book of records of the term in which the judgment was awarded, so that the same may be readily found; and the judgment when so recorded shall be considered in all respects as a judgment of the term in which it was originally awarded. And the party delinquent in such case, shall pay to the clerk the costs of recording the judgment anew, and also the costs on the petition, and the costs of the adverse party, if he shall attend to answer thereto.

29. *Whereas* the clerks in keeping their records in books, according to the ancient usage in this state, do sometimes begin to enter a judgment before they have all the papers necessary to complete the same, and thereupon leave a blank in the book to be afterwards filled up; *It is ordered*, that no such blanks be suffered to remain for more than six months after the end of the term, at which the judgment was rendered; and if the clerk, after beginning to enter a judgment as aforesaid, shall be prevented from completing the record for want of any necessary papers, as mentioned in the preceding rule, he shall make a memorandum of that fact, as above directed in the blank space so left in the book, so that no one can afterwards interpolate the judgment therein.

30. *No* cause shall be opened for trial, by the jury, until the fees due in that behalf are paid to the clerk; all other fees due to the clerk shall be paid as soon as they are by law payable, and if the clerk shall fail to demand and receive any such fees, when payable as aforesaid, he shall be chargeable with all those, for which he is by law required to account to others, in like manner, as if he had actually received the same.

31. *Bills* of costs shall be taxed by the clerk, upon a bill to be made out by the party entitled to them, if he shall present such bill, and otherwise upon a

view of the proceedings and files appearing in the clerk's office; and no costs shall be taxed without notice, to the adverse party to be present, provided he shall have given notice to the clerk in writing, or by causing it to be entered on the clerk's docket, of his desire to be present at the taxation thereof. And either party dissatisfied with the taxation by the clerk, may appeal to the court or to the judge in vacation.

32. *When* an action is continued by the court for advisement, or under reference by a rule of court, costs shall be allowed to the party prevailing, for only one day's attendance and his travel, at every intermediate term.

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## RULES OF THE BAR OF THE COUNTY OF SUFFOLK, *June 25, 1819. with the* AMENDMENTS (1)

WHEREAS, in all the liberal professions, great mischiefs are caused to the public by unlearned and immoral persons assuming to perform duties, which can safely be entrusted to none, but such as are competent in knowledge and pure in character; and as the surest safeguard against these evils it has been an ancient custom for those, who exercise such professions, to unite themselves as a fraternity, to prescribe to themselves such rules as are found best adapted to secure their honour and usefulness, to judge of the qualifications of such as offer themselves to become members of the profession, and by their approbation, and by admission to their society, to distinguish those, who have pursued a proper course of study and dicipline, from such as intrude themselves without due preparation:—And whereas maintenance, barratry and abuse of legal process are the usual consequences of unsuitable and unqualified persons assuming the practice of the law;—

The members of the bar of Suffolk do agree upon and establish the following rules:

ARTICLE 1. *There* shall be one stated meeting of the Bar on the first Tuesday in September annually, at such hour and place as the President herein-after mentioned may appoint. There shall also be special meetings as herein-after provided for.

All meetings of the Bar shall be holden in future by those only, who are counsellors or attornies of the Supreme Judicial Court, and who shall have been admitted as counsellors or attornies on the recommendation of the Bar, or else shall have been specially admitted as members of the Bar in the manner provided by Art. 6, and no person shall be considered a member of the Bar, who shall not have subscribed these rules. Provided, however, that all who are now attornies in the Court of Common Pleas, shall, if they subscribe these rules, be considered as members of the Bar, and be required to attend its meetings. No business whatever shall be done at any meeting unless twenty members are present, but a less number may adjourn the meeting.

2. *At* the annual meeting above mentioned, the Bar will dine together, and it shall be the duty of the standing committee, herein-after mentioned, to at-

(1) I have published the "Rules of the Bar" of Suffolk county, as the latest Formulary of this description, which has been communicated to me. A system of rules for securing the *dignity* and rights of the profession, devised by the eminent men who preside and practice in the courts of Massachusetts, and particularly in its refined capital, cannot be misplaced in this work. It furnishes a precedent which may assist in the formation of similar institutions—whilst it conveys the information necessary to comprehend the actual situation of those who aspire to—or exercise the profession of the law—in that great and wise community. Ed.

