

MAINE STATE LEGISLATURE

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REPORT

OF THE

COMMISSIONERS

APPOINTED TO REVISE THE

PUBLIC LAWS

OF THE

STATE OF MAINE.

TITLE XII.

Augusta:

Wm. R. SMITH & Co., PRINTERS TO THE STATE.

1840.

TITLE TWELFTH.

OF CRIMES AND OFFENCES, PROCEEDINGS IN CRIMINAL CASES, PUNISHMENTS AND PRISONS, AND INCIDENTAL PROVISIONS.

- Chap.* 153. Of offences against the sovereignty of the State.
154. Of offences against the lives and persons of individuals.
155. Of offences against habitations, and other buildings, including arson, burglary and similar crimes.
156. Of larceny and the receiving of stolen goods.
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159. Of offences against the public peace.
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176. Of coroner's inquest.
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CHAPTER 153.

OF OFFENCES AGAINST THE SOVEREIGNTY OF THE STATE.

- Sect.* 1. Treason.
2. Two witnesses necessary to conviction.
3. Misprision of treason.
4. Necessary proof.
5. Limitation as to time of prosecution.
6. Usurpation, by a foreigner, of power and jurisdiction.

SECT. 1. Whoever shall be guilty of treason, by levying war
2 against the State, adhering to its enemies, giving them aid and
3 comfort, shall be punished with death. Constitution.

SECT. 2. No person shall be indicted and convicted of trea-
2 son, unless on the testimony of two witnesses to the same overt
3 act, or by confession in open court. Constitution.

SECT. 3. If any person shall have knowledge of any treason
2 committed or to be committed, and shall conceal the same, and
3 shall not, as soon as may be, give information thereof upon
4 oath, to the governor of the State, a judge of a court of record
5 or to a justice of the peace, to the end that the offender therein
6 may be apprehended, and be amenable to justice, he shall be
7 deemed guilty of misprision of treason, and shall be punished
8 by imprisonment in the state prison, not more than five years, or
9 by fine not exceeding one thousand dollars and by imprisonment
10 in the county jail not more than one year. 1821, 1, § 2, 3.

SECT. 4. No person shall be indicted and convicted of mis-
2 prision of treason, unless the treason concealed and not informed
3 of, as mentioned in the preceding section shall be proved by
4 the testimony of two witnesses to the same overt act, or by one
5 witness to one overt act, and by another witness to another
6 overt act of the same species of treason, or by voluntary con-
7 fession in open court. 1821, 1, § 5.

SECT. 5. No person shall be indicted and convicted of treason
2 or misprision of treason, unless the indictment therefor shall be
3 found within three years next after the commission of the
4 treason. 1821, 1, § 7.

SECT. 6. If any person, not a citizen of the United States,
2 or any person under the authority or color or pretence of
3 authority from any foreign prince, state or government, shall
4 enter upon any lands, cut any timber, serve any civil or criminal
5 process, or exercise any act of jurisdiction, authority or owner-
6 ship, or shall pretend or attempt or claim any right or threaten
7 to do any of the said acts within the limits of this State as
8 described in and by the treaty of seventeen hundred and eighty
9 three, between the United States and Great Britain, such person
10 and every person who shall aid or encourage the same shall be
11 deemed guilty of a high misdemeanor and shall be punished, on
12 conviction in the supreme judicial court or district court in any
13 county in the State, by fine and imprisonment at the discretion
14 of the court, according to the aggravation of the offence.

1829, 446.

CHAPTER 154.

OF OFFENCES AGAINST THE LIVES AND PERSONS OF INDIVIDUALS.

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 3. Murder of the second degree.
 4. Jury may find the degree—proceeding on plea of guilty.
 5. Manslaughter.
 6. Duel fought *out* of the State—death within it.
 7. Seconds in a duel—accessaries before the fact.
 8. Former conviction or acquittal *out* of the State—effect.
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 10. Accepting challenge, &c.
 11. Going out of the State to fight a duel, &c.
 12. Posting a person for not fighting.
 13. Maiming.
 14. Robbery defined.
 15. Punishment when dangerous weapon is used.
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 18. Abduction and compulsion to marry offender.
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 20. Forcible confinement and kidnapping.
 21. Offence of kidnapping, where punishable.
 22. Abandoning children.
 23. Transporting minors out of the State, &c.
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 26. Attempt to extort money by threats.
 27. Assault with intent to ravish a female *over* 10 years old.
 28. Assault with such intent on one *under* 10 years old.
 29. Assault, when *armed*, with intent to kill, &c.
 30. Assault, when *not* armed, with such intent.
 31. Other felonious assaults.
 32. Attempt to kill by poison—drowning, &c.
 33. Assault and battery defined.
 34. Punishment thereof.
 35. Jurisdiction of justices, as to assaults, &c.

SECT. 1. Whoever shall unlawfully kill any human being, with malice aforethought, either express or implied, shall be deemed guilty of murder.

SECT. 2. Whoever shall commit murder with express malice aforethought, or in perpetrating or attempting to perpetrate any crime punishable with death, or imprisonment in the state prison for life, or for an unlimited term of years, shall be deemed guilty of murder of the first degree, and shall be punished with death. 1821, 2, § 1.

SECT. 3. Whoever shall commit murder otherwise than is set forth in the preceding section, shall be deemed guilty of murder of the second degree, and shall be punished by imprisonment for life in the state prison.

SECT. 4. Upon the trial of an indictment for murder, the jury, if they find the defendant guilty, shall enquire and by

3 their verdict ascertain whether he be guilty of murder of the
4 first or second degree ; but if such defendant be convicted upon
5 his confession in open court, the court shall proceed by the
6 examination of witnesses, to determine the degree of the mur-
7 der, and to award sentence accordingly.

SECT. 5. Whoever shall unlawfully kill any human being in
2 the heat of passion, upon sudden provocation, without malice
3 aforethought, either express or implied, or in any manner shall
4 be guilty of manslaughter, at common law, shall be punished by
5 imprisonment in the state prison, not more than ten years, or by
6 fine not exceeding one thousand dollars, and imprisonment in
7 the county jail not more than one year.

1821, 2, § 3.

SECT. 6. Every person, being an inhabitant or resident of
2 this State, who shall within the same make an appointment or
3 engagement to fight a duel with deadly weapons, and shall fight
4 such duel without the jurisdiction of this State, and in so doing
5 shall inflict a mortal wound on any person whereof such person
6 shall afterwards die within this State, shall be deemed guilty of
7 murder of the first degree within this State and be punished
8 accordingly, and may be indicted, tried and convicted in the
9 county where such death shall happen.

N. Y. R. S. 2 Vol. 657. M. R. S. 125, § 3.

SECT. 7. Every person, being an inhabitant or resident of this
2 State, who shall by previous appointment or engagement made
3 within the same, be the second of either party in such duel as is
4 mentioned in the preceding section, and shall be present, as
5 such second when such mortal wound is inflicted, whereof death
6 shall ensue within this State, shall be deemed to be accessory
7 before the fact, to murder of the first degree within this State,
8 and be punished accordingly, and may be indicted, tried and
9 convicted in the county where the death shall happen.

N. Y. R. S. 2 Vol. 657. M. R. S. 125, § 4.

SECT. 8. Any person indicted under either of the two pre-
2 ceding sections may plead a former conviction or acquittal of
3 the same offence in any other State or country, and such plea,
4 if admitted or established, shall be a bar to all further or other
5 proceedings against such person for the same offence within this
6 State.

M. R. S. 125, § 4.

SECT. 9. Every person who shall fight a duel with deadly
2 weapons, or who shall be present at the fighting of such duel,
3 as an aid, second or a surgeon, or shall advise, encourage or
4 promote such duel, although no homicide ensue ; and every per-
5 son who shall challenge another to fight a duel, or shall send or
6 deliver any verbal or written message, purporting or intended to
7 be such challenge, although no duel shall ensue, shall be
8 punished by imprisonment in the state prison, not more than
9 twenty years, or by fine not exceeding one thousand dollars,
10 and imprisonment in the county jail not more than one year, and
11 shall also be incapable of holding, being elected or appointed

12 to any office, or place of honor, trust or profit under this State
13 for the term of twenty years after conviction. 1821, 2, § 7.

SECT. 10. Every person who shall accept such challenge,
2 and every person who shall engage to act as a second or as a
3 surgeon on such acceptance, or who shall knowingly carry and
4 deliver any such challenge or acceptance, or who shall advise,
5 encourage or promote the same, although no duel ensue, shall
6 be punished by imprisonment in the county jail not more than
7 one year, and by fine not exceeding one thousand dollars, and
8 shall also be incapacitated as mentioned in the preceding sec-
9 tion, for the term of five years after conviction.

1821, 2, § 8.

SECT. 11. If any inhabitant or resident of this State shall
2 leave the same for the purpose of eluding the operation of the
3 provisions of the two preceding sections, with intent to give or
4 accept a challenge or to fight a duel, out of the State, or to aid
5 as a second or as a surgeon, in any such duel out of the State,
6 he shall be deemed as guilty and be subject to like punishment,
7 as if the offence had been committed within this State, and may
8 be indicted, tried and convicted in the county where he may
9 reside, and a former conviction or acquittal for the same offence
10 in any other State or country, may be pleaded on such trial;
11 and if admitted or established, shall be a bar to any further or
12 other proceedings against such person for the same offence.

N. Y. R. S. Vol. 2, 686.

SECT. 12. If any person shall post another, or in writing or
2 print, use any reproachful or contemptuous language to, or con-
3 cerning another for not fighting a duel or for not sending or not
4 accepting a challenge he shall be punished by imprisonment in
5 the county jail, not more than one year, and by fine not exceed-
6 ing one hundred dollars.

N. Y. R. S. Vol. 2, 686, 694. M. R. S. 125, § 8.

SECT. 13. If any person with malicious intent to maim or
2 disfigure, shall cut or maim the tongue, put out or destroy an
3 eye, cut or tear off an ear, cut, slit or mutilate the nose or lip,
4 or cut off or disable a limb or any other member of another
5 person, he shall be punished by imprisonment in the state prison
6 not more than twenty years.

1821, 2, § 4.

SECT. 14. If any person shall with force or violence, or by
2 putting in fear, feloniously steal and take from the person of
3 another any property that is the subject of larceny, he shall be
4 deemed guilty of robbery; and every such offender shall be
5 punished according to the aggravation of the offence, as is pro-
6 vided in the two following sections.

1821, 7, § 7.

SECT. 15. If such offender, at the time of such robbery, shall
2 be armed with a dangerous weapon, with intent, if resisted, to
3 kill or maim the person robbed, or, if being so armed, he shall
4 wound or strike the person robbed, or if he shall have any con-
5 federate aiding and abetting him in such robbery, present and

6 so armed, he shall be punished by imprisonment in the state
7 prison for life. 1821, 7, § 8. 1829, 430, § 1.

SECT. 16. If such offender shall commit such robbery, other-
2 wise than as mentioned in the preceding section, he shall be
3 punished by imprisonment in the state prison for any term of
4 years, or for life. 1821, 7, § 7. 1829, 430, § 1.

SECT. 17. If any man shall ravish and carnally know any
2 female of the age of ten years or more, by force and against
3 her will, or shall unlawfully or carnally know and abuse any
4 female child under the age of ten years, he shall be punished
5 by imprisonment in the state prison for life.

1821, 3, § 1. 1829, 430, § 5.

SECT. 18. If any person shall take any woman unlawfully
2 and against her will, and by force, menace or duress compel her
3 to marry him, or any other person, or to be defiled, shall be pun-
4 ished by imprisonment in the state prison for life or any term of
5 years.

N. Y. R. S. 663. Common Law, 3 Henry VII, ch. 2, 39 Eliz-
abeth, ch. 9.

SECT. 19. If any person shall take any woman unlawfully and
2 against her will, with intent to compel her by force, menace or
3 duress, to marry him or any other person, or to be defiled, he
4 shall be punished by imprisonment in the state prison, not more
5 than ten years. 1821, 3, § 1. 1829, 430, § 5.

SECT. 20. Whoever without lawful authority shall confine or
2 imprison any person in this State against his will, or shall forc-
3 bly transport or carry any person out of the State, or from one
4 place to another place within the State, without his consent; or
5 shall forcibly seize, inveigle, convey and kidnap any person, with
6 intent to cause such person to be so confined or imprisoned, or
7 so transported or carried against his will and consent; or shall
8 as a slave any negro or mulatto, or other person of color, who
9 shall have been unlawfully seized, inveigled or kidnapped as
10 aforesaid, he shall be punished by imprisonment in the state
11 prison, not more than five years, or by fine not exceeding one
12 thousand dollars and imprisonment in the county jail not more
13 than one year. 1821, 22, § 1. 1838, March 15.

SECT. 21. Every offence mentioned in the preceding section
2 may be indicted and tried, either in the county in which the
3 same may have been committed, or in which such person may have
4 been taken or confined, or to which he may have been carried
5 or brought; and on the trial, the consent of such person shall
6 not be a defence, unless it shall be made to appear to the jury
7 that such consent was not obtained by fraud, threats or duress.

1838, March 15.

SECT. 22. If the father or mother of any child, under the age
2 of six years, or any person to whom such child shall have been
3 confided, shall expose such child in any highway, street, field,
4 house or outhouse, or in any other place, with intent wholly to
5 abandon it, he or she shall be punished by imprisonment in the

6 state prison, not more than five years, or by fine, not exceeding
7 five hundred dollars and imprisonment in the county jail not
8 more than one year. N. Y. R. S. Vol. 2, 665.

SECT. 23. Every master or commander of any ship or vessel
2 who shall knowingly carry or transport out of this State any
3 person under the age of twenty-one years, or any apprentice or
4 indented servant, without the consent of his parent, master and
5 guardian, shall be punished by a fine not exceeding two hun-
6 dred dollars, and shall be further liable to such parent, master
7 or guardian for all damages sustained, in an action on the case.
1821, 22, § 2.

SECT. 24. If any person within this State shall enlist or
2 cause to be enlisted into the army of the United States any
3 minor under the age of twenty-one years, knowing him to be
4 such minor, without the consent in writing of his parent, master
5 and guardian, and such minor shall within six months after his
6 enlistment, be removed out of this State, so that he cannot be
7 had before the tribunals of this State by writ of habeas corpus,
8 he shall be punished by a fine not exceeding five hundred dol-
9 lars, and imprisonment in the county jail not more than one year.
1821, 22, § 3.

SECT. 25. If any person, knowing one to be a minor under
2 the age of twenty-one years, shall persuade him to depart from
3 this State, with intent to enlist into the army of the United
4 States, without the consent of his parent, master and guardian,
5 he shall be punished as provided in the following section.

1821, 22, § 4.

SECT. 26. If any person shall, either verbally or by any writ-
2 ten or printed communication, maliciously threaten to accuse
3 another of a crime or offence, or to do any injury to the person or
4 property of another, with intent thereby to extort any money or
5 pecuniary advantage whatever, or to compel the person, so threat-
6 ened, to do any act against his will, he shall be punished by
7 imprisonment in the state prison, not more than two years, or
8 by fine not exceeding five hundred dollars, and imprisonment in
9 the county jail not more than one year.

M. R. S. 125, § 57. N. Y. R. S. Vol. 2, 678.

SECT. 27. If any person, with intent to commit a rape, shall
2 assault any female of the age of ten years or more, he shall be
3 punished by imprisonment in the state prison not more than ten
4 years, or by fine not exceeding five hundred dollars and impris-
5 onment in the county jail not more than one year.

1821, 3, § 3.

SECT. 28. If any person, with intent to commit a rape, shall
2 assault a female under the age of ten years, he shall be punished
3 by imprisonment in the state prison, not more than twenty years.

1821, 3, § 4.

SECT. 29. If any person, being armed with a dangerous
2 weapon, shall assault another with intent to murder, kill, maim,

3 rob, steal, or to commit arson or burglary, he shall be punished
4 by imprisonment in the state prison not more than twenty years.

1821, 2, § 5, 6—7, § 9.

SECT. 30. If any person, not being armed with a dangerous
2 weapon, shall assault another with intent to murder, kill, maim,
3 rob, steal, or to commit arson or burglary, he shall be punished
4 by imprisonment in the state prison, not more than ten years, or
5 by fine, not exceeding one thousand dollars, and imprisonment
6 in the county jail, not more than one year.

1821, 2, § 6—7, § 11. 1836, 241, § 1.

SECT. 31. If any person shall assault another with intent to
2 commit any felony or crime, punishable with imprisonment in
3 the state prison, where the punishment for such assault is not
4 otherwise herein before prescribed, he shall be punished by
5 imprisonment in the state prison, not more than five years, or
6 by fine not exceeding five hundred dollars, and by imprisonment
7 in the county jail, not more than one year.