(Note.) The *index* is framed by the editor, rather to finish, than as being necessary to matters so brief and intelligible. The "*Amendments*," are in Italick.

tend to the provision of a suitable dinner, and the expense thereof shall be assessed equally upon all the members of the Bar, who shall not, at least eight days previous to the meeting, give notice in writing to the Secretary of their intention not to attend the dinner, and shall be collected by the Treasurer in the same manner as the fines and other assessments.

It shall also be the duty of said Standing Committee annually to appoint some person, at least six months before the meeting in September, to deliver an address to the Bar, at their annual meeting, on some subject relating to the profession. The hour and place of delivering said address shall be appointed and notified by the President, and the same may be attended by all the members of the Bar, by the Justices of the several Courts of the United States and of this state, and by such other persons as the Standing Committee may invite.

3. At the meeting in September, annually, there shall be chosen by ballot a committee of seven, to remain in office one year, and until others are chosen. From among their number they shall elect a President. At this meeting a Secretary shall be chosen for one year, who shall also be Treasurer. The President shall preside at all meetings of the Bar, and at all meetings of the Committee. He shall convene special meetings of the Bar, whenever he shall think proper, or whenever thereto requested in writing by five or more members. He shall also call special meetings of the Committee, as often as occasion may require, by directing the Secretary to issue notifications therefor. He shall receive and lay before the Committee, or before the gentlemen of the Bar, at any meetings, such matters and communications as may appertain or be addressed to them respectively. In the absence of the President the duties appertaining to him shall devolve upon and be performed by the senior member of the Committee, who may be present.

4. It shall be the duty of the Secretary to attend all meetings of the Committee, and to keep a fair record of all their proceedings, and also constantly to attend all meetings of the bar, and to keep a record of their proceedings. He shall be the keeper of the records and the files, and shall not permit the same to be taken from his possession. He shall keep an account of all monies which he may receive in his capacity of Treasurer, and shall hold the same subject to the orders of the Standing Committee. It shall be his duty to demand and receive all fines and assessments, and if those which may be incurred or imposed, pursuant to these regulations, are not collected by him, he shall be accountable for the same himself, unless he shall state in writing to the President, that he has demanded the same, and that the gentlemen from whom the same are due, have refused or neglected to pay.

5. A fund shall be raised to be holden in trust for the relief of such members of the Bar, or their families, as by reason of reduced circumstances shall stand in need of assistance. And the mode of raising the same shall be as follows. Every person on subscribing these rules (excepting such as are now members of the Bar, to whom it is earnestly recommended so to do) shall pay into the hands of the Secretary and Treasurer, for the use of this fund, a sum

not less than five dollars; and at the annual meeting every member of the Bar shall contribute towards the said fund a sum not less than one dollar. The investing and managing of said fund shall be confided to four persons as Trustees, who shall be chosen or removed from time to time by the Bar, as shall be found necessary: and the income of said fund shall be applied by the Standing Committee to the purposes aforesaid at their discretion—and said Trustees shall transfer the said trust property to their successors by such legal acts and conveyances, as may be sufficient for that purpose. The said fund may also be increased by voluntary donations, and a book shall be kept by the Secretary and Treasurer, in which all such donations shall be recorded. And a distinct account shall be kept of all monies received for the use of, and expended from, the said fund.

6. *All* counsellors and attornies, who have been regularly admitted to practise, and who now reside or usually practise in this county, may subscribe these rules at any time before the first day of August next. But after that day no person shall subscribe the same, unless upon being admitted, on the recommendation of this bar, to practise as an attorney in the Supreme Judicial Court, or by a special vote of the Standing Committee allowing such person to subscribe the said rules, and to become a member of the Bar.

No person who has been admitted to practice in any other county of this commonwealth shall be considered a member of this Bar, nor allowed to subscribe these rules, until he shall have filed with the Secretary of this Bar a certificate of his having been so admitted, and shall have produced to the Standing Committee the recommendation of the Bar of the county, in which he shall have been so admitted. "*And any gentleman who has been admitted a practitioner of any of the Judicial Courts in another state, and who has removed into this county with the intention of opening an office and of practising in the courts of the same, shall, prior to his being recommended for admission to a like degree in the courts of this commonwealth, produce the evidence of his having studied one year in the office of a counsellor within this county, in addition to the production of such evidence of classical and professional study and of moral character as by existing regulations is required from candidates for admission originally to the courts within this county.*"

(Records Sept. 5, 1820.)