SECT. 32. If any person with intent to murder, shall mingle
2 poison in any food, drink or medicine, or shall poison any
3 spring, well or reservoir of water, or shall in any way attempt
4 to kill or murder by poisoning, drowning, suffocating, or by any
5 other means, not constituting an assault with an intent to kill or
6 murder, he shall be punished by imprisonment in the state
7 prison, not more than twenty years. 1836, 241, § 2.

SECT. 33. If any person shall unlawfully offer or attempt to
2 strike, hit, touch or do any violence, however small to the per-
3 son of another in a wanton, wilful, angry or insulting manner,
4 with or without a weapon, or through the instrumentality or
5 intervention of any thing animate or inanimate, and under cir-
6 cumstances where an intention and existing ability at the time
7 to do some violence to the person of another is apparent, he
8 shall be deemed guilty of an assault; and if such attempt be
9 effected, and the person of another be struck, hit, touched or
10 injured, however slight degree in manner above mentioned, the
11 offender shall be deemed guilty of an assault and battery.

SECT. 34. Whoever shall be convicted of an assault or an
2 assault and battery, where no other punishment is prescribed,
3 shall be punished by a fine not exceeding two hundred dollars,
4 and by imprisonment in the county jail, not more than one year.

SECT. 35. Every justice of the peace shall have jurisdiction
2 with the district court of all assaults (committed in his county)
3 and batteries, which are not of a high and aggravated nature,
4 and on conviction, may punish the offender by fine, not exceed-
5 ing ten dollars, or by imprisonment in the county jail, not more
6 than one month. 1821, 76, § 1.

NOTES.

SECT. 1. In this section the word "human" is substituted in the room of "reasonable." An idiot is a *human* being, but cannot properly be termed a *reasonable* being. He could not be considered as capable of committing a crime, yet the person who murders an idiot surely ought to be punished as a murderer.

SECTS. 2, 3, 4. Some new principles are introduced in these sections, and a distinction made as to the *degrees of murder*, and difference as to the punishment; which distinction is founded on the nature of the *malice* with which the crime is committed. The *second* section refers to *express malice*; and those cases which shew that the crime was committed with deliberation and coupled with the intention of committing some other flagrant offence. The third section refers to cases where *such* proof of deadly malice does not exist as stated in the second section; but where the malice is *implied* from circumstances. The third section can only apply to cases where the prisoner pleads guilty *generally*; the court therefore must hear the evidence and draw the line between the degrees of murder, which line the jury draw in cases of trial. These sections are taken from the revised statutes of New York; and the commissioners have proposed them for enactment, should the Legislature approve them. It is believed that very few jurors are found who would hesitate to pronounce a prisoner guilty of murder when *express malice* is clearly proved; but when the malice is to be *inferred* or *implied* from circumstances, different minds may draw different conclusions from the same facts; hence, in many cases, as the law now is, where such is the reasoning and conclusion of a portion of the jury, a conviction of the crime of murder cannot be obtained, when death is to be the doom of the offender. The above distinction or degrees of murder, may relieve a jury from painful doubts and difficulties, and a conviction of murder of the *second* degree may be the consequence. Thus the offender will be duly punished; and if facts should afterward appear shewing the conviction to have been wrong, the offender is in a situation where mercy may find him, and from which a pardon may relieve him. In the existing state of public opinion on the subject of capital punishment, the foregoing considerations are presented to view; of the weight or value of them, the Legislature will decide. The above sections are taken from laws of Pennsylvania and Virginia and a late report of the committee to codify the criminal law of Massachusetts.

SECT. 5. Is unaltered, except that the offence is more definitely described.

SECT. 6. This section contains some new provisions, taken from the codes of New York and Massachusetts. They are designed to reach those cases, where the offenders have carefully adopted measures to accomplish their object, and evade punishment by the mode of accomplishing it.

SECT. 7. This section proceeds on the same principle.

SECT. 8. Contains a limitation of the power given to our courts by the 6th and 7th sections, which justice seems to require.

SECT. 11. This section, in the spirit of its provisions, is similar to the 6th and 7th.

SECTS. 18, 19. These sections are taken from the revised statutes of New York; we have no statute relating to the subject in this State. It is believed to be a proper protection.

SECT. 22. This section is new; taken from New York code. The provisions of it though less necessary in this State than in that, still the offence is a cruel one.

SECT. 26. In this State, we have no such statute provision; and this is taken from the New York and Mass. codes. It would seem to be required that such an offence should appear on our statute book.

SECT. 33. This definition of an assault is taken in part from Livingston's criminal code, and is proposed as an accurate and useful one, which should be known to all our citizens.

CHAPTER 155.

OF OFFENCES AGAINST HABITATIONS AND OTHER BUILDINGS,
INCLUDING ARSON, BURGLARY AND SIMILAR CRIMES.

- Sect.* 1. Arson—definition of it, &c.
 2. Burning dwelling house in day time.
 3. Burning other buildings in the night.
 4. Burning such in day time.
 5. Burning other buildings, vessels, bridges, &c.
 6. Burning produce, lumber, &c. &c.
 7. Married women liable for such offences.
 8. Burglary defined.
 9. Punishment thereof, when offender is *armed*.
 10. Punishment, when *not* armed.
 11. Entering a dwelling house in night without breaking.
 12. What constitutes a *dwelling house*.

SECT. 1. If any person shall wilfully and maliciously set fire
 2 to the dwelling-house of another, or to any out-building adjoin-
 3 ing the same, or to any other building, owned by himself or
 4 another, with the intent that such dwelling-house shall be burnt ;
 5 and by the kindling of such fire, or the burning of such other
 6 building, such dwelling-house shall be burnt in the night time,
 7 he shall be punished with death ; but if the defendant shall
 8 prove on trial, and the jury shall find that at the time of com-
 9 mitting such offence, there was no person lawfully in the
 10 dwelling-house so burnt, he shall be punished by imprisonment
 11 for life in the state prison. 1829, 430, § 4. M. R. S. 126, § 1.

SECT. 2. If any person shall wilfully and maliciously set fire
 2 to any dwelling-house of another, or any out-building adjoining
 3 the same, or to any other building owned by himself or any other
 4 person, with the intent that such dwelling-house shall be burnt ;
 5 and by the kindling of such fire, or by the burning of such
 6 other building, such dwelling-house shall be burnt in the day
 7 time, he shall, on conviction of such offence be punished by
 8 imprisonment for life in the state prison. 1821, 4, § 2.

SECT. 3. If any person shall wilfully and maliciously set fire
 2 to any meeting-house, court-house, jail, town-house, college or
 3 academy, or any other building erected for public use ; or to
 4 any store, barn, stable, shop or office of another, being within
 5 the curtilage of a dwelling-house, so that such dwelling-house
 6 shall be endangered by such firing ; and by the kindling of such
 7 fire any such public or other building shall be burnt in the night
 8 time, he shall be punished by imprisonment in the state prison
 9 for life or any term of years. 1821, 4, § 2.

SECT. 4. If any person shall wilfully and maliciously set fire
 2 to and burn any such building, and in the manner or by the
 3 means mentioned in the preceding section in the day time, he
 4 shall be punished by imprisonment in the state prison not more
 5 than ten years. 1821, 4, § 3,

SECT. 5. If any person shall wilfully and maliciously burn
 2 any other building, or any shop or vessel, or any bridge, lock,
 3 dam or floom of another, he shall be punished by imprisonment
 4 in the state prison, not more than ten years. 1821, 4, § 3.

SECT. 6. If any person shall wilfully and maliciously burn
 2 any corn, grain, hay or other produce, or any fences, wood,
 3 boards or other lumber, or any soil, vegetables, trees, under-
 4 wood or any other property of another, he shall be punished by
 5 imprisonment in the state prison not more than three years.

1821, 4, § 4.

SECT. 7. The preceding sections shall severally extend to a
 2 married woman, who shall commit either of the offences therein,
 3 without the consent of her husband, though the property burnt
 4 or set on fire may belong in part or in whole to her husband.

M. R. S. 126, § 7.

SECT. 8. If any person with intent to commit a felony, shall
 2 in the night time break and enter, or having entered with such
 3 intent, shall in the night time break a dwelling-house, any per-
 4 son being then lawfully therein, such offender shall be deemed
 5 guilty of burglary, and shall be punished, according to the
 6 aggravation of the offence, as is provided in the two following
 7 sections.

1821, 61, § 2.

SECT. 9. If such offender, at the time of committing such
 2 burglary shall be armed with a dangerous weapon, or shall so
 3 arm himself after having entered such dwelling-house, or shall
 4 actually assault any person being lawfully therein, or shall have
 5 any confederates present, aiding and abetting in such burglary,
 6 he shall be punished by imprisonment in the state prison for
 7 life.

1821, 6, § 1.

SECT. 10. If such offender shall commit such burglary, oth-
 2 erwise than as mentioned in the preceding section, he shall be
 3 punished by imprisonment in the state prison for life or any term
 4 of years.

1821, 6, § 2.

SECT. 11. If any person with intent to commit a felony, shall
 2 in the day time break and enter, or shall in the night time enter
 3 without breaking, any dwelling-house, or shall at any time break
 4 and enter any office, bank, shop, warehouse, ship or vessel, or
 5 any building in which any goods, merchandize or valuable things
 6 shall be kept for use, sale or deposit, any person being lawfully
 7 therein and put in fear, such offender shall be punished by
 8 imprisonment in the state prison, not more than ten years; but
 9 if no person was lawfully in such building, ship or vessel, and
 10 put in fear, at the time of committing such offence, such offen-
 11 der shall be punished by imprisonment in the state prison not
 12 more than five years or by fine not exceeding five hundred dol-
 13 lars, and imprisonment in the county jail not more than one
 14 year.

1821, 7, § 5.

SECT. 12. Any house, prison, jail or other permanent edifice,
 2 usually occupied by any person or persons by lodging therein at
 3 nights, shall be deemed a dwelling-house of any such persons,

4 although such occupants may for a time be absent, leaving furniture or goods, with an intention of returning; but no warehouse, barn or other out-house shall be deemed a dwelling-house 7 or part of a dwelling-house, unless the same shall be joined to 8 or connected and occupied with, and as a part of the dwelling-house.

Com. law. East. C. L. 15, § 11 : do. 21, § 5. 1 Hawk. 38, § 18.
4 Black. 416. N. Y. R. S. 669, 675.

NOTES.

SECT. 1. The last clause of this section, is taken from the revised statutes of Mass.; the merciful character of it, seems to recommend it as worthy of enactment.

SECT. 7. This is a new section, taken from the Mass. revised statutes. When a married woman, in company with her husband does an act in company with her husband, which is criminal on *his* part, it is presumed she acts by his command or consent, and so is not liable to punishment; this section negatives all *consent* on the part of her husband, and therefore if she burns *his* house or buildings she shall be punishable, notwithstanding she has an interest in it herself; that is, a contingent right of dower.

SECT. 9. The circumstance of the offender's having a *confederate* present, aiding and abetting him, is *new*, and added to the section, as shewing previous arrangement and deliberation; being circumstances of aggravation.

SECT. 12. This seems to be a very useful section; containing a clear definition of a *dwelling house*; as the same has been established by many decisions, named in the margin. It is broader than the present statute.

CHAPTER 156.

OF LARCENY AND THE RECEIVING OF STOLEN GOODS.

- Sect.**
1. Simple larceny.
 2. Larceny in night time in a dwelling house, &c.
 3. Larceny in day time in such house.
 4. Larceny at fires.
 5. Larceny from the person of another.
 6. Embezzlement by various officers.
 7. Embezzlement by carriers.
 8. Falsely personating another, &c.
 9. Second conviction of larceny.
 10. Receiving or concealing stolen goods.
 11. Effect of restitution of goods concealed, &c.
 12. Second conviction of receiving stolen goods.
 13. Receiver may be tried before the thief.
 14. Officer to secure the goods, &c.
 15. Jurisdiction of justices of the peace.

SECT. 1. Any person who shall steal, take and carry away, of
 2 the property of another, any money, goods or chattels, any writ,
 3 process or public record, any bond, bank note, promissory note,
 4 bill of exchange or other bill, order or certificate, or any book
 5 of accounts respecting money, goods or other things, or any
 6 deed or writing containing a conveyance of real estate, or any
 7 valuable contract in force, or any receipt, release or defeasance,
 8 or any instrument or writing whereby any demand, right or obli-
 9 gation shall be created, increased, extinguished or diminished,
 10 shall be deemed guilty of larceny, and shall be punished, when
 11 the value of the property stolen shall exceed the sum of one
 12 hundred dollars, by imprisonment in the state prison not more
 13 than five years; and when the value of the property stolen shall
 14 not exceed the sum of one hundred dollars, by imprisonment in
 15 the State prison not more than two years, or by fine not exceed-
 16 ing one hundred dollars and imprisonment in the county jail not
 17 more than one year. 1821, 7, § 1.

SECT. 2. Every person who shall in the night time commit
 2 larceny in any dwelling-house or the out-houses adjoining to and
 3 occupied therewith, without breaking, or shall in the night time
 4 break and enter any office, bank, shop, ware-house, barn or stable
 5 or any ship or vessel, or any building in which any goods, mer-
 6 chandize or any valuable thing shall be kept for use, sale or
 7 deposit, or any court-house, jail, meeting-house, college or
 8 academy or other building for public use, and commit larceny
 9 therein, shall be punished by imprisonment in the state prison
 10 not more than fifteen years. 1821, 7, § 4, 5, 6.

SECT. 3. Every person who shall in the day time commit
 2 larceny in any dwelling-house or the out-houses adjoining to and
 3 occupied therewith, without breaking, or in the day time shall
 4 break and enter any ship or vessel, or any of the other buildings
 5 mentioned in the preceding section, and commit larceny therein,
 6 shall be punished by imprisonment in the state prison not more
 7 than six years, or by fine not exceeding one thousand dollars,
 8 and imprisonment in the county jail not exceeding one year.

1821, 7, § 6.

SECT. 4. Every person who shall commit larceny by stealing
 2 in any building that is on fire, or by stealing any property
 3 removed in consequence of alarm occasioned by fire, shall be
 4 punished by imprisonment in the state prison, not more than
 5 five years, or by fine not exceeding five hundred dollars, and
 6 imprisonment in the county jail, not more than one year.

M. R. S. 126, § 15. 1821, 132, § 9.

SECT. 5. Every person who shall commit larceny by stealing
 2 from the person of another, shall be punished by imprisonment
 3 in the state prison not more than six years, or by fine not exceed-
 3 ing five hundred dollars, and imprisonment in the county jail not
 4 exceeding one year. 1821, 7, § 10. Hawk. 34.

SECT. 6. If any officer, agent, clerk or servant of any incor-
 2 porated company or if any clerk, agent or servant of any person

3 or copartnership, except apprentices and other persons under the
4 age of sixteen years, shall embezzle and fraudulently convert to
5 his own use or shall take and secrete, with intent to convert
6 to his own use, without the consent of his employer or master
7 any money or property of another which shall have come to his
8 possession, or shall be under his care by virtue of such employ-
9 ment, he shall be deemed, by so doing, to have committed lar-
10 ceny, and shall be punished accordingly.

N. Y. R. S. Vol. 2, 678. M. R. S. 126, § 29.

SECT. 7. If any carrier or other person, to whom any money,
2 goods or other property, which may be the subject of larceny,
3 shall have been delivered, to be carried for hire, or if any other
4 person who shall be entrusted with such property, shall embezzle
5 or fraudulently convert to his own use, any such money, goods
6 or other property, either in the mass, as the same were delivered
7 or otherwise, and before the same shall be delivered at the place
8 or to the person, whom and to whom they were to be delivered,
9 he shall be deemed, by so doing, to have committed larceny and
10 be punished accordingly.

N. Y. R. S. 679. M. R. S. 126, § 30.

SECT. 8. Every person who shall falsely personate or represent
2 another, and in such assumed character, shall receive any money
3 or other thing intended to be delivered to the party so person-
4 ated, with intent to convert the same to his own use, shall be
5 deemed, by so doing, to have committed larceny, and shall be
6 punished accordingly. M. R. S. 126, § 31.

SECT. 9. If any person, having been before convicted of lar-
2 ceny upon indictment, or of being accessory thereto before the
3 fact, shall afterwards commit, or be accessory before the fact to
4 another larceny, and be thereof convicted on indictment; or if
5 any person, at the same term of the court shall be convicted as
6 principal or as accessory before the fact, in three distinct larce-
7 nies, he shall be deemed a common and notorious thief, and shall
8 be punished by imprisonment in the state prison, not less than
9 four years, nor more than fifteen years. 1821, 7, § 3.

SECT. 10. Every person who shall bury, receive or aid in
2 concealing any stolen money, goods or other property, knowing
3 the same to have been stolen, shall be punished by imprisonment
4 in the state prison, not more than five years, or by fine not
5 exceeding five hundred dollars and imprisonment in the county
6 jail not more than one year. 1821, 7, § 12.

SECT. 11. If any person, on being convicted of the offence
2 described in the preceding section, and when the stealing of the
3 property was a simple larceny, shall make satisfaction to the
4 party injured, to the full value of the property stolen, and not
5 restored, he shall not be sentenced to imprisonment in the state
6 prison. 1821, 7, § 15.

SECT. 12. If any person, after having been convicted of the
2 offence of burying, receiving or aiding in the concealment of
3 stolen property, shall again be guilty and convicted of a like

4 offence; or if any person, at the same term of the court, shall
5 be convicted of three distinct acts of burying, receiving or aid-
6 ing in the concealment of stolen property, he shall be punished
7 by imprisonment in the state prison not more than ten years.

1821, 7, § 14.

SECT. 13. In any prosecution for the offence of burying,
2 receiving or aiding in the concealment of stolen property,
3 knowing it to be stolen, it shall not be necessary to aver, nor on
4 trial thereof to prove that the person who stole such property
5 has been convicted.

1821, 7, § 13.

SECT. 14. The officer who shall arrest any person charged as
2 principal or accessory in any larceny, or with burying, receiving
3 or concealing stolen property, shall secure the property alleged
4 to have been stolen, and shall be answerable for the same; and
5 shall annex a schedule thereof to his return; and upon convic-
6 tion of the offender, the stolen property shall be returned to the
7 owner.

1821, 7, § 17.

SECT. 15. Every justice of the peace in his proper county
2 shall have concurrent jurisdiction of the offences mentioned in
3 the first and tenth sections of this chapter, when the property
4 alleged to have been stolen, received or concealed, known to be
5 stolen, shall not exceed in value the sum of ten dollars; in
6 which case, upon conviction before a justice of the peace, the
7 punishment of a first offence shall be fine, not exceeding ten
8 dollars, and by imprisonment in the county jail, not more than
9 two months; and upon a second conviction as aforesaid, for a
10 like offence, committed after a previous conviction, the punish-
11 ment shall be by fine not exceeding twenty dollars and by
12 imprisonment in the county jail, not more than six months; sav-
13 ing to the person, so convicted, the right of appeal as by law
14 allowed.

1821, 7, § 1.

NOTES.

SECT. 4. This section provides for the case noticed in the existing law. It is taken from Mass code. It seems deserving severe punishment; but varies from it in some measure.

SECTS. 6 and 7. Provide that certain unlawful acts therein described, shall be deemed *larceny* and punished as such. They serve to remove all doubts as to the nature of the offence which may have existed, arising from the nature of the possession or care of the property by the offender, before and at the time of the offence.

SECT. 8. This, in its spirit, is similar to the 6th and 7th sections.

SECT. 15. This section is new; and taken from M. R. S. It seems to be recommended by the circumstance of its harmony with the spirit of the 12th section, which punishes a *second* offence more severely than a *first*.

CHAPTER 157.

OF FORGERY AND COUNTERFEITING.

- Sect.* 1. Forgery of records, certificates, securities, &c.
 2. Uttering same as true, &c.
 3. Forgery of public securities.
 4. Forging bank bills, &c.
 5. Having ten or more in possession, &c.
 6. Having any such bills or securities in possession.
 7. Uttering same as true.
 8. Punishment on second conviction of above offences.
 9. Making or possessing plates, tools, &c.
 10. What is evidence to prove forgery of bills.
 11. Certificates of certain United States officers—evidence.
 12. Case of false certificates as to proof of deeds, &c.
 13. Joining parts of notes or instruments together.
 14. Total erasure, when deemed forgery.
 15. Affixing fictitious signatures.
 16. Forging gold or silver coin, having ten or more in possession.
 17. Having such in possession—less than ten, &c.
 18. Punishment on second conviction of said offences.
 19. Making or possessing moulds or tools.
 20. Forging foreign coin, &c.
 21. Rewards to prosecutors, &c.

SECT. 1. If any person, with intent to defraud, shall falsely
 2 make, alter, forge or counterfeit any public record or any pro-
 3 cess issued or purporting to be issued by any competent court,
 4 magistrate or officer or any pleading or proceeding filed or
 5 entered in any court of law or equity, any attestation or certifi-
 6 cate of any public officer or other person in relation to any
 7 matter wherein such attestation or certificate is required by law
 8 or may be received or be taken as legal proof; any charter,
 9 deed, will, testament, bond, writing, obligatory, power of attor-
 10 ney, letter of credit, policy of insurance, bill of lading, bill of
 11 exchange, promissory note or any order, acquittance, discharge
 12 or accountable receipt for money or other valuable thing; or
 13 any acceptance of any bill of exchange, or order, or any endorse-
 14 ment or assignment of any bill of exchange, promissory note or
 15 order or of any debt or contract, or any other instrument in
 16 writing, being or purporting to be the act of another by which
 17 any pecuniary demand or obligation, or any right or interest in
 18 or to any property whatever shall be, or shall purport to be
 19 created, increased, transferred, conveyed, discharged or dimin-
 20 ished, he shall be punished by imprisonment in the state prison
 21 not less than two years, nor more than ten years.

1821, 11, § 1. N. Y. R. S. Vol. 2, 673. Livingston's Code,
 409.

SECT. 2. If any person shall utter and publish as true, any
 2 record, process, certificate, deed, will or any other instrument
 3 or writing mentioned in the preceding section, knowing the

4 same to be false, altered, forged or counterfeit, with intent to
5 defraud, he shall be punished by imprisonment in the state
6 prison not less than two years, nor more than ten years.

1821, 11, § 1.

SECT. 3. If any person with intent to defraud, shall falsely
2 make, alter, forge or counterfeit any note, certificate, bill of
3 credit, or other instrument, being public security for money or
4 other property issued, or purporting to be issued by authority of
5 this State, or any other of the United States or any territory
6 thereof, or any endorsement or other writing purporting to trans-
7 fer the right or interest of any holder of such public security,
8 he shall be punished by imprisonment in the state prison for
9 life or any term of years.

1821, 11, § 2.

SECT. 4. If any person with intent to defraud, shall falsely
2 make, alter, forge or counterfeit any bank bill or promissory
3 note, payable to the bearer thereof, or to the order of any per-
4 son, issued or purporting to be issued by any bank or banking
5 company established within this State or in any of the United
6 States and signed in behalf of such bank or banking company,
7 he shall be punished by imprisonment in the [state] prison for
8 life or any term of years.

1821, 11, § 2.

SECT. 5. If any person shall have in his possession at one
2 time, ten or more of any such forged or counterfeit public securi-
3 ties as are mentioned in the third section of this chapter or
4 ten or more of any bank bills or notes in the similitude of the
5 bank bills or notes payable to the bearer or to the order of any
6 person, issued or purporting to have been issued by any bank or
7 banking company established within this State or any part of
8 the United States, or in any foreign province, state or govern-
9 ment, with intent to utter and pass such public securities, bank
10 bills or notes as true or false, knowing the same to be forged or
11 counterfeit, shall be punished by imprisonment in the state
12 prison for life or any term of years.

1821, 11, § 2.

SECT. 6. If any person shall have in his possession any public
2 security, bank bill or note before mentioned in this chapter, with
3 intent to utter and pass the same as true or false, knowing the
4 same to be forged or counterfeit, he shall be punished by im-
5 prisonment in the state prison not more than three years, or by
6 fine, not exceeding one thousand dollars and imprisonment in
7 the county jail not more than one year.

1821, 11, § 3.

SECT. 7. If any person shall utter or tender in payment, as
2 true, any public security, bank bill or note before mentioned in
3 this chapter, knowing the same to be forged or counterfeit, with
4 intent to defraud, he shall be punished as is provided in the
5 preceding section.

1821, 11, § 3.

SECT. 8. If any person, having been convicted of the offence
2 described in the preceding section, shall afterwards be guilty
3 and convicted of a like offence; or if any person, at the same
4 term of the court shall be convicted of three such distinct

5 offences, he shall be punished by imprisonment in the state
6 prison, not less than three years, and not more than ten years.

1821, 11, § 3.

SECT. 9. If any person shall make, mend, engrave or mould
2 or begin to make, mend, engrave or mould any plate, block, press
3 or tool or instrument, or make or provide any paper or other
4 material designed and adapted for the making of any false,
5 forged or counterfeit public security, bank bill or note before
6 mentioned in this chapter; or shall have in his possession any
7 such plate or block, engraved in any part, or any press, tool or
8 other instrument adapted and designed for the purpose aforesaid,
9 with intent to use the same or to permit the same to be used for
10 that purpose, he shall be punished by imprisonment in the state
11 prison, not more than three years, or by fine not exceeding five
12 hundred dollars and imprisonment in the county jail not more
13 than one year.

1821, 11, § 7.

SECT. 10. In prosecutions for any offence in relation to bank
2 bills or notes described in this chapter, the testimony of the
3 president or cashier of any bank may be dispensed with, if he
4 reside out of the State or more than forty miles from the place of
5 trial; and any other witness, acquainted with the signature of
6 such officers, or having knowledge of the difference between the
7 true and counterfeit bills of such bank, may be admitted as a
8 witness to prove that the same are forged or counterfeit.

1821, 11, § 5.

SECT. 11. In prosecutions for forging, altering or counterfeit-
2 ing any public security, issued under the authority of the United
3 States or of any State or territory, or for uttering and publishing
4 the same, or being possessed thereof with intent to utter and
5 and pass the same, the certificate under oath, of the secretary of
6 the treasury, or treasurer of the United States, or of the secre-
7 tary or treasurer of any State or territory, on whose behalf such
8 public security purports to be issued, of the tenor of the true
9 bill of credit or other public security alleged to be forged or
10 altered, shall be admitted in evidence for the purpose of proving
11 the same to be forged or altered.

1821, 11, § 6. Con. of Maine, Art. 1, § 6.

SECT. 12. If any officer or magistrate legally authorized to
2 take the proof or acknowledgment of any conveyance of real
3 estate or of any other instrument, which by law may be recorded,
4 shall wilfully and falsely certify that any such instrument or
5 conveyance was acknowledged by any party thereto, when in
6 truth, no such acknowledgment was made, or that the same
7 was proved, when in truth no such proof was made, he shall be
8 deemed guilty of forgery and shall be punished as provided in
9 the first section.

N. Y. R. S. § 671.

SECT. 13. If any person shall fraudulently connect together
2 different parts of several genuine bank bills, notes or other
3 instruments in writing, so as to produce one instrument, or shall

4 alter any note or instrument in writing in a matter that is mate-
5 rial, with intent to defraud, the same shall be deemed forgery in
6 like manner as if such note, bill or instrument had been forged
7 and counterfeited, and the offender shall be punished accord-
8 ingly.

N. Y. R. S. 675. 10 Mass. R. 34. M. R. S. 127, § 12.

SECT. 14. The total erasure or obliteration of any record,
2 process, certificate, deed, will or any other instrument in writing,
3 mentioned in this chapter, with intent to defraud, shall be deemed
4 forgery, and the offender shall be punished in like manner as
5 if the same had been forged and counterfeited.

N. Y. R. S. 675.

SECT. 15. If any fictitious or pretended signature, purporting
2 to be the signature of any officer or agent of any corporation,
3 shall be fraudulently affixed to any instrument in writing, pur-
4 porting to be a draft, note, or other evidence of debt, issued by
5 such corporation, with intent to pass the same as true, it shall
6 be deemed forgery, though no such person may ever have been
7 an officer or agent of such corporation, or ever have existed;
8 and the offence shall be punished as provided in the first section
9 of this chapter.

SECT. 16. If any person shall forge or counterfeit any gold
2 or silver coin, current in this State, or shall have in his posses-
3 sion, at one time, ten or more pieces of false money or coin,
4 current as aforesaid, with intent to pass the same as true or false,
5 knowing the same to be forged and counterfeit, he shall be pun-
6 ished by imprisonment in the state prison, for life or any term of
7 years.

1821, 11, § 8.

SECT. 17. If any person shall bring into this State, or have in
2 his possession at one time, any number, less than ten, of such
3 false or counterfeit coin, knowing the same to be false or coun-
4 terfeit, with intent to utter or pass the same as true or false; or
5 if any person shall utter or pass or tender in payment any such
6 coin, knowing it to be false or counterfeit, with intent to defraud
7 any person, he shall be punished by imprisonment in the state
8 prison, not more than three years, or by fine not exceeding one
9 thousand dollars, and imprisonment in the county jail, not more
10 than one year.

1821, 11, § 9.

SECT. 18. If any person having been convicted of either of
2 the offences mentioned in the preceding section shall afterwards
3 be guilty and convicted of a like offence; or if any person, at
4 the same term of the court, shall be convicted of three such
5 distinct offences, he shall be punished by imprisonment in the
6 state prison not less than three years, nor more than ten years.

1821, 11, § 9.

SECT. 19. If any person shall cast, stamp, engrave, make or
2 mend, or shall have in his possession any mould, die, press or
3 other instrument or tool, adapted and designed for the forging
4 or counterfeiting of any coins before mentioned, with intent to
5 use the same or to permit the same to be used for that purpose,

6 he shall be punished by imprisonment in the state prison not
7 more than three years, or by a fine not exceeding five hundred
8 dollars and imprisonment in the county jail not more than one
9 year. 1821, 11, § 10.

SECT. 20. If any person shall forge or counterfeit any gold or
2 silver coin of any foreign government or country with intent to
3 export the same, to injure or defraud any foreign government or
4 the subjects thereof, he shall be punished by imprisonment in
5 the state prison not more than three years, or by fine not exceed-
6 ing one thousand dollars, and imprisonment in the county jail
7 not more than one year. N. Y. R. S. 672.

SECT. 21. There shall be paid to the person who shall inform
2 and prosecute in the cases hereinafter mentioned, the sums, fol-
3 lowing, by way of record; that is to say, the sum of sixty dollars
4 for each person convicted and sentenced for either of the offences
5 of forging or counterfeiting any public security, bank bill or note
6 or any coin, as described in the third, fourth and sixteenth sec-
7 tions of this chapter; and the sum of forty dollars for each per-
8 son convicted and sentenced for either of the offences of pos-
9 sassing with intent to utter, or of knowingly uttering any such
10 public security, bank bill, note or coin as described in the fifth,
11 sixth, seventh, sixteenth and seventeenth sections; which rewards
12 shall be paid out of the treasury of the State, by warrant of the
13 governor with advice of council, to be granted on certificate of
14 the judge or court before whom the conviction shall be had;
15 and where there shall be two or more informers and prosecutors
16 for the same offence, the said reward shall be divided between
17 them equally or in such proportions as said judge or court shall
18 determine. 1821, 11, § 11.

NOTES.

SECT. 1. In the latter part of this section, some additional language has been introduced, for the purpose of more completely embracing all cases in which forgery could be committed; they are borrowed from the sources mentioned in the margin.

SECT. 12. This is new, and borrowed from New York code; embracing cases falling within the reason and design of the chapter, but which have not been provided for in any of our existing statutes.

SECT. 13. New. The same remark will apply, as made relating to the preceding section. See the cases noted in the margin.

SECT. 14. This declares a fact to amount to a forgery, which is designed to produce the usual effects of that crime. It is considered as declarative of a principle of the common law; which is thus made known to all.

SECT. 20. This is a new section, from the New York code, to prevent another species of fraud and mischief; and to render the law plain and intelligible on the subject.

CHAPTER 158.

OF OFFENCES AGAINST PUBLIC JUSTICE.

- Sect.* 1. Definition of perjury.
 2. Subornation of perjury.
 3. Persuading another to commit the offence, though the same be not committed.
 4. Proceedings on suspicion of perjury.
 5. Witnesses to be recognized.
 6. Bribery of officers.
 7. Acceptance of bribes.
 8. Bribing persons, not officers.
 9. Acceptance by them of bribes.
 10. Bribing and corrupting jurors.
 11. Acceptance of such bribes.
 12. When person bribing shall not be punished.
 13. Embracery.
 14. Irregular conduct of jurors—receiving papers, &c.
 15. Officers—receiving rewards for official neglect.
 16. Officers, &c. purchasing demands.
 17. Extortion.
 18. Compounding felonies—capital.
 19. Compounding and concealing other felonies.
 20. Officers refusing to execute process.
 21. Voluntary escape of prisoner convicted capitally.
 22. Voluntary escape of prisoner charged with capital offence.
 23. Voluntary escape in other cases.
 24. Negligent escape.
 25. Aiding escape of prisoners—rescue, &c.
 26. Refusing to assist officers, when required.
 27. Refusing to obey justices of the peace.
 28. Falsely assuming to be a justice of peace or officer.
 29. Disguising to obstruct officers, &c.