7. *No* costs shall be demanded, nor continuance claimed for any amendment of a writ or declaration, which is authorized by law, or permitted by the Court, provided it be made at the first term of the Court, at which the action is commenced, or in cases of demurrer by consent, at the first term of the Supreme Judicial Court.

8. *No* member of the bar shall have his office in the same apartment with justices of the peace, who try causes, or with deputy sheriffs, or constables, or any person authorised to serve legal process; and no gentleman, who so keeps his office, shall be recommended for admission to the Supreme Court, or to the Boston Court of Common Pleas. And if any practitioner of

the Supreme Court, or of the Boston Court of Common Pleas, shall so keep his office, his name shall be erased from the Bar-book, and the President shall give notice thereof to the Courts respectively.

9. *It* is considered improper and dishonourable, and tending greatly to the prejudice not only of practitioners at this Bar, but of the public, for any person, who is not a regularly admitted practitioner at the same, or at some other bar in this state, to commence any action before any justice of the peace, or in the Boston Court of Common Pleas, or Supreme Judicial Court, District or Circuit Court, and no gentleman of the Bar, shall, upon any terms, nor under any circumstances whatever, assume the care of such action; nor shall any gentleman of this Bar, upon any terms, nor under any circumstances, be in any manner connected in his professional practice with any person who is not, as aforesaid, a regularly admitted practitioner. Nor shall any gentleman assume the care of any action originated in this county by a person practising therein, not having subscribed these rules, unless such person, being a regularly admitted attorney of the Boston Court of Common Pleas, and not having been refused a recommendation for admission to the Supreme Judicial Court, or otherwise censured by a vote of the Bar, shall in writing, in a book to be kept for that purpose by the Secretary, have declared his assent to these rules, and engaged to observe the same. Nor shall any gentleman advise or consult, or be in any manner associated in any case whatever with any person practising in this county, who shall not have subscribed these rules, excepting such attornies as aforesaid of the Boston Court of Common Pleas.

10. *Taking* into consideration that the rules of the Supreme Judicial Court require that nine years, at least, should have been passed in literary and professional pursuits, to qualify a man for admission to that Court as an attorney thereof, and two years practice therein as an attorney, to qualify him for admission as a counsellor thereof, and also that those who take upon themselves to perform professional duties are, and ought to be, holden in law and in honour to indemnify their clients for all losses or damages which are occasioned by negligence or want of professional knowledge; and lastly, that the members of the profession are never applied to, if the party can obtain, without their agency, the rights which the laws of the land secure to him;—

We the subscribers, members of the Bar in the county of Suffolk, establish the following rates of compensation and fees as the lowest, which we can reasonably and honourably receive; and we bind ourselves not to receive less fees or compensation than are herein expressed, nor any commutation or substitute therefor, viz.

ADVICE OR CONSULTATION.

For advising when the property in dispute exceeds 100 dollars, and does not exceed 500 dollars, not less than . . . . . $4

For advising when the property exceeds 500 dollars, not less than . . 5

DRAFTING OF LEGAL INSTRUMENTS.

The compensations in these cases do not admit of any precise rule. The service to be

compensated is compounded of professional advice and knowledge, and the labour of applying them in writing to each particular case.

LETTERS BEFORE SUIT.

| | |
|---|---|
| For a letter demanding payment, under 500 dollars | $2 |
| Above 500 dollars | 3 |

WRITS, &c. ADVISING AND COMMENCING THE ACTION.

| | |
|---|---|
| Where the demand or cause of action does not exceed 100 dollars | $3 |
| Where the demand or cause of action exceeds 100 dollars, and not 500 dollars | 4 |
| Where the demand or cause of action exceeds 500 dollars | 5 |

TRUSTEE PROCESS, ADVISING, &c.

One dollar in addition to each of the sums chargeable as above for common writs, that is, four, five, and six dollars, instead of three, four, and five.

These charges are to be made when the action is settled before entry, and are to be paid together with the sheriff's fees.

In addition to these charges the plaintiff's attorney or counsellor will charge his fees for advice, if the case be such as to authorise such charge to the plaintiff.

## FEES IN THE COURT OF COMMON PLEAS.

FOR PLAINTIFF'S COUNSEL OR ATTORNEY.