SECT. 1. If any person being required to depose the truth on
 2 oath or affirmation lawfully administered, shall wilfully and cor-
 3 ruptly swear or affirm falsely to any material matter in any
 4 proceeding in any court of justice, or before any officer thereof,
 5 or before any tribunal or officer created by law, or in any pro-
 6 ceeding, or in regard to any matter or thing in or respecting
 7 which an oath or affirmation is required or authorized by law,
 8 he shall be deemed guilty of perjury, and shall be punished, if
 9 the perjury was committed on trial of a capital crime, by impris-
 10 onment in the state prison, for life, or any term of years, not less
 11 than ten years; and if committed in any other case, by impris-
 12 onment in the state prison, not less than two years, nor more
 13 than ten years. 1821, 12, § 1.

SECT. 2. If any person shall procure another to commit per-
 2 jury, he shall be deemed guilty of subornation of perjury, and
 3 shall be punished in the same manner as if he had himself
 4 committed such perjury. 1821, 12, § 2.

SECT. 3. If any person shall wilfully and corruptly endeavor
 2 to incite or procure another to commit perjury, though no per-

3 jury be committed, he shall be punished by imprisonment in the
4 state prison not more than five years. 1821, 12, § 3.

SECT. 4. Whenever it shall appear to any court of record, that
2 any witness or party who has been legally sworn and examined
3 or given his affidavit in any proceeding before such court, has
4 testified in such a manner as to raise a reasonable presumption
5 that he has been guilty of perjury therein, such court may
6 immediately commit such witness or party to prison by an order
7 or process for such purpose, or take recognizance with sureties
8 for his appearance to answer to an indictment for perjury.

N. Y. R. S. 681. M. R. S. 128, § 6.

SECT. 5. Such court shall thereupon bind over the witnesses
2 to establish such perjury, if present, to appear at the proper
3 court, and may by order detain so long as necessary, any papers
4 or documents, which may have been produced and which shall
5 be deemed necessary to be used in the prosecution for such per-
6 jury, and notice of the proceedings had in relation thereto,
7 mentioned in this and the preceding section, shall be given to
8 the attorney general. N. Y. R. S. 68. M. R. S. 128, § 7.

SECT. 6. If any person shall give, offer or promise to any
2 executive, legislative or judicial officer after his election or
3 appointment, and either before or after he shall have been qual-
4 ified or shall have taken his seat, any valuable consideration or
5 gratuity whatever, with intent to influence his act, vote, opinion
6 or judgment in any matter, question, cause or proceeding, which
7 may be pending, or which may legally come or be brought
8 before him in his official capacity, he shall be punished by
9 imprisonment in the state prison not more than five years, or by
10 fine not exceeding three thousand dollars and imprisonment in
11 the county jail not more than one year.

N. Y. R. S. 682. M. R. S. 128, § 8.

SECT. 7. If any executive, legislative or judicial officer, shall
2 corruptly accept any valuable consideration or gratuity whatever,
3 or any promise to make the same, or to do any act, beneficial to
4 such officer, under the agreement or with the understanding that
5 his vote, opinion, decision or judgment, shall be given in any
6 particular manner, or upon a particular side of any question,
7 cause or other proceeding which is or may by law be brought
8 before him in his official capacity, or that, in such capacity, he
9 shall make any particular nomination or appointment, he shall
10 forfeit his office, be forever disqualified to hold any public office,
11 trust or appointment under this State, and shall be punished by
12 imprisonment in the state prison, not more than ten years, or by
13 fine not exceeding five thousand dollars, and imprisonment in
14 the county jail not more than one year.

N. Y. R. S. 682. M. R. S. 128, § 9.

SECT. 8. If any person shall directly or indirectly give, offer
2 or promise any valuable consideration or gratuity to any other
3 person, not being such officer as is mentioned in the preceding
4 section, with intent to induce such other person to procure for

5 him, by his interest, influence or any other means whatever, any
6 place of trust within this State, he shall be forever disqualified
7 from holding any office or place of trust under this State, and
8 shall be punished by a fine not exceeding three hundred dollars
9 and by imprisonment in the county jail not more than one year.

1821, 21, § 1.

SECT. 9. If any person, not being such officer as is referred to
2 in the preceding section, shall accept and receive of another
3 any valuable consideration or gratuity whatever, as a reward for
4 procuring or to procure any office or place of trust within this
5 State for any person, he shall, on conviction, be forever disqual-
6 ified from holding any office or place of trust within this State,
7 and shall be punished by fine; not exceeding three hundred dol-
8 lars and imprisonment in the county jail not more than one year.

1821, 21, § 2.

SECT. 10. Whoever shall corruptly give, offer or promise any
2 valuable consideration or gratuity whatever to any person, sum-
3 moned, appointed or sworn as a juror, or appointed or chosen
4 arbitrator or umpire or referee, or to any master in chancery or
5 appraiser of real or personal estate or auditor, with intent to
6 influence the opinion or decision of any such person in any mat-
7 ter, inquest or cause which may be pending or can legally come
8 before him or he may be called on to decide in either of said
9 capacities, shall be punished by imprisonment in the state prison
10 not more than five years, or by fine, not exceeding one thousand
11 dollars and imprisonment in the county jail not more than one
12 year.

N. Y. R. S. 683. M. R. S. 128, § 10.

SECT. 11. If any person summoned, appointed or sworn as a
2 juror or appointed arbitrator, umpire or referee, or if any master
3 in chancery or auditor or appraiser as aforesaid shall corruptly
4 take or receive any valuable consideration or gratuity whatever
5 to give his verdict, award or report in favor of any particular
6 party, or shall knowingly receive any gift or gratuity from any
7 party to any suit, cause or proceeding for the trial of which such
8 juror shall have been summoned, appointed or sworn, or for the
9 hearing or decision of which such person shall have been sum-
10 moned or appointed or chosen as aforesaid, he shall be punished
11 by imprisonment in the state prison not more than five years,
12 or by a fine not exceeding one thousand dollars, and imprison-
13 ment in the county jail, not more than one year.

N. Y. R. S. 683. M. R. S. 128, § 11.

SECT. 12. If either of the parties offending in any manner
2 described in the six preceding sections, shall give information
3 under oath against the party so offending, and shall duly prose-
4 cute the same, he shall be exempted from the disqualifications
5 and punishments therein provided.

1821, 21, § 3.

SECT. 13. Any person who shall attempt improperly to in-
2 fluence any juror in a civil, or criminal cause, or any one drawn
3 or summoned or appointed or sworn as such juror, or any arbi-
4 trator or referee, in relation to any cause or matter pending in

5 or to be brought before the court for which such juror shall have
 6 been drawn or summoned or appointed or sworn or for the
 7 hearing and decision of which such arbitrator or referee shall
 8 have been chosen or appointed, shall be punished by a fine not
 9 exceeding two hundred dollars or by imprisonment in the county
 10 jail not more than three months. N. Y. R. S. 693.

SECT. 14. If any person, drawn, summoned or sworn as a
 2 juror shall make any promise or agreement to give a verdict for
 3 or against any person in a civil or criminal case, or shall receive
 4 any paper, evidence or information from any one in relation to
 5 any matter or cause, for the trial of which he shall be sworn,
 6 without the authority of the court or officer before whom such
 7 cause or matter shall then be pending, and without immediately
 8 disclosing the same to the said court or officer, he shall be pun-
 9 ished by a fine, not exceeding two hundred dollars, or by im-
 10 prisonment in the county jail not more than three months.

N. Y. R. S. 693.

SECT. 15. If any sheriff, deputy sheriff, constable or coroner,
 2 shall receive from a defendant or any other person any money
 3 or other valuable thing as a consideration or inducement for
 4 omitting or delaying to arrest any defendant or to carry him
 5 before a magistrate or to prison, or for postponing the sale of
 6 property on execution, or for omitting or delaying the sale of
 7 property on execution or for omitting or delaying to perform any
 8 other duty pertaining to his office, he shall be punished by fine
 9 not exceeding three hundred dollars, or by imprisonment in the
 10 county jail not more than three months. M. R. S. 128, § 22.

SECT. 16. If any attorney, justice of the peace, sheriff,
 2 deputy sheriff, coroner or constable shall loan or advance, or
 3 promise to loan or advance any money, or shall give or promise
 4 to give day of payment of any money due on demand, left with
 5 him for collection or shall give or promise any valuable consid-
 6 eration, or shall become liable in any manner whatever for the
 7 payment of money or other thing, or shall become surety for
 8 another for such payment, or shall request, advise or procure
 9 another person to become responsible, or to be surety as afore-
 10 said, with intent thereby to procure any account, note or other
 11 demand for the purpose of making a profit to himself, from the
 12 fees arising from the collection thereof by a suit at law, he shall
 13 be punished by a fine not exceeding five hundred dollars, nor
 14 less than twenty dollars; or the like sum or penalty may be
 15 recovered of such offender by action; in which case one half
 16 of the penalty recovered shall accrue to the use of the person
 17 who shall sue for the same in his own name and the other half
 18 to the State. 1821, 20, § 1. 1824, 256, § 1.

SECT. 17. If any person shall corruptly and wilfully demand
 2 and receive of another, for performing any service or official
 3 duty, for which the fee or compensation is established by law,
 4 or shall receive security for any greater fee or compensation
 5 than is allowed and provided for the same; or if any witness

6 shall falsely and corruptly certify that, as such, he has travelled
 7 more miles or attended more days than he has actually travelled
 8 or attended, he shall be punished, on indictment and conviction,
 9 by a fine not exceeding thirty dollars for each offence; or he
 10 shall forfeit a sum, not more than thirty dollars for each offence
 11 to be recovered by action of debt; in which latter case, the
 12 forfeiture shall accrue to the person who shall first sue for the
 13 same in his own name; but no indictment or action for such
 14 offence shall be sustained, unless commenced within one year
 15 after the commission of the offence. 1821, 105, § 5.

SECT. 18. If any person, having knowledge of the commission
 2 of any offence, punishable with death or imprisonment in the
 3 State prison for life, or for an unlimited number of years, shall
 4 take any money or any valuable consideration or gratuity, or any
 5 promise therefor, upon an agreement or understanding, express
 6 or implied, to compound or conceal such offence, or not to prose-
 7 cute therefor, or not to give evidence thereof, he shall be
 8 punished by imprisonment in the state prison, not more than
 9 five years, or by fine not exceeding five hundred dollars and
 10 imprisonment in the county jail, not more than one year.

N. Y. R. S. 689. M. R. S. 128, § 21.

SECT. 19. If any person, having knowledge of the commission
 2 of any offence punishable by imprisonment in the state prison
 3 for a limited term of years, shall be guilty, in relation thereto,
 4 of the offence described in the preceding section, he shall be
 5 punished by imprisonment in the county jail, not more than one
 6 year, and by fine not exceeding five hundred dollars.

N. Y. R. S. 689. M. R. S. 128, § 21.

SECT. 20. If any officer, authorized to serve process, shall
 2 wilfully and corruptly refuse to execute any lawful process to
 3 him directed, requiring him to apprehend or confine any person
 4 charged with, or convicted of an offence; or shall wilfully and
 5 corruptly delay or omit to execute such process, whereby such
 6 person shall escape, he shall be punished by imprisonment in the
 7 county jail, not more than one year, or by fine not exceeding
 8 one hundred dollars.

N. Y. R. S. 684. M. R. S. 128, § 16.

SECT. 21. If any jailer or other officer shall voluntarily suffer
 2 any prisoner in his custody, upon conviction of a capital felony,
 3 to escape, he shall be punished by fine not exceeding one thou-
 4 sand dollars, and in addition thereto, by imprisonment in the
 5 state prison for life. 1829, 430, § 6.

SECT. 22. If any jailer or other officer shall voluntarily suffer
 2 any prisoner in his custody upon charge of a capital felony, to
 3 escape, he shall be punished by imprisonment in the state prison,
 4 not less than five years and not more than fifteen years; or by
 5 fine not exceeding one thousand dollars. 1821, 430, § 6.

SECT. 23. If any jailer or other officer shall voluntarily suffer
 2 any prisoner in his custody, upon charge or conviction of any
 3 felony, not capital, or of any other criminal offence, to escape,

4 he shall suffer the like punishment and penalties as the prisoner,
5 so suffered to escape, was sentenced to, or would be liable
6 to suffer, upon conviction of the offence wherewith he stood
7 charged. 1821, 110, § 11.

SECT. 24. If any jailer or other officer shall through negli-
2 gence, suffer any prisoner in his custody for any criminal offence,
3 to escape, or shall wilfully refuse to receive into his custody any
4 prisoner lawfully committed thereto, on any criminal charge or
5 conviction, or on any lawful process whatever, he shall be
6 punished by imprisonment in the county, jail, not more than two
7 years, or by fine, not exceeding five hundred dollars.

1821, 110, § 12.

SECT. 25. If any person shall convey into any jail, or other
2 place of confinement, any disguise, instrument, arms or other
3 thing proper or useful to aid any prisoner in making his escape,
4 and with intent to facilitate the escape of any prisoner there
5 lawfully detained, for any criminal offence, whether such escape
6 be effected or attempted or not; or shall by any means, aid or
7 assist any such prisoner to escape, whether such escape be
8 effected or not; or shall forcibly rescue any prisoner, held in
9 custody for any criminal offence, he shall be punished, when
10 such prisoner was imprisoned or in custody for any felony, by
11 imprisonment in the state prison not more than seven years;
12 and when such prisoner was imprisoned or in custody for any
13 offence, not a felony, by imprisonment in the county jail, not
14 more than one year, or by fine not exceeding five hundred
15 dollars.

1821, 110, § 13. N. Y. R. S. 684. M. R. S. 128, § 12.

SECT. 26. If any person, being required in the name of the
2 State, by any sheriff, deputy sheriff, coroner or constable, shall
3 neglect or refuse to assist any of them in the execution of their
4 office, in any criminal case, or in the preservation of the peace,
5 or the apprehending and securing any person for a breach of the
6 peace, or in any escape or rescue of persons arrested on civil
7 process, he shall be punished by imprisonment in the county jail
8 not more than thirty days, or by fine not exceeding fifty dollars.

1821, 97, § 7.

SECT. 27. If any justice of the peace, upon view of any
2 breach of the peace, or any other offence, proper for his cogni-
3 zance, shall require any person to apprehend and bring before
4 him, the offender therein, every person, so required, who shall
5 refuse or neglect to obey such justice, shall be punished as pro-
6 vided in the preceding section; and no person to whom such
7 justice shall be known, or shall declare himself to be a justice
8 of the peace, shall be permitted to plead any excuse on pretence
9 of ignorance of his office. 1821, 76, § 5.

SECT. 28. If any person shall falsely assume to be a justice
2 of the peace, sheriff, deputy sheriff, coroner or constable, and
3 shall take upon himself to act as such, or to require any one to
4 aid or assist him in any matter pertaining to the duty of any

5 such office, he shall be punished by imprisonment in the county
6 jail, not more than one year, or by fine, not exceeding four
7 hundred dollars. 1821, 92, § 8.

SECT. 29. If any person shall disguise himself in any manner,
2 with intent to obstruct the due execution of the laws, or to
3 intimidate any officer, surveyor or other person in the legal
4 discharge of his duty under the laws and constitution of the
5 State, whether such intent be effected or not, he shall be pun-
6 ished by imprisonment in the county jail not more than one year
7 or by fine not exceeding five hundred dollars. 1821, 17, § 2.

CHAPTER 159.

OF OFFENCES AGAINST THE PUBLIC PEACE.

- Sect.* 1. Affrays between two or more persons.
2. Unlawful assembly of three or more.
3. Riot.
4. One may be convicted without the others.
5. Unlawful assembly of twelve or more.
6. Refusal to aid magistrates, &c.
7. Refusal of magistrates to do their duty.
8. Magistrates may require aid.
9. Armed force when called out—to obey orders, &c.
10. Magistrates held guiltless.
11. Riotous destruction of houses, &c.
12. Cities and towns, liable for damage.
13. They may recover indemnity of rioters, &c.

SECT. 1. If two or more persons shall voluntarily or by agree-
2 ment, engage in any fight or use any blows or violence towards
3 each other in an angry or quarrelsome manner, in any public
4 place, to the terror or disturbance of others, they shall be
5 deemed guilty of an affray; and every such offender, when no
6 other punishment is provided by law for the offence by him then
7 committed, shall be prosecuted and punished in the same man-
8 ner as if he had been guilty of an assault and battery.

Com. law, Hawkins, book 1, ch. 63.

SECT. 2. When three or more persons, in a violent or tumult-
2 uous manner, assemble together to do an unlawful act, or
3 together attempt to do, or make any advance or motion towards
4 doing any act, whether lawful or unlawful, in an unlawful, vio-
5 lent or tumultuous manner, to the terror or disturbance of others,
6 they shall be deemed guilty of an unlawful assembly: and every
7 such offender shall be punished by imprisonment in the county
8 jail, not more than one year, and by fine not exceeding five hun-
9 dred dollars.

Com. law, Hawkins, book 2, 65, § 8, 9.

SECT. 3. When three or more persons together and in a violent or tumultuous manner commit an unlawful act, or together do a lawful act in an unlawful, violent or tumultuous manner, to the terror or disturbance of others, they shall be deemed guilty of a riot; and every such offender on conviction thereof, shall be punished as is provided in the preceding section: and in addition thereto, he shall suffer such other punishment as he would be liable to, if he had alone committed such unlawful act.

Com. law, Hawkins, book 2, 65, § 8, 9.

SECT. 4. Any person guilty of unlawfully assembling or of a riot, may alone be indicted and convicted thereof, provided it be alleged in the indictment, and proved on trial, that three or more persons were engaged therein, and, if known, they must be named or if unknown, that fact must be alleged.

SECT. 5. If any persons to the number [of] twelve or more, any of them being armed with clubs or other dangerous weapons, or if any persons to the number of thirty or more, whether armed or not, shall be unlawfully, riotously or tumultuously assembled in any city or town, it shall be the duty of the mayor and each of the aldermen of such city and of each of the selectmen and constables of such town, and every justice of the peace living in such town, and also of the sheriff of the county and his deputies, to go among the persons, so assembled, or as near to them as may be with safety, and in the name of the State to command all persons, so assembled, immediately and peaceably to disperse: and if the persons so assembled shall not thereupon immediately and peaceably disperse, it shall be the duty of each of said magistrates and officers to command the assistance of all persons then present, in arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded with according to law.

1821, 17, § 1. M. R. S. 129, § 1.

SECT. 6. If any persons shall refuse to assist in arresting the persons so unlawfully assembled, or shall refuse immediately to disperse, upon being commanded so to do, as mentioned in the preceding section, he shall be deemed one of such unlawful or riotous assembly, and shall be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail, not more than one year.

M. R. S. 129, § 2.

SECT. 7. If any such magistrate or other officer, having notice of any such unlawful or tumultuous assembly, in the city or town where he dwells, shall refuse or neglect immediately to execute his duty in relation thereto, as provided in the fifth section of this chapter, he shall be punished by a fine, not exceeding three hundred dollars.

M. R. S. 129, § 3.

SECT. 8. If any persons, so riotously or unlawfully assembled, shall upon command, as aforesaid refuse or neglect to disperse, without unnecessary delay, any two of the magistrates or officers before mentioned, may require the aid of a sufficient number of persons, in arms or otherwise, and shall proceed in

6 such manner as they may judge expedient, to suppress such
7 riotous or tumultuous assembly, and to arrest and secure the
8 persons composing the same, that they may be proceeded with
9 according to law. M. R. S. 129, § 4.

SECT. 9. When an armed force shall be called out as pro-
2 vided in the they shall obey such orders for suppressing
3 such unlawful and riotous assembly, and for arresting and dis-
4 persing the persons engaged therein, as they may receive from
5 the governor, or any judge of a court of record, or the sheriff
6 of the county, and also such further orders as they may receive
7 from any two of the magistrates or officers mentioned in the
8 fifth section. M. R. S. 129, § 5.

SECT. 10. If by reason of any efforts made as before men-
2 tioned to suppress such riotous and unlawful assembly, or to
3 arrest and secure the persons composing the same, who have
4 refused to disperse, though the number remaining be less than
5 twelve, any such persons, or any persons present as spectators or
6 otherwise, shall be killed or wounded, the said magistrates and
7 officers, and persons acting with them by the order or direc-
8 tion of the governor, or any judge or sheriff, as mentioned in
9 the preceding section, shall be held guiltless and justified in
10 law. And if any of said magistrates or officers or persons
11 acting by such order or direction, shall be killed or wounded,
12 all persons, so unlawfully or riotously assembled, and all other
13 persons, who, when commanded or required, shall have refused
14 to aid and assist the said magistrates or officers, shall be held
15 answerable therefor. M. R. S. 129, § 6.

SECT. 11. If any of the persons so assembled unlawfully and
2 riotously, as mentioned in the fifth section, shall pull down or
3 destroy or begin to pull down and destroy any dwelling-house
4 or other building, or any ship or vessel, or perpetrate any pre-
5 meditated injury on the person of any individual, not being a
6 felony, he shall be punished by imprisonment in the state prison
7 not more than five years, or by fine not exceeding five hundred
8 dollars, and imprisonment in the county jail, not more than one
9 year; and shall also be answerable to any person injured, to the
10 full amount of the damages by him sustained, in an action of
11 trespass. M. R. S. 129, § 7.

SECT. 12. When any of the persons unlawfully or riotously
2 assembled, as mentioned in the fifth section, shall destroy or
3 injure any property to the amount of fifty dollars or more, the
4 city or town in which such property was situated, shall be liable
5 to indemnify the owner thereof to the amount of three-fourths
6 of the value of such property or the injury thereto, to be recov-
7 ered in an action on the case, provided the said owner shall use
8 all reasonable diligence to prevent such destruction or injury
9 and to procure the conviction of the offenders.

Mass. Statute of March, 1839.

SECT. 13. Any city or town which shall pay any sum under
2 the provisions of the preceding section, may recover the same

3 against any or all of the persons who shall have so injured or
4 destroyed such property, in an action of the case.

CHAPTER 160.

OF OFFENCES AGAINST CHASTITY, MORALITY AND DECENCY.

- Sect.* 1. Adultery.
2. Cohabitation after a divorce.
3. Punishment of incest.
4. Crime against nature.
5. Polygamy.
6. Excepted cases.
7. Polygamy—where triable.
8. Unmarried person marrying one who is married.
9. Lewd and lascivious cohabitation.
10. Fornication.
11. Concealment of death of a bastard child.
12. Such concealment may be charged with murder in same indictment.
13. Procuring abortion.
14. Attempt to procure one.
15. Keeping house of ill fame.
16. Lease of house for that purpose, void.
17. Enticing females to such a house.
18. Warrant to search for such females.
19. Obscene books and pictures.
20. Warrant to search for such.
21. Blasphemy.
22. Profanity.
23. Disturbing public worship.
24. Disturbers—how to be arrested.
25. Rude behaviour on Lord's day in house of worship.
26. Business, &c. prohibited on that day.
27. Innholders not to entertain person on that day, except, &c.
28. Limits of Lord's day.
29. Amusements, &c. on Saturday and Sunday evenings prohibited.
30. Exception of certain persons as to observance, &c.
31. Duty of sheriffs, jurors to prosecute for violation of the day.
32. Disinterment of dead bodies.
33. Deceased persons not to be taken on execution, &c.
34. Injuring and defacing tombs.
35. Cruelty to animals.
36. Drunkenness.
37. Keeping a gaming house.
38. Gambling and betting in certain cases.
39. Search warrants on special cases.

SECT. 1. Every person who shall commit the crime of adultery,
2 shall be punished by imprisonment in the state prison, not more
3 than five years; and when the crime is committed between
4 parties, only one of whom being married, both shall be deemed
5 guilty of adultery and shall be punished accordingly.

1821, 10, § 1.

SECT. 2. If any persons, having been legally divorced from
 2 each other, for the cause of prior marriage or adultery, shall
 3 afterwards live and cohabit together, each of them shall be
 4 deemed guilty of adultery. 1821, 71, § 6,

SECT. 3. Persons being within the degrees of consanguinity
 2 or affinity, within which marriages are declared to be incestuous
 3 and void, as provided in the eighty-seventh chapter, who shall
 4 intermarry or commit fornication or adultery with each other,
 5 shall be punished by imprisonment in the state prison not more
 6 than ten years. 1821, 71, § 6, 1.

SECT. 4. If any person shall be convicted of the detestable
 2 crime against nature, committed with mankind or with a beast,
 3 such offender shall be punished by imprisonment in the state
 4 prison not more than ten years. 1821, 5, § 1.

SECT. 5. Every person having a husband or wife living, who
 2 shall marry any other person, whether married or single, shall,
 3 except in the cases specified in the following section, be deemed
 4 guilty of polygamy, and be punished by imprisonment in the
 5 state prison not more than five years, or by a fine not exceeding
 6 five hundred dollars, and imprisonment in the county jail not
 7 more than one year. 1821, 10, § 2.

SECT. 6. The preceding section shall not extend to any per-
 2 son whose husband or wife shall have been continually absent
 3 for seven years, without being known to such person to be living
 4 within that time; nor to the wife of any man who shall willingly
 5 absent himself from his said wife for seven years together, with-
 6 out making suitable provision for her support, if of sufficient
 7 ability so to do; nor to any person whose husband or wife shall
 8 have been sentenced to the state prison for life; nor to any per-
 9 son, who at the time of such marriage shall at his or her own
 10 instance or application have been divorced by a decree of a com-
 11 petent court.

1821, 10, § 2. 1837, 292, § 3. 1834, 116, § 3.

SECT. 7. The indictment against any person for polygamy
 2 may be found in the county where such person may reside or be
 3 apprehended, and the same proceedings be had therein, as if
 4 the offence had been committed in that county.

Com. law. N. Y. R. S. 688.

SECT. 8. Every unmarried person who shall knowingly marry
 2 the husband or wife of another, when such husband or wife shall
 3 be guilty of polygamy thereby, shall be punished by imprison-
 4 ment in the state prison, not more than five years, or by fine not
 5 exceeding five hundred dollars, and imprisonment in the county
 6 jail not more than one year. Com. law. N. Y. R. S. 688.

SECT. 9. If any man or woman, either or both of them being
 2 at the time, married to some other person, shall lewdly and las-
 3 civiously associate and cohabit together; or if any man and
 4 woman, married or unmarried, shall be guilty of open, gross
 5 lewdness and lascivious behavior, every such person shall be
 6 punished by imprisonment in the state prison, not more than five

7 years, or by fine not exceeding three hundred dollars and
8 imprisonment in the county jail not more than one year.

1821, 10, § 3.

SECT. 10. If any unmarried man shall commit fornication
2 with any unmarried woman, each of them shall be punished by
3 imprisonment in the county jail, not more than sixty days, and
4 by fine not exceeding one hundred dollars.

1821, 10, § 4.

SECT. 11. If any woman shall willingly be delivered in secret,
2 of any issue of her body, which, if born alive, would be a bas-
3 tard, and shall conceal the death of the same, so that it may not
4 be known whether it was born alive or not, or was murdered or
5 not, she shall be punished by imprisonment in the state prison,
6 not more than three years, or by fine not exceeding one hundred
7 dollars, and imprisonment in the county jail not more than one
8 year.

1821, 2, § 9, 10.

SECT. 12. In the indictment against a woman for the murder
2 of her infant, bastard child, she may be also charged with the
3 offence described in the preceding section; and if the jury on
4 trial shall acquit her of the charge of murder, and find her
5 guilty of the other offence, sentence shall be awarded against
6 her for the same.

1821, 2, § 11.

SECT. 13. Every person who shall administer to any woman
2 pregnant with child, whether such child be quick or not, any
3 medicine, drug or substance whatever, or shall use or employ
4 any instrument or other means whatever, with intent to destroy
5 such child, and shall thereby destroy such child before its birth,
6 unless the same shall have been necessary to preserve the life
7 of the mother, shall be punished by imprisonment in the state
8 prison not more than five years or by fine not exceeding one
9 thousand dollars and imprisonment in the county jail not more
10 than one year.

Com. law, 1 Hawk. 31, § 16. 9 Mass. R. 387. N. Y. R. S.
661, 692.

SECT. 14. Every person who shall administer to any woman,
2 pregnant with child, whether such child shall be quick or not,
3 any medicine, drug or substance whatever, or shall use or employ
4 any instrument or other means whatever, with intent thereby to
5 procure the miscarriage of such woman, unless the same shall
6 have been done, as necessary to preserve her life, shall be
7 punished by imprisonment in the county jail, not more than one
8 year, or by fine not exceeding one thousand dollars.

Com. law, 1 Hawk. 31, § 16. 9 Mass. R. 387. N. Y. R. S.
661, 692.

SECT. 15. Any person who shall keep a house of ill fame,
2 resorted to for the purpose of prostitution or lewdness, shall be
3 punished by imprisonment in the county jail not more than one
4 year, or by fine not exceeding five hundred dollars; and any
5 person who, after having been once convicted of such offence,
6 shall again be convicted of a like offence, shall be punished by

7 imprisonment in the state prison, not less than one year nor more
8 than three years. 1836, 225, § 3.

SECT. 16. When the lessee of a dwelling house shall be con-
2 victed of keeping the same as a house of ill fame, the lease or
3 contract for letting such house, shall, at the option of the lessor,
4 become void; and such lessor shall thereupon have the like
5 remedy to recover possession, as against a tenant holding over,
6 after the expiration of his term.

N. Y. R. S. 702. M. R. S. 130, § 9.

SECT. 17. Any person who shall inveigle or entice any female,
2 before reputed virtuous, to a house of ill fame or shall knowingly
3 conceal or aid or abet in concealing any such female, so deluded
4 or enticed, for the purpose of prostitution or lewdness, shall be
5 punished by imprisonment in the state prison not less than one
6 year, nor more than three years. 1836, 225, § 2.

SECT. 18. When there is reason to believe that any female
2 has been inveigled, deluded or enticed to a house of ill fame as
3 aforesaid, upon complaint thereof being made under oath, by
4 any overseer of the poor, or by the parent, master or guardian
5 of such female, to any justice of the peace or other magistrate
6 authorized to issue warrants, he may issue his warrant to enter,
7 by day or night such house or houses of ill fame, and to search
8 for such female, and to bring her and the person in whose pos-
9 session or keeping she may be found, before such justice or
10 magistrate, who may on examination, order her to be delivered
11 to such overseer, parent, master or guardian, or to be discharged
12 as law and justice may require; which warrant shall be pro-
13 cured, made, issued and executed as other search warrants
14 according to the provisions of the fourteenth section of the two
15 hundred and seventieth chapter. 1836, 225, § 1.

SECT. 19. If any person shall import, print, publish, sell or
2 distribute any book, pamphlet, ballad or any printed paper, con-
3 taining obscene language or obscene prints, pictures or descrip-
4 tions, manifestly tending to corrupt the morals of youth, or shall
5 procure, receive or have any of them in his possession, with
6 intent to sell, loan, exhibit or circulate the same, he shall be
7 punished by imprisonment in the county jail, not more than one
8 year or by fine not exceeding five hundred dollars.

Com. law. 17 M. R. 336. Strange, 788, 834. 4 Bur. 25, § 27.

M. R. S. 130, § 10. Connecticut title 21.

SECT. 20. A warrant to search for such obscene books, pamph-
2 lets, prints, pictures or other things mentioned in the preceding
3 section, may be issued by any justice of the peace in the man-
4 ner, and subject to the provisions of the eighteenth section of
5 this chapter; and when any of them shall be found by the
6 officer executing such warrant, they shall be brought before such
7 justice, and kept by him or the officer so long as may be
8 necessary for the purpose of being used as evidence in any case,
9 respecting the same or the person in whose possession they may
10 be found or any other person concerned in their printing, intro-

11 duction or circulation as aforesaid; and on conviction of any
 12 offender so prosecuted, the said books, pamphlets, prints or pic-
 13 tures shall be destroyed by order of the court in which such
 14 conviction may be had.

M. R. S. 130, § 11.

SECT. 21. If any person shall wilfully blaspheme the holy
 2 name of God, by denying, cursing or contumeliously reproach-
 3 ing God, his creation, government or final judging of the world,
 4 or by cursing or contumeliously reproaching Jesus Christ or the
 5 Holy Ghost or the Holy Scriptures, as contained in the canonical
 6 books of the old and new testament, or by exposing them to
 7 contempt or ridicule, he shall be punished by imprisonment in
 8 the state prison, not more than two years or by fine not exceed-
 9 ing two hundred dollars, and imprisonment in the county jail
 10 not more than one year. 1821, 8, § 1.

SECT. 22. If any person arrived at years of discretion shall
 2 profanely curse or swear, upon being convicted thereof on com-
 3 plaint before a justice of the peace, he shall be punished by a
 4 fine not exceeding two dollars; and for a subsequent offence of
 5 the like kind, committed after a previous conviction, by a fine
 6 not exceeding five dollars;—provided the complaint be made
 7 within twenty days after commission of the offence.

1821, 8, § 2.

SECT. 23. If any person on the Lord's day or at any other
 2 time, shall wilfully interrupt or disturb any assembly of people
 3 for religious worship, within the place of such assembly or out
 4 of it, he shall be punished by imprisonment in the county jail
 5 not more than thirty days or by fine not exceeding thirty dollars.

1821, 9, § 8.

SECT. 24. It shall be the duty of every justice of the peace,
 2 sheriff, deputy sheriff, constable, grand juror and tythingman,
 3 who may be present at any assembly for religious worship, which
 4 may be interrupted or disturbed as mentioned in the preceding
 5 section, to apprehend or cause to be apprehended any person so
 6 offending, and him to detain in custody until the close of such
 7 assembly, or until he be taken, as soon as may be conveniently
 8 before some justice of the peace, to be dealt with according to
 9 law. And all persons present at such assembly shall, when
 10 requested to assist said officers in the execution of their duty,
 11 under the like punishment as is provided in the twenty-eighth
 12 section of the two hundred and fifty-eighth chapter relating to
 13 offences against public justice. 1824, 270, § 1, 2, 4.