If he prevails, the counsel or attorney is to charge the plaintiff with the bill of costs and give him credit for it, if it be received from the defendant, or on execution.

He is also to charge the fees for arguing the cause, if argued either to the Court or Jury.

If the plaintiff does not prevail in the suit, his counsel or attorney is to charge the writ according to the rates before stated, and all sums of money paid for the plaintiff in carrying on the suit. He is also to charge a term fee for each term.

| | |
|---|---|
| In cases not exceeding 100 dollars | $3 |
| ——— exceeding 100 and not exceeding 500 dollars | 4 |
| ——— exceeding 500 dollars | 5 |

If the cause be argued to the Court or Jury, the arguing fee is to be charged for the term at which the argument took place, instead of the term fee.

In cases, where several actions are brought on one and the same title, or on the same policy of assurance, or other like cases, in which *all* are governed by the decision of one, or more, either term fees or half term fees may be charged at discretion, in such actions as are not tried or argued.

FOR DEFENDANT'S COUNSEL OR ATTORNEY.

Where the defendant prevails, his counsel or attorney is to charge the bill of costs recovered against the plaintiff, and in addition thereto, term fees as before stated, excepting the term when the cause is argued to the Court or Jury, when the arguing fee is to be charged instead of a term fee.

But when the costs cannot be obtained of the plaintiff, the defendant's counsel may charge either the bill of costs and arguing fee only, or the term fees and arguing fee only, at his option.

If the defendant does not prevail, his counsel or attorney is to charge him term fees,

as aforesaid, for each term. If the cause be argued, the arguing fee is to be substituted for the term fee at the term when the argument is had.

| | |
|---|---|
| For arguing a cause in the Common Pleas, not less than | $10 |
| For trustee's answer, &c. where he has no effects | 3 |
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## SUPREME JUDICIAL COURT.

### FOR PLAINTIFF'S COUNSEL OR ATTORNEY.

When the plaintiff prevails, the counsel or attorney is to charge the bills of costs in the Court of Common Pleas, and in the Supreme Court, and fees of arguing to the Court or Jury, or both, as the case may be.

When the plaintiff does not prevail, the counsel or attorney is to charge the sums paid in the prosecution of the suit, and term fees, double the amount chargeable as term fees in the Common Pleas, and also the fees of arguing the cause either to the Court or Jury, or both, as the case may be.

### DEFENDANT'S COUNSEL OR ATTORNEY.

When the defendant prevails, the counsel or attorney is to charge the bill of costs and the fees for arguing the cause to the Court or Jury, or both, as the case may be, and term fees double the amount chargeable in the Court of Common Pleas.

When the costs cannot be obtained from the plaintiff, the defendant's counsel may charge the bill of costs and arguing fee only, or the term fees and arguing fee only, at his discretion.

When the defendant does not prevail, the counsel or attorney is to charge term fees double the amount chargeable as term fees in the Common Pleas, and instead of term fee, the fees of arguing at the term when argument is had.

| | |
|---|---|
| For arguing a cause to the Jury in the Supreme Judicial Court, for plaintiff or defendant, not less than | $20 |
| For arguing a question to the Court, for plaintiff or defendant, not less than | 20 |

But when the matter in dispute does not exceed $100 in value, the counsel shall charge for arguing the cause, what they shall deem a reasonable compensation.

| | |
|---|---|
| For divorce | Not less than $20, exclusive of clerk's dues. |
| For naturalization | |
| For process of partition | |

### DISTRICT AND CIRCUIT COURTS.

The fees are to be the same in all respects as in the Supreme Judicial Court, with such additions thereto as the peculiar practice of these Courts may make proper in the opinion of gentlemen who may practise therein.

### REFERENCES, &c.

In all arbitrations, and in references entered into in the Supreme Judicial Court and Court of Common Pleas, and rules entered into before a justice of the peace, the compensation is to be regulated according to the rate of fees established as to the Courts of Common Pleas and the Supreme Court, as to arguing cases; and for the advice and preparation for the hearing, a reasonable charge to be made according to the spirit of these rules.

After the term when a cause is referred, and before the term when the report is made, the counsel or attorney of the plaintiff, and the counsel or the attorney of the defendant, shall charge half term fees only.

COLLECTING MONEY.