SECT. 25. If any person shall on the Lord's day, within the
 2 walls of any house of public worship behave rudely or inde-
 3 cently, he shall be punished by fine not exceeding ten dollars.

1821, 9, § 7.

SECT. 26. If any person shall on the Lord's day keep open
 2 his shop, work-house or ware-house, or travel or do any work,
 3 labor or business on that day, works of necessity or charity
 4 excepted; or use any sport, game or recreation, or be present

5 at any dancing, public diversion, show or entertainment, he shall
6 be punished by a fine not exceeding ten dollars.

1821, 9, § 1, 2.

SECT. 27. If any innholder, retailer of spirituous liquors, or
2 other person, keeping a house of public entertainment shall, on
3 the Lord's day suffer any persons, not being travellers, strangers
4 or lodgers in such house, to abide and remain in his house, yard,
5 orchard or field, drinking or spending their time idly or at play,
6 on in doing any secular business, works of necessity or charity
7 excepted, he shall be punished by a fine not exceeding four
8 dollars, for every person so suffered to abide and remain; and
9 upon any subsequent conviction of a like offence, committed
10 after the former conviction he shall be punished by a fine not
11 exceeding ten dollars for each offence; and upon a third con-
12 viction, he shall also be incapable of holding a license. And
13 every person so abiding, drinking and spending his time, shall
14 be punished by a fine not exceeding four dollars for each offence.

1821, 9, § 3.

SECT. 28. For the purposes of the provisions of the two pre-
2 ceding sections, the Lord's day shall be construed to include
3 the time between the midnight preceding and the sunsetting of
4 the same day.

1821, 9, § 4.

SECT. 29. If any person on the evening preceding or follow-
2 ing the Lord's day, shall be present at any dancing or other
3 public diversion, except concerts of sacred music, or shall then
4 use any sport, game or recreation; or if any innholder, retailer
5 or keeper of a public-house, shall then suffer to abide and
6 remain in his house or places appurtenant, any persons drinking
7 or spending their time idly or at play, such persons not being
8 travellers, strangers or lodgers in such house, shall be punished
9 by a fine not exceeding three dollars.

1821, 9, § 5.

SECT. 30. No person who conscientiously believes that the
2 seventh day of the week ought to be observed as the sabbath,
3 and actually refrains from secular business and labor on that
4 day, shall be liable to the said penalties for performing secular
5 business and labor on the Lord's day, or first day of the week,
6 provided he disturbs no other persons.

Con. R. S. 447. M. R. S. 50, § 10.

SECT. 31. It shall be the duty of all tythingmen, sheriffs,
2 deputy sheriffs, grand jurors and constables to take notice of
3 and to prosecute for all offences violating the Lord's day, as
4 described in the twenty-fifth, twenty-sixth, twenty-seventh and
5 twenty-ninth preceding sections; and the same may be prose-
6 cuted either in the district court, or when the fine or fines shall
7 not exceed ten dollars, by complaint before a justice of the
8 peace; provided the indictment be found or complaint be made
9 within six months next after the commission of the offence.

1821, 9, § 12, 6, 13.

SECT. 32. If any person, without the permission of the board
2 of health, selectmen or overseers of the poor of any town, or

3 the mayor or aldermen of any city, or other legal authority,
 4 shall wilfully dig up, disinter, remove or carry away any human
 5 body or the remains thereof, or aid or assist in so doing, or shall
 6 wilfully receive, conceal or dispose of any such human body or
 7 the remains thereof; or if any person shall wilfully and unnec-
 8 essarily, and in an improper manner, indecently expose, throw
 9 away or abandon any human body or the remains thereof, in
 10 any public place or in any river, stream or other place, every
 11 such offender shall be punished by imprisonment in the county
 12 jail, not more than one year, or by fine not exceeding one
 13 thousand dollars. 1821, 15, § 1, 2. 1 Greenleaf, 226.

SECT. 33. If any officer shall take the body of any deceased
 2 person by any writ or execution, he shall be punished by a fine
 3 not exceeding five hundred dollars, or by imprisonment in the
 4 county jail not more than six months. 1821, 16, § 1.

SECT. 34. If any person shall wilfully destroy or injure any
 2 tomb, grave stone, monument or other thing, placed or designed
 3 as a memorial of the dead, or any fence, railing or other thing
 4 placed about the same, or any place inclosed for the burial of
 5 the dead; or shall wilfully destroy, injure, or remove any tree,
 6 shrub or plant within such inclosure, he shall be punished by
 7 imprisonment in the county jail not more than one year, or by
 8 fine not exceeding five hundred dollars. M. R. S. 130, § 20.

SECT. 35. Every person who shall cruelly beat or torture any
 2 horse or ox or other animal, whether belonging to himself or
 3 another, shall be punished by imprisonment in the county jail
 4 not more than six months, or by fine not exceeding one hundred
 5 dollars. 1821, 4, § 7. M. R. S. 131, § 22.

SECT. 36. Any person who shall be guilty of drunkenness by
 2 the voluntary use of intoxicating liquor, shall, for the first
 3 offence, be punished by a fine, not exceeding five dollars; and
 4 for any like offence, committed after the first conviction shall
 5 be punished by a fine not exceeding ten dollars, or by imprison-
 6 ment in the county jail or house of correction, not more than
 7 three months; but no prosecution therefor shall be commenced
 8 after six months from the commission of the offence; and any
 9 justice of the peace shall have jurisdiction of such offence, con-
 10 current with the district court.

M. R. S. 131, § 18. Conn. R. S. 139.

SECT. 37. If any person or corporation shall keep a house,
 2 shop or other place resorted to for the purpose of gaming,
 3 or shall permit any person in any house or shop or other place
 4 under his care or control, to play at cards, dice, billiards, or
 5 other game for money or other thing, such offender shall be pun-
 6 ished by a fine not less than twenty dollars and not more than
 7 one hundred dollars, to the use of the prosecutor therefor.

1836, 221, § 1. 1821, 133, § 4.

SECT. 38. If any person shall for money or other thing, play
 2 at cards, dice, billiards or other game or with any implements
 3 used in gaming; or shall bet on any person so playing, he shall

4 be punished by a fine not less than one dollar and not more than
 5 twenty dollars to the use of the prosecutor therefor, either by
 6 indictment or by complaint before a justice of the peace, in
 7 which latter case the fine shall not exceed ten dollars.

1836, 221, § 1. 1821, 18, § 3, 4.

SECT. 39. If any person shall make oath before a justice of the
 2 peace that he has probable cause to suspect and does suspect
 3 that any house or building (naming the house and the occupant
 4 in said complaint,) is unlawfully used as a common gaming
 5 house for the purpose of gaming for money or other property,
 6 and that idle or dissolute persons resort to the same for that
 7 purpose, whether they be known to the complainant or not,
 8 such justice shall issue his warrant in the manner and subject to
 9 the provisions contained in the eighteenth section of this chap-
 10 ter, for the search for all such implements as are above named ;
 11 and if found there or any of them, for the apprehension also of
 12 the occupant or keeper of such house or other building ; and
 13 after such search, seizure and arrest the said implements and
 14 said keeper shall be carried before such justice to be disposed
 15 of according to law. M. R. S. 50, § 19. Con. R. S. 268.

CHAPTER 161.

**OF CHEATING BY FALSE PRETENCES, GROSS FRAUDS AND
 CONSPIRACY.**

- Sect.* 1. Cheating by false pretences.
 2. Parties to fraudulent conveyances.
 3. Suppression of wills, &c.
 4. Gross frauds at common law.
 5. Wilful destruction of vessels, &c.
 6. Fitting out vessels for such purpose.
 7. False invoices, &c.
 8. False affidavit, protest, &c.
 9. Owner's burning their own property.
 10. Conspiracy to prosecute an innocent person.
 11. Other conspiracies.
-

SECT. 1. If any person designedly and by any false pretence,
 2 or by any privy or false token, and with intent to defraud, shall
 3 obtain from another any money, goods or other property, or shall
 4 so obtain the signature of any person to any written instrument,
 5 the false making of which would be punishable as forgery, he
 6 shall be punished by imprisonment in the state prison, not more
 7 than seven years, or by fine not exceeding five hundred dollars
 8 and imprisonment in the county jail not more than one year.

1821, 13, § 1. M. R. S. 126, § 32.

SECT. 2. Any person knowingly being a party to any conveyance or assignment of any estate or interest in lands, goods or things in action, or of any rents or profits arising therefrom, or being a party to any charge on such estate, interest, rents or profits, or created with intent to defraud prior or subsequent purchasers, or to hinder, delay or defraud creditors or other persons; and every person being privy to, or knowing of such fraudulent conveyance, assignment or charge, who shall wilfully put the same in use, as having been made in good faith, shall be punished by a fine not exceeding one thousand dollars and imprisonment in the county jail not more than one year.

N. Y. R. S. 690. M. R. S. 126, § 34. 1835, 195, § 13.

SECT. 3. If any person, having in his possession or under his control, any last will and testament of a person deceased, shall wilfully suppress, secrete, deface or destroy the same, with intent to injure or defraud any devisee, legatee or other person, he shall be punished by imprisonment in the state prison not more than seven years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

Com. law—Hawk. 1, 77, § 1.

SECT. 4. Every person who shall be convicted of any gross fraud or cheat at common law shall be punished as provided in the preceding section.

1821, 13, § 2.

SECT. 5. If any person shall wilfully cast away, burn, sink or otherwise destroy any ship or vessel within any county in this State, with intent to injure or defraud any owner of such vessel or the owner of any property laden on board the same, or any insurer of such vessel or property or of any part thereof, he shall be punished by imprisonment in the state prison for life, or any term of years not less than five years.

1821, 14, § 1.

SECT. 6. If any person shall lade, equip or fit out or assist in lading, equipping or fitting out any ship or vessel, with intent that the same shall be wilfully cast away, burnt, sunk or otherwise destroyed, to injure or defraud any owner or insurer of such vessel or of any property laden on board of the same, he shall be punished by imprisonment in the State prison, not more than twenty years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail, not more than one year.

1821, 14, § 2.

SECT. 7. If any owner of any ship or vessel or any property laden or pretended to be laden on board of the same, or if any other person concerned in the lading or fitting out such ship or vessel, shall make out or exhibit, or cause to be made out and exhibited any false or fraudulent invoice, bill of lading, bill of parcels or other false estimates of any goods or property laden or pretended to be laden on board of such vessel, with intent to injure or defraud any insurer of such vessel or property or of any part thereof, he shall be punished by imprisonment in the

10 state prison not more than ten years, or by fine not exceeding
 11 five thousand dollars, and imprisonment in the county jail not
 12 more than one year. 1821, 14, § 3.

SECT. 8. If any master, other officer or mariner of any ship
 2 or vessel, shall make or cause to be made, or shall swear to any
 3 false affidavit or protest, or if any owner or other person con-
 4 cerned in such vessel, or in the goods or property laden on board
 5 such vessel, shall procure any such false affidavit or protest to be
 6 made, or shall exhibit the same with intent to injure, deceive or
 7 defraud any insurer of such vessel or of the goods or property
 8 laden on board of the same, he shall be punished by imprison-
 9 ment in the state prison not exceeding ten years, or by a fine
 10 not exceeding five thousand dollars and imprisonment in the
 11 county jail, not more than one year. 1821, 14, § 4.

SECT. 9. If any owner of any building, goods or property,
 2 insured against loss or damage by fire, or if any other person in
 3 possession thereof or in any other way concerned or interested
 4 therein, shall wilfully burn or cause to be burnt any such build-
 5 ing or other property, with intent to defraud the insurer, he shall
 6 be punished by imprisonment in the state prison, not more than
 7 twenty years. M. R. S. 125, § 8. N. Y. R. S. 667.

SECT. 10. If any two or more persons shall conspire, confed-
 2 erate and agree together, with intent falsely, fraudulently and
 3 maliciously to cause or procure another person to be indicted or
 4 in any way impleaded or prosecuted for an offence of which he
 5 is innocent, whether such person shall be so impleaded, indicted
 6 or prosecuted or not, they shall be deemed guilty of a conspi-
 7 racy; and every such offender shall be punished by imprisonment
 8 in the state prison not more than five years or by a fine not
 9 exceeding one thousand dollars, and imprisonment in the county
 10 jail not more than one year. 2 Mass. R. 536.

SECT. 11. If any two or more persons shall conspire, confed-
 2 erate and agree together, with the fraudulent or malicious intent
 3 wrongfully and wickedly to injure the person, character, business
 4 or property of another individual, or to do any illegal act injurious
 5 to the public trade, health, morals or police, or to the adminis-
 6 tration of public justice, or to commit any felony or crime pun-
 7 ishable by imprisonment in the state prison, they shall be deemed
 8 guilty of conspiracy, and every such offender and every person
 9 who shall be convicted of conspiracy at common law, shall be
 10 punished by imprisonment in the state prison, not more than
 11 three years; or by fine not exceeding one thousand dollars, and
 12 imprisonment in the county jail not more than one year.

2 Mass. R. 329. 96, 580. 6 Mass. R. 74. 5 Mass. R. 106.

NOTES.

SECT. 1. That part of the section relating to the fraudulent obtaining of a man's signature to a written instrument, is new, and borrowed from the R. S. of New York; but it falls within the principle of the former part of the section.

SECT. 2. The essence of this section is found in the revised statutes of New York, and Mass. The commissioners deem it a most important section, and well adapted to prevent those fraudulent conveyances which are frequent subjects of investigation in our courts of justice. It is believed that such conveyances are too frequent; and one of the most effectual methods of preventing such a course of proceeding, is to subject to punishment both or either of the parties, knowingly making such a conveyance, or any agreement intended to produce an injurious effect as to creditors.

SECT. 3. This section is new—we have no statute respecting the subject. It provides against such a base and fraudulent proceeding as is mentioned; and the consequences may be extremely mischievous; the commissioners recommend its adoption as important.

SECT. 9. This is a *new* section, as appears by the cases cited in the margin and the revised statutes of New York and Mass. Its provisions are of the same spirit as those mentioned in the *seventh* section, which applies wholly to vessels and their cargoes insured. There seems to be the same propriety and necessity for this section as the 7th.

SECTS. 10, 11. These are new; we have no statute law on the particular subject of either section. They contain definitions of the crime of conspiracy, as found in common law treatises and in sundry decisions of the S. J. court, of Mass., which are cited in the margin. The great object in their enactment as *statute law*, is that all persons may know what acts and proceedings constitute the offence. They are dangerous to society and the Legislature will judge whether the sections are not valuable, and the punishments no more than an offender, on conviction, would justly deserve.

CHAPTER 162.

OF MALICIOUS MISCHIEF AND TRESPASSES ON PROPERTY.

- Sect.*
1. Malicious killing, maiming, &c.
 2. Malicious injury to dams, engines, &c.
 3. Malicious injury to bridges, roads, &c.
 4. Malicious injury to booms, rafts, vessels, &c.
 5. Malicious injury to fruit trees, &c.
 6. Malicious injury to fences, gates, &c.
 7. Malicious injury as to produce of the land.
 8. Wanton removal of boundaries, mile stones, &c.
 9. Wilful trespass on timber and wood land, &c., soil, &c.
 10. Limitation of preceding section.
 11. Wilful trespass on gardens, orchards, &c.
 12. Wilful trespass by passing through gardens, &c.
 13. Wilful trespass on buildings, goods, papers, &c.
 14. Limitation of prosecutions.
 15. Justice's jurisdiction in certain cases.

SECT. 1. If any person shall wilfully, maliciously or cruelly
2 kill, wound, maim or disfigure the horses, cattle or any other

3 beast of another, or shall wilfully and maliciously administer
 4 poison to any such animal, or shall expose any poisonous sub-
 5 stance, with intent that the same should be taken and swallowed
 6 by them, he shall be punished by imprisonment in the state
 7 prison not more than four years, or by fine not exceeding five
 8 hundred dollars, and imprisonment in the county jail not more
 9 than one year. 1821, 4, § 4. N. Y. R. S. Vol. 2, 689.

SECT. 2. If any person shall maliciously or wantonly break
 2 down, injure, remove or destroy any dam, reservoir, canal,
 3 trench or any of the appurtenances thereof, or any of the gear
 4 or machinery of any mill or manufactory; or shall maliciously
 5 or wantonly draw off the water from any mill pond, reservoir,
 6 canal or trench; or destroy, injure or render useless any engine
 7 or the apparatus thereto belonging, prepared and kept for the
 8 extinguishment of fires, he shall be punished by imprisonment
 9 in the state prison not more than three years, or by a fine not
 10 exceeding five hundred dollars, and imprisonment in the county
 11 jail not more than one year.

M. R. S. 126, § 40. N. Y. R. S. Vol. 2, 695. 1821, 27, § 1.

SECT. 3. If any person shall wilfully and maliciously break
 2 down, injure, remove or destroy any public or toll bridge or rail-
 3 road, or place any obstruction on such bridge, railroad or any
 4 public road with intent that any person or property passing on
 5 the same should be injured thereby, he shall be punished by
 6 imprisonment in the state prison not more than three years, or
 7 by fine not exceeding five hundred dollars and imprisonment in
 8 the county jail not more than one year.

M. R. S. 126, § 41. N. Y. R. S. 695. 1834, 98, § 1.

SECT. 4. If any person shall wilfully or maliciously, without
 2 the consent of the owner, cut away, let loose, injure or destroy,
 3 any boom or raft of logs or other lumber, or any vessel, gondola,
 4 scow or other boat fastened to any place, of which he is not the
 5 owner or legal possessor, he shall be punished by fine, not
 6 exceeding five hundred dollars and imprisonment in the county
 7 jail not more than one year, and shall also forfeit to the use of
 8 the person injured double the amount of damages by him thereby
 9 sustained, to be recovered in action of trespass.

SECT. 5. If any person shall maliciously or wantonly cut
 2 down or destroy, or by topping, girdling or otherwise shall
 3 injure any fruit tree or other tree or shrub not his own, standing
 4 or growing for ornament or use; *or* 1821, 33, § 1, 7.

SECT. 6. Shall maliciously or wantonly break down, mar,
 2 deface or injure any fence belonging to or inclosing lands not
 3 his own, or throw down or open any gates or bars, not his own
 4 and leave them open; *or* 1821, 33, § 1, 7.

SECT. 7. Maliciously or wantonly injure, destroy or sever
 2 from the land of another any produce thereof, or any thing
 3 attached thereto, he shall be punished by imprisonment in the
 4 county jail not more than one year and by fine not exceeding
 5 one hundred dollars. 1821, 33, § 1, 7.

SECT. 8. If any person shall wilfully and maliciously take
 2 down, injure or remove any monument erected, or any tree
 3 marked as a boundary of any tract of land or of any town; or
 4 shall destroy, deface or alter the marks of any such monument
 5 or tree made for the purpose of designating such boundary, or
 6 injure or deface any mile stone or board guide erected on any
 7 public way, turnpike or rail road, or shall maliciously or wantonly
 8 remove, deface or injure any sign board, or break or remove any
 9 lamp or lamp post or extinguish any lamp on any bridge, street
 10 way or passage, he shall be punished by imprisonment in the
 11 county jail, not more than six months and by fine not exceeding
 12 fifty dollars. 1821, 33, § 2.

SECT. 9. If any person shall wilfully commit any trespass by
 2 cutting down or destroying any timber or wood standing or
 3 growing on the land of another, or by carrying away timber and
 4 wood, being on such land, or by digging up or carrying away
 5 any earth or stone, or by taking and carrying away from such land
 6 any grass, hay, corn, grain, fruit or other vegetables, or carrying
 7 away from any wharf or landing place any goods whatever in
 8 which he has no interest, he shall be punished by imprisonment
 9 in the county jail not more than two months and by fine not
 10 exceeding fifty dollars.

1821, 33, § 1, 6.

SECT. 10. The preceding section shall not be construed to
 2 extend to prohibit any surveyor of highways from taking stones
 3 and gravel from any uninclosed lands for repairing the highways,
 4 provided that the town, for whose [use] the same may be taken
 5 and applied as aforesaid shall be liable to make compensation to
 6 the owner of such land as provided in the twenty-fifth chapter,
 7 respecting ways. 1821, 13, § 1.

SECT. 11. If any person shall wilfully commit any trespass
 2 by entering upon the garden, orchard or improved land of
 3 another, with intent to take, carry away, destroy or injure the
 4 trees, shrubs, grain, grass, hay, fruit or vegetables there being,
 5 he shall be punished by a fine, not exceeding twenty dollars or
 6 imprisonment in the county jail, not more than thirty days.

1821, 33, § 5.

SECT. 12. If any person shall wilfully enter and pass over or
 2 through any garden, yard or other improved field, after having
 3 been expressly forbidden so to do, by the owner or occupant
 4 thereof, he shall be punished by a fine not exceeding five dol-
 5 lars, or imprisonment in the county jail, not more than ten days.

1825, 312, § 1.

SECT. 13. If any person shall wilfully or maliciously injure,
 2 destroy or deface any building or fixture attached thereto, not
 3 having the consent of the owner thereof; or wilfully or mali-
 4 ciously destroy, injure or secrete any goods or chattels or
 5 valuable papers of another, he shall be punished by imprison-
 6 ment in the county jail not more than one year, or by a fine not
 7 exceeding five hundred dollars, and shall also be liable to the

8 party injured, in a sum equal to three times the value of the
9 property so destroyed or injured, in an action of trespass.

1825, 312, § 1.
SECT. 14. All prosecutions for offences mentioned in this
2 chapter, after the fourth section, shall be commenced within
3 four years from the time the offence shall have been committed.
1825, 312, § 2.

SECT. 15. Every justice of the peace in his proper county
2 shall have jurisdiction of the offences described in this chapter,
3 after the fourth section, where the property destroyed or the
4 injury occasioned by the trespass shall not be alleged to exceed
5 the sum of ten dollars, in which case the punishment shall be
6 by fine, not exceeding ten dollars, or imprisonment in the county
7 jail, not more than thirty days; saving to the party convicted
8 the right of appeal according to law.

NOTES.

SECTS. 2 and 3. These are taken in part from the R. S. Mass. and New York. In cases of the kinds enumerated in them, liability to penalties and damages furnishes but poor protections against the mischiefs mentioned. Originating, as such actions do, in a wanton and wicked disposition, the only probable preventives seem to be fines and imprisonment. Some of the above remarks may apply to some other sections where a criminal prosecution has been substituted for a penalty.

CHAPTER 163.

OF OFFENCES AGAINST THE PUBLIC HEALTH, SAFETY AND
POLICY.

- Sect. 1. Selling unwholesome provisions.
2. Adulterating food, liquors, medicines, &c.
3. Selling, having or firing rockets, &c.
4. Making lotteries, selling tickets, &c.
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SECT. 1. If any person shall sell any diseased, corrupted or
2 unwholesome provisions, whether for meat or drink, knowing the
3 same to be such, without making it known to the buyer, he shall
4 be punished by imprisonment in the state prison, not more than
5 five years, or by fine not exceeding one thousand dollars, and
6 imprisonment in the county jail not more than one year.
1821, 23, § 1.

SECT. 2. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits, malt-liquor or other liquor intended for drink, in such manner as to render the same injurious to health, he shall be punished as provided in the preceding section.

M. R. S. 131, § 2, 3. Livingston's code, 416.

SECT. 3. If any person shall sell, offer for sale or give away any fire works, called crackers, squibs, rockets or other fire works, or shall set fire to, or throw the same in any town or city, without the license of the selectmen of such town or the mayor or aldermen of such city, he shall be punished by a fine, not exceeding ten dollars, to be recovered on complaint before a justice of the peace, to the use of the town or city in which the offence shall be committed. 1821, 26, § 1.

SECT. 4. If any person shall make or aid in making any lottery, or shall hereafter advertise or make public any scheme for any lottery, or shall advertise or offer for sale any ticket or part of a ticket in any lottery, or shall sell or give away, negotiate or dispose of, or shall purchase or receive the same, or shall have in his possession any ticket or paper, purporting to be the number of any ticket or part of a ticket of any lottery, with intent to sell or dispose of the same, on his own account, or as agent for another, he shall be punished by a fine, not less than one hundred dollars, and not exceeding one thousand dollars; one half of which fine shall be for the use of the person who shall inform and prosecute for the same, and the other half to the use of the State. 1826, 327, § 1. 11, § 4.

CHAPTER 164.

OF NUISANCES.

- Sect.*
1. Certain nuisances described.
 2. Exception as to places assigned by selectmen for offensive trades, &c.
 3. When such places become nuisances, complaint may be made to the district court.
 4. Manufacture of gunpowder, when to be deemed a nuisance.
 5. Burning of bricks in places prohibited by towns, &c., a nuisance.
 6. Water mills, &c., and certain fences and buildings, when not deemed nuisances.
 7. Punishment of common nuisances, on indictment.
 8. Action may be maintained for damages occasioned by any nuisance.
 9. Upon conviction, the court or justice may issue warrant for abatement and the form thereof.
 10. Warrant may be staid, on recognizance of defendant.
 11. How the warrant is to be executed, and the expenses collected and paid.
 12. Supreme judicial court to have equity jurisdiction of nuisances. Courts of record may grant injunctions, &c. in cases before them.

SECT. 1. The erecting, continuing or using any building or
 2 other place for the exercise of any trade, employment, or man-
 3 ufacture, which by occasioning noxious exhalations, offensive
 4 smells, or other annoyances, become injurious and dangerous to
 5 the health, comfort, or property of individuals, or the public ;
 6 the causing or suffering any offal, filth, or noisome substance to
 7 be collected, or to remain in any place to the prejudice of
 8 others ; the obstructing or impeding without legal authority the
 9 passage of any navigable river, harbor, or collection of water,
 10 or the corrupting or rendering unwholesome or impure the
 11 water of any river, stream or pond, or unlawfully diverting the
 12 same from its natural course or state, to the injury or prejudice
 13 of others ; and the obstructing or encumbering by fences, build-
 14 ings or otherwise, the public highways, private ways, streets,
 15 alleys, commons, common landing places, or burying grounds ;
 16 shall be deemed nuisances, within the limitations and exceptions
 17 hereafter mentioned.

Com. law. 1821, 24, § 5.

SECT. 2. The selectmen of any town, or the mayor and alder-
 2 men of any city may, when they judge it necessary assign some
 3 certain place or places in such town or city, for the exercise of
 4 any trade, employment or manufacture, injurious as aforesaid to
 5 the health, comfort, or property of individuals or the public, and
 6 forbid the exercise of them in places not so assigned, under
 7 penalty of their being deemed public or common nuisances, and
 8 liable to be prosecuted and abated as such. All such assign-
 9 ments shall be entered in the records of such town or city, and
 10 may be revoked when said town or city officers shall judge
 11 proper.

1821, 24, § 1, 2.

SECT. 3. When any place or building so assigned shall
 2 become a nuisance, offensive to the neighborhood, or injurious
 3 to the public health, any person may make complaint thereof to
 4 the district court, and if, after notice to the party complained of,
 5 the truth of said complaint shall be made to appear to a jury,
 6 on trial, the court may revoke such assignment, and prohibit the
 7 further use of such place or building for the offensive purposes
 8 aforesaid, under a fine not exceeding one hundred dollars for
 9 each month the same shall be so continued after such prohibi-
 10 tion, to be recovered on indictment to the use of said town or
 11 city, and may order the same to be abated, and issue a warrant
 12 therefor, or stay the same, as hereafter provided ; and if the
 13 jury on said trial shall acquit the defendant, he shall recover his
 14 costs of the complainant.

1821, 24, § 3.

SECT. 4. If any person shall carry on the business of manu-
 2 facturing gunpowder, or of mixing or grinding the composition
 3 therefor, in any building within eighty rods from any valuable
 4 building, erected at the time when such business may be com-
 5 menced, the building in which such business may be carried on
 6 as aforesaid, shall be deemed a public nuisance, and such per-
 7 son shall be liable to be prosecuted and indicted accordingly.

1834, 96.

SECT. 5. Any city or town at their annual meeting may prohibit, by a vote, the burning of any bricks, or the erecting of any brick kiln for the purpose of burning the same, within such parts of said city or town as they may deem for the safety of the citizens or their property. And if any person by himself or others shall burn any bricks or erect any brick kiln for that purpose in any place prohibited as aforesaid, it shall be the duty of the mayor and aldermen of such city, or of the selectmen of such town, to cause said bricks or brick kiln to be forthwith removed, at the expense of the owners thereof; and the offender shall also be further liable on indictment to be punished by a fine not exceeding two hundred dollars, to the use of said city or town; and if said bricks or brick kiln shall not have been before a conviction on such indictment removed, the court may issue a warrant for the removal of the same, or stay such warrant as hereafter provided. 1827, 353.

SECT. 6. The erecting and maintaining of water mills, and dams to raise water for working the same upon or across streams not navigable, as provided in the one hundred and twenty-sixth chapter, shall not be deemed nuisances within the provisions of this chapter, unless the same shall become offensive to the neighborhood or injurious to the public health, as mentioned in the preceding first section, or unless the same shall occasion injuries or annoyances of a kind not within the purview of the said chapter. And fences and buildings fronting on public ways, commons, or land appropriated to public use, shall not be deemed nuisances when they have been erected for the times and shall be justified as mentioned in the one hundredth section of the chapter on ways.

11 M. R. 364, 465. 7 Greenleaf, p. 155. 1836, 238, § 1.

SECT. 7. Whoever shall be convicted upon indictment of erecting, causing or continuing a public or common nuisance, as described in this chapter, or at common law, when the same has not been modified or repealed by statute, where no other punishment therefor is specially provided, may be punished by a fine not exceeding one hundred dollars; and the court, with or without such fine, may order such nuisance to be discontinued or abated, and may issue a warrant therefor as hereafter provided.

SECT. 8. Any person injured in his comfort, property, or the enjoyment of his estate, by any nuisance as before described, or at common law as aforesaid, whether the same be a common and public nuisance, or a private nuisance, being one that is an injury to particular individuals only, may maintain against the party guilty thereof, an action on the case for the recovery of the damages which he has thereby sustained, unless it be otherwise specially provided by law. 1821, 24, § 4.

SECT. 9. When upon indictment, complaint, or action, any person shall be adjudged guilty of a nuisance, the court before whom such conviction shall be had, may, in addition to the fine imposed, if any, or to the judgment for damages and costs, for

5 which a separate execution shall issue, order that the said nuisance be abated or removed at the expense of the defendant; 6 and after enquiring into and estimating, as nearly as may be, the 7 sum necessary to defray the expense of such abatement, the 8 said court may issue a warrant therefor, substantially in the form 9 following: 1821, 24, § 8.

11 STATE OF MAINE.

12 L. ss. To the sheriff of our county of L. or either of his 13 deputies, Greeting.

14 Whereas by the consideration of our court, begun and 15 held at (describing the court, and the term) upon indictment, (or complaint, or action in favor of A. B. as the case may 16 be) C. D. of &c., was adjudged guilty of erecting, [causing or continuing] a certain nuisance, being a building in said 17 and for (or fence, or other thing, describing particularly 18 the nuisance and the place) which said nuisance was ordered 19 by said court to be abated and removed. We therefore command you forthwith to cause said nuisance to be abated and 20 removed. And also that you levy of the materials by you so 21 removed, and of the goods, chattels and lands of the said C. D. 22 a sum sufficient to defray the expense of removing and abating 23 the same, not to exceed the sum of dollars, (the sum 24 estimated by the court) together with your lawful fees and thirty- 25 three cents more for this writ. And for want of such goods and 26 estate to satisfy the sums aforesaid, we command you to take the 27 body of the said C. D. and him commit unto our jail in W. in 28 said county, and there detain till he pay the sums aforesaid, or 29 be legally discharged. And make return of this warrant, with 30 your doings thereon within thirty days.—Witness A. R. Esq. 31 at this day of in the year of our Lord 32 J. S. Clerk.

33 And when the conviction shall be had upon an action before a 34 justice of the peace, and no appeal being made, the said justice 35 after estimating as aforesaid the sum necessary to defray the 36 expense of removing or abating the nuisance, may issue a like 37 warrant, making corresponding alterations in the form thereof.

38 SECT. 10. Instead of issuing the said warrant, the court or 39 justice may order the same to be staid, upon motion of the 40 defendant, and upon his entering into recognizance, in such 1 sum, and with such surety as the court or justice shall direct, 2 in case of an indictment, to the State, or in case of a complaint 3 or action, to the plaintiff, conditioned either that the defendant 4 will discontinue said nuisance, or that within a time limited by 5 the court, and not exceeding six months, he will cause the same 6 to be abated and removed, as either shall be directed by the 7 court; and upon his default to perform the condition of the 8 recognizance, the same shall be deemed forfeited, and the said 9 court, or any justice thereof, in term time or in vacation, or said 10 justice of the peace, upon being satisfied of such default, may 11

14 order such warrant forthwith to issue, and scire facias to issue
15 on said recognizance.

SECT. 11. The expense of abating a nuisance by virtue of a
2 warrant, shall be collected by the officer in the same manner as
3 damages and costs are collected on execution, except that the
4 materials of any buildings, fences or other things, that shall be
5 removed as a nuisance, may be first levied upon and sold by the
6 officer, and if any of the proceeds remain after satisfying the
7 expense of removal, such balance shall be paid by the officer on
8 demand to the defendant or to the owner of the property levied
9 upon; and if said proceeds shall not be sufficient to satisfy said
10 expenses, the officer shall collect the residue thereof as before
11 mentioned. Any person committed to jail on such warrant,
12 may be admitted to the privilege of the oath for the relief of
13 poor debtors, in the same manner as if he had been committed
14 on execution. And if said expense cannot be collected of the
15 defendant, it shall be paid in the same manner as costs in crim-
16 inal prosecutions. M. R. S. 106, § 3. 1821, 24, § 2.