For attention and responsibility of the attorney or counsel in effecting a settlement with the debtor before judgment, and obtaining the money due, or for obtaining execution and committing the same to a proper officer, and receiving the money from him or from the debtor, and paying the same over to the creditor, when the amount does not exceed one thousand dollars, a commission of two and one half per cent is to be charged, and for every hundred dollars above one thousand dollars, a commission of one dollar.

When mortgaged premises are sued for, and the money is paid, the like rate of commission is to be charged; but if the demandant receives his writ to take possession, or when the judgment recovered is to be satisfied by a levy on real estate, a reasonable compensation shall be charged and received.

If the plaintiff thinks fit to take the execution from the attorney or counsel, and disposes of the same himself, he shall be charged and required to pay the same percentage as if the attorney had collected the money, or done other duty as to the execution, which would entitle him to a commission, according to the foregoing provisions.

Where money is collected for a client, who lives out of the Commonwealth, a commission of three per cent shall be charged to him upon the amount received

When the plaintiff cannot obtain any benefit from his suit, the counsel or attorney may charge the bill of costs only.

These rules are intended to establish the lowest compensation; and not to restrict gentlemen from taking higher compensation in cases of difficulty or magnitude; and these rules are not to apply to cases not exceeding twenty dollars.

11. *Every* gentleman of the Bar shall attend every meeting of the Bar, which may be duly notified; and every gentleman, who is absent from any meeting, shall forfeit and pay to the Treasurer one dollar, unless absent from town, or confined by sickness, and this shall be stated in writing by such absent member to the Treasurer. Notice shall be given of every meeting of the Bar by a written or printed notification to be left at the office of every member of the Bar, one day before the meeting.

12. No gentleman shall enter, or cause his name to be entered on the docket, or be considered as counsel for the plaintiff or defendant, or trustee in any action, unless there shall have been an application to him personally or by writing, or by some person who may have been duly and expressly authorised by the party to retain counsel in the action, or unless he is retained by the party as counsel in all cases.

13. *The* sum which every student shall be required to pay for his law education, shall be at the rate of five hundred dollars for three years, one third part thereof to be paid, or satisfactorily secured to be paid, at the expiration of each year.

And every student shall be holden to pay at the rate of five hundred dollars for any portion of three years. Every student, whose term of study is more than three years, shall pay at the same rate of five hundred dollars for three years, and shall pay at the end of each year, or secure the payment of the sum due.

14. *Whenever* any gentleman shall intend to be proposed for admission as an attorney of the Boston Court of Common Pleas, he shall give notice thereof to the Secretary, at least ten days before the first week of the term in which he proposes to be admitted, which notice the Secretary shall lay before the Committee, and shall also hand the same to the Clerk of the Court. And if the Committee are satisfied that such gentleman has strictly conformed to the rules of the Bar, and that his moral character is fair, the Committee shall give him a certificate of his title to be recommended for admission accordingly to the Boston Court of Common Pleas. Upon refusal of such certificate the candidate may appeal to the Bar. All students, on their admission to the Bar, shall pay to the Secretary of the Bar a fee of three dollars, to be appropriated towards the expenses of the Bar. And any gentleman, who shall receive a student into his office, shall, at the time of his commencing his studies, furnish him with a copy of the Bar-rules.

The qualifications for recommendation by the Committee of the Bar for admission to the Boston Court of Common Pleas shall be the following.—The applicant shall have been graduated at some university, and shall have diligently studied law three years in the office of a counsellor in the Supreme Judicial Court of this state, (the professor of law at Cambridge is considered as such counsellor) and the last of said years in the county of Suffolk, and shall produce a certificate of these facts, and that he is of good moral character. "*And any person having a liberal education and a regular degree as aforesaid who shall afterwards have commenced and pursued the study of the law in any other state in the office of a counsellor of the highest Judicial Court of such state for two years, and afterwards shall pursue the study of the law in the office of a counsellor of the Supreme Judicial Court of this state residing within the county of Suffolk for one year, shall be entitled to a recommendation by the committee of the Bar for admission to the Boston Court of Common Pleas, on producing certificates of these facts and that he is of good moral character.*"

(Records, Sept. 5, 1820.)

Or 2d. If the applicant shall not have been graduated at some university, he shall have had a good school education, equivalent to such education as would qualify him for admission at Harvard University in the freshman class; and he shall have devoted four years to the study of such sciences and literature as are the subjects of instruction at the university, and shall have studied law three years besides in the office of a counsellor as aforesaid, and shall be certified to have so done, and to be of good moral charcter.