SECT. 12. The supreme judicial court may hear and deter-
2 mine, in equity, all matters concerning nuisances, in which there
3 is not a plain, adequate, and complete remedy at law, and may
4 direct any fact to be determined by a jury, when they shall deem
5 it necessary. And any court of record, before whom an indict-
6 ment, complaint or action for a nuisance may be pending, may
7 in any county, issue an injunction to stay or prevent any such
8 nuisance, and make such orders and decrees for enforcing or
9 dissolving the same, as justice and equity may require.

M. R. S. 106, § 6, 7, 8, 9,

NOTES.

The provisions of this chapter are not confined exclusively to those offences, which are subjects of a criminal prosecution. Public or common nuisances, which may be indicted, and private nuisances, for which the remedy is by a civil action, are so intimately connected in our laws, that they cannot conveniently, and without much repetition, be all arranged under distinct titles and chapters. The commissioners have therefore deemed it advisable to include in this chapter all those provisions, relating to private as well as to public nuisances, which could not be more appropriately revised in other places.

SECT. 1. Describes certain offences, not revised in other chapters, which directly or by implication, are declared to be nuisances by the existing statutes, and also many others, of frequent occurrence, which are well known and defined by the common law. Others of this class upon which the courts have seldom if ever in this State occasion to adjudicate, we have thought it safest to leave as we find them, to be settled and defined by the common law. Such are the offences of overhanging houses, obstructing ancient lights, keeping dangerous animals, disorderly houses, scolds, &c. Many of the offences mentioned in this section have been modified or limited by several statutes of this State, which are substantially revised in sections 2, 3, 4 and 5, and referred to in section 6.

SECT. 3. Enlarges the penalty from \$20 to \$100.

SECT. 6, Enacts a principle, well established by frequent judicial decisions.

SECT. 7, Provides a punishment for public and common nuisances. Private nuisances, being an injury to individuals only, are not indictable. 1st Hawk. b. 1st, c. 75, § 2, except in particular cases, provided by statute, such as offensive trades, brick kilns, &c. in places prohibited.

SECT. 8, Is similar to the present statute but more comprehensive. At common law, the person injured by a public or common nuisance, could not recover any compensation by action, except in aggravated cases, of direct injury, where one person suffers extraordinary damage beyond others. 3d Blackstone, c. 13, § 2. Hawk. ch. 76, § 1.

SECT. 9, Authorizes the nuisance to be abated by legal process, after it has been judicially decided to be such, either upon indictment or action. As the law now is, the court may, upon an indictment, award the abatement of the nuisance, but not in a civil action. And so it is at common law. Yet the common law, authorizes any individual to take the means of redress into his own hands, and to remove a nuisance, whether common or private; "and a man whose grounds are overhung, or whose lights are darkened by another house, may justify the entering into another's grounds, and pulling down and destroying such a nuisance," (Hawkins, b. 1, ch. 75, 12. 3 Blackstone, ch. 1, § 4,) without any legal process or decision whatever. It is therefore thought advisable to authorize a warrant for abatement to be granted in all cases, after a conviction for a nuisance, and thus prevent the dangers, and breaches of the peace that would be apt to arise, from an individual's attempting to do himself justice, without a legal process to warrant and protect him.

The existing statute provides a complicated and expensive process, by which this object may be obtained, and which seems to have been borrowed in part from the old English "*assize of nuisance*." It provides that a complaint may be made to two justices of the peace, "*quorum unus*," who may issue a warrant to the sheriff to summon and empanel a jury of twelve men, who are to try the complaint, and upon conviction of the defendant, the justices may issue a warrant for abatement, with costs, &c. The defendant is entitled to an appeal to S. J. court, and to costs if he prevail. This process, the act states, was intended to afford a prompt remedy to the party injured. It must be obvious, however, that these preliminary and expensive proceedings would, in most cases, be useless, as the defendant, if defeated, would almost always appeal; it would serve only to create uncertainty, and technical objections as to forms, and the great enhancement of the costs would alone become an object of litigation. It has never, to our knowledge, been enforced in this State, but the more simple, cheap, and expeditious remedy by indictment or action at common law has been preferred. These remedies are preserved, and likewise the only benefit to be derived from the process alluded to, which is the warrant of the court for abatement of the nuisance. Also justices of the peace, in cases of trifling amount, where the damages are not over \$20, have authority to issue such warrant. Many cases may be mentioned, such as removing filth, offal, &c. where it would be for the public interest that they should have this power, as the costs would not be large, and the remedy prompt and effectual. And no danger could be apprehended from its exercise, as in all such cases, either party, if he thinks proper, can appeal to a higher court. In recommending the repeal of this process, we are supported by the example of Mass. who have abolished it.

The other sections need no explanation.

CHAPTER 165.

OF LIBEL.

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- Sect.* 1. Libel defined.
 2. Who are liable to punishment for making, &c.
 3. Same subject.
 4. Truth, a justification, in libels against public officers.
 5. Truth, a justification in all cases, unless, &c.
 6. In other cases, above excepted, deemed malicious, unless, &c.
 7. What constitutes a publication.
 8. Powers of the jury.
-

SECT. 1. A libel shall be construed to be the malicious defa-
 2 mation of a person, made public by either any printing, writing,
 3 sign, picture, representation or effigy, tending to provoke him to
 4 wrath or expose him to public hatred, contempt or ridicule, to
 5 deprive him of the benefits of public confidence and social
 6 intercourse; or any malicious defamation, made public as afore-
 7 said, designed to blacken and vilify the memory of one who is
 8 dead, and tending to scandalize, or provoke his surviving rela-
 9 tives or friends. 4 Blackstone, 2, § 13. 1 Hawkins, 73.

SECT. 2. Every person who makes, composes, dictates, writes
 2 or prints a libel, or who directs or procures the same to be done,
 3 or who publishes or circulates such libel, or in any way, know-
 4 ingly and wilfully aids or assists in making, publishing or circu-
 5 lating the same, shall be punished by imprisonment in the county
 6 jail, not more than one year, and by fine not exceeding one
 7 thousand dollars. 4 Blackstone, 2, § 13. 1 Hawkins, 73.

SECT. 3. Every person who manages or controls the business
 2 of any printing office, book-store or shop, whether for himself or
 3 as agent for another, and every proprietor, editor, printer and
 4 publisher of any newspaper, pamphlet, book or other publica-
 5 tion, shall be responsible for any libel printed or published in
 6 any such office, book-store or shop which he manages or con-
 7 trols, as aforesaid, or in any newspaper, pamphlet, book or other
 8 publication of which he is, in whole or in part, proprietor,
 9 editor, printer or publisher, unless he can prove on trial that
 10 such libel was so printed and published without his knowledge,
 11 consent or suspicion; and that by his using reasonable care and
 12 diligence, it was not in his power to have prevented the printing
 13 and publication of the same as aforesaid.

2 Gilbert's Evidence, 841, 85. Chit. C. L. 2, 871.

SECT. 4. In prosecutions for any publication respecting the
 2 official conduct of men in public capacity, or the qualifications
 3 of those who are candidates for the suffrages of the people; or
 4 where the matter published is proper for public information, the
 5 truth thereof may be given in evidence, and if established, it
 6 shall be held a complete justification.

Constitution, Art. 1, § 4.

SECT. 5. In the trial of any criminal prosecution for writing or publishing a libel, other than as mentioned in the preceding section, the defendant may give in evidence the truth of the matter charged as libelous; and the truth of such matter being established, the same shall be held a complete defence and justification, unless it shall be made to appear that the publication thereof, originated from corrupt and malicious motives.

1823, 73, § 1.

SECT. 6. If the publication of an alleged libel shall not be justified in any manner as mentioned in the two preceding sections, the same shall be deemed to have been malicious, unless the contrary shall be fully and clearly proved.

3 Pick. 304.

SECT. 7. No printing, writing or other thing shall be held to be a libel, unless there shall have been a publication thereof; and the delivery or selling, or reading or otherwise communicating a libel, or causing the same to be delivered, sold, read or otherwise communicated to one or more persons, or to the party libeled, shall be deemed a publication thereof.

Hawkins, Chitty, &c.

SECT. 8. In all indictments for libels, the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact. Constitution.

CHAPTER 166.

CRIMES AND OFFENCES WITHIN THE JURISDICTION OF DIFFERENT COURTS.

- Sect. 1. Crimes and offences in the jurisdiction of the S. J. court.
 2. Crimes and offences in the jurisdiction of the district court.
 3. Crimes and offences in the jurisdiction of justices of the peace, police and municipal courts.
 4. Offences committed on or near the boundary of two counties.
 5. Death from injury inflicted in another county.
 6. Or on the high seas, or without the State.
 7. Acquittal of part of indictment, and conviction of the residue.

SECT. 1. The supreme judicial court shall have exclusive jurisdiction of all crimes, punishable with death, or by imprisonment in the state prison for life, or for an unlimited term of years, and of the crimes of misprision of treason, manslaughter and duelling as described in the sixth, seventh, ninth, tenth, and eleventh sections of the two hundred and fifty-fourth chapter, felonious maims and assaults, the crime against nature, adultery, incest, polygamy, the offences of burning buildings, described

9 in the fourth and fifth sections of the two hundred and sixtieth
10 chapter, of the offences of forging and counterfeiting, described
11 in the first, second, twelfth, thirteenth, fourteenth, fifteenth, and
12 twentieth sections of the two hundred and fifty-seventh chapter,
13 and of the offences against public justice, which are severally
14 described in the first ten sections of the one hundred and fifty-
15 eighth chapter. 1823, 233, § 1. 1836, 196, § 1.

SECT. 2. The district court shall have exclusive original
2 jurisdiction of all crimes, offences, and misdemeanors, with the
3 exception of those mentioned in the preceding section, and of
4 those of which justices of the peace, police and municipal courts
5 have by law original jurisdiction, exclusive, or concurrent with
6 the district court; the said jurisdiction of the district court shall
7 be final, except that an appeal shall be allowed from the opinion,
8 direction or judgment of said court in matter of law, upon
9 exceptions being filed as is provided in the ninety-seventh
10 chapter. 1823, 233, § 1. 1836, 196, § 1. 1839, 373.

SECT. 3. Justices of the peace, police and municipal courts
2 shall have original jurisdiction, exclusive, or concurrent with the
3 district court, and of such crimes, offences and misdemeanors,
4 as is or shall be prescribed by law; and any person aggrieved
5 by a judgment or decision of any justice of the peace, police or
6 municipal court, in any prosecution pending before them res-
7 pectively, may appeal therefrom to the district court, as men-
8 tioned in the two hundred and seventieth chapter, unless it is
9 otherwise provided by law. Constitution, Art. 1, § 6.

SECT. 4. Any offence committed on the boundary between
2 any two counties, or within one hundred rods of the same, may
3 be alleged in the indictment or complaint to have been com-
4 mitted, and may be prosecuted and punished, in either county.
N. Y. R. S. Vol. 2, 727. M. R. S. 133, § 7.

SECT. 5. If any mortal wound, or other violence or injury
2 shall be inflicted, or any poison administered, in one county, by
3 means whereof death shall ensue in another county, the offence
4 may be prosecuted and punished in either county.
1821, 59, § 40.

SECT. 6. If any mortal wound, or other violence or injury
2 shall be inflicted or poison administered on the high seas, or on
3 land, without the jurisdiction of this State, by means of which
4 death shall ensue within this State, such offence may be pros-
5 ecuted and punished in the county where such death shall
6 happen. 1821, 59, § 41.

SECT. 7. When any person, indicted for any felony or other
2 offence, shall by the verdict of the jury on trial be acquitted of
3 a part of the offence, and found guilty of the residue thereof,
4 such verdict may be received and recorded by the court; and
5 thereupon such person may be convicted of the offence, if any,
6 which may appear to said court to be substantially charged by
7 the residue of such indictment, of which he has thus been found
8 guilty, and shall be sentenced and punished accordingly although

9 the offence of which he is thus convicted is not within the juris-
 10 diction of said court, by the previous provisions of this chapter.
 1821, 59, § 43. 1829, 433, § 1.

CHAPTER 167.

GENERAL PROVISIONS RELATING TO CRIMES AND PUNISHMENTS.

- Sect.* 1. No person to be punished till after conviction.
 2. The term "felony" as used in this chapter defined.
 3. Accessories *before* the fact, how punished.
 4. How, when and where to be indicted and tried.
 5. Same subject.
 6. Accessories *after* the fact.
 7. Same subject.
 8. Ownership of property—what is proof of it.
 9. Intent to defraud—statement and proof of it.
 10. Attempt to commit crimes.
 11. Imprisonment in State prison, not less than one year.
 12. Convicts, having been before sentenced.
 13. Fines and forfeitures—how to accrue.
 14. How to be recovered.
 15. Limitation of prosecutions.

SECT. 1. No person, charged with any offence against the
 2 law, shall be punished for the same, unless he shall have been
 3 duly and legally convicted thereof in a court having competent
 4 jurisdiction of the cause and person.

M. R. S. 123, § 6.

SECT. 2. The term "felony" when used in any chapter in
 2 this title, shall be construed to include murder, rape, arson, rob-
 3 bery, burglary, maims, larceny, and every offence punishable
 4 with death or by imprisonment in the state prison.

N. Y. R. S. vol. 2, p. 702.

SECT. 3. Every person, who shall aid and abet in the commis-
 2 sion of any felony, or who shall be accessory thereto before the
 3 fact, by counseling, hiring, or otherwise procuring the same to
 4 be committed, shall be punished in the same manner, which is
 5 or shall be prescribed for the punishment of the principal felon.

Criminal statutes. M. R. S. 133, § 1.

SECT. 4. Every person, who shall counsel, hire, or otherwise
 2 procure any felony to be committed, which shall be committed
 3 in consequence thereof, may be indicted and convicted, as an
 4 accessory before the fact, either with the principal felon, or after
 5 his conviction, or he may be indicted and convicted of a sub-
 6 stantive felony, whether the principal felon shall, or shall not
 7 have been convicted, or shall, or shall not be amenable to jus-
 8 tice, and shall in the last mentioned case, be punished in the

9 same manner as if convicted of being an accessory before the
10 fact. 1831, 504, § 1.

SECT. 5. Any person, charged with the offence; mentioned
2 in the preceding section, may be indicted and convicted in the
3 same court and county, where the principal felon might be
4 indicted and tried, although the offence of counseling, hiring,
5 or otherwise procuring the commission of such felony may have
6 been committed on the high seas, or on land without the limits
7 of this State; and if the principal felony be committed in one
8 county, and the offence of being accessory thereto be committed
9 in another county, the last mentioned offence may be indicted,
10 tried and punished in either of said counties.

1831, 504, § 2.

SECT. 6. Every person, not standing in the relation of hus-
2 band or wife to the principal offender, who shall harbor, conceal,
3 maintain, or assist any principal felon, or accessory before the
4 fact to any felony, knowing him to be such, with intent that he
5 shall avoid or escape from detection, arrest, trial, or punishment,
6 shall be deemed an accessory after the fact, and shall be pun-
7 ished by imprisonment in the state prison not more than seven
8 years, or in the county jail not more than one year, and by fine
9 not exceeding one thousand dollars; but in no case shall such
10 punishment exceed the punishment to which the principal felon
11 on conviction would have been liable.

1831, 504, § 3. M. R. S. 133, § 4.

SECT. 7. Every person, who shall be accessory after the fact
2 to any felony, may be indicted, tried and sentenced in any court
3 or county, having jurisdiction of the principal offence, whether
4 the principal felon shall or shall not have been convicted, or
5 shall or shall not be amenable to justice; and if the principal
6 felony shall be committed in one county, and the offence of
7 being accessory after the fact in another county, the last men-
8 tioned offence may be indicted, tried and punished in either
9 county.

1831, 504, § 3. M. R. S. 133, § 5.

SECT. 8. In the prosecution of any offence committed upon,
2 in relation to, or any way affecting any real estate or personal
3 property, it shall be sufficient and not be deemed a variance, if
4 it be proved on the trial, that at the time when the offence was
5 committed, either the actual or constructive possession, or the
6 general or special property in the whole or any part of such
7 real estate or personal property was in the person or community
8 alleged in the indictment or complaint, to be the owner thereof.

M. R. S. 133, § 10.

SECT. 9. When an intent to defraud is required to be shewn
2 in order to constitute any offence, it shall be sufficient to allege
3 in the indictment an intent to defraud, without naming therein
4 the particular person or body corporate, intended to be de-
5 frauded; and, on