Or 3d. The applicant shall have such school education as aforesaid, and shall have devoted two years to scientific and literary attainments, and shall have diligently studied in the office of a counsellor five years besides, and shall be certified so to have done, and that he is of good moral character.

And the Committee of the Bar may, if they see fit, require of any applicant, who has not been graduated at some university, to submit to an examination before said Committee, as to his scientific, literary, classical and legal attainments.

15. (1) *Meetings of the Bar for the purpose of acting upon the applications*

(1) The original article repealed, and the following substituted.

*of gentlemen who may desire a recommendation for admission to the Supreme Judicial Court, shall be holden on such day in the first week in October and in the last week in February respectively as the president shall appoint. And whenever any gentleman shall intend to be proposed, for admission as aforesaid, he shall give notice thereof to the Committee of the Bar at least fourteen days before the session of the court at which he is to be proposed, and at least seven days before the said first week in October or of the said last week in February as the case may be, and if the Committee are satisfied that such gentleman has strictly conformed to the rules of the Bar, and that his moral character is fair, the Committee shall certify his title to a recommendation of the Bar for admission to the S. J. C. to be acted upon by the Bar at either of the said meetings. And no other meeting shall be called for the sole purpose of considering such applications, unless the Standing Committee shall be of opinion, that from some peculiar circumstances the applicants are entitled to such indulgence.*" (Records, Feb. 24, 1821.)

16. *No* gentleman shall have more than three students in his office at the same time. And every gentleman, who shall in future receive any student into his office, shall give to the Secretary in writing the name of such student and the time of the commencement of his studies, and the time when, and the university or college at which such student was graduated, if at any; and if the student be not a graduate of any university or college, the gentleman proposing to receive such student shall fully state all facts as to the nature of his education: all which shall be laid before the Committee of the Bar at the next ensuing meeting; and unless such student be then approved by the Committee, and shall be so recorded in the Bar-book by the Secretary, he shall not be considered as a student within the meaning of these provisions.

17. *And* no gentleman, who has been a student in any other county of the Commonwealth, shall be received into any office in this county as a student, unless he shall produce to the gentleman, into whose office he comes, satisfactory certificates or evidence of his having been regularly admitted a student in the county from which he came, and that he sustains a good moral character. These certificates or evidence, shall be handed by him to the Secretary within thirty days next following, and the same shall be recorded in the Bar-book by the Secretary.

18. *No* student shall commence or defend any action, or do any professional business whatever on his own account.

19. *The* standing rules and regulations shall be entered in the Bar-book, subscribed by every member of the Bar, and no person shall be considered or treated as a member of the Bar until he has subscribed the same; and every gentleman of the Bar shall be bound in honour to give notice in writing to the President of any transgression or breach of these rules by any gentleman belonging to the profession.

No person shall be recommended by the Committee for admission to practise as an attorney at the Boston Court of Common Pleas, until he shall have

in writing declared his assent to the Bar-rules, and his determination to adhere to the same.

20. *All* controversies or complaints concerning the breach of any of these rules shall be submitted to the Committee, whose decision thereon shall be final.

21. *A* Committee of seven shall be appointed annually to inquire on complaint of any member of the Bar, or other notice, of malpractice or infringement of the standing rules of the Bar, or of any unfair, oppressive, dishonourable, or illegal practices, and to present the same either to the Standing committee, or to some other sufficient tribunal.

22. *No* person shall receive a recommendation to the Supreme Judicial Court until 2 years after he shall have declared his assent to these rules and regulations, as provided in 9th article, or have subscribed those in force prior to these; nor shall any person receive a recommendation to the Supreme Court, who shall have practised otherwise than as these rules and regulations require.

23. *So* much of these rules and regulations as respects fees and compensations, excepting as to students, shall be printed on sheets of paper, with the names of those members, who have subscribed the same, and one of these sheets shall be put up in some conspicuous place in the office of every attorney and counsellor of the Supreme Judicial Court, and of the Boston Court of Common Pleas, to the end that every gentleman may show to his clients, if there be any occasion so to do, the rules by which his practice is to be governed.

24. *This* association, considering the great convenience and public benefit, which will result from the trial of civil actions under twenty dollars before one respectable magistrate, do hereby recommend to all members of the Bar to commence all such actions before the Justice of the Town Court.

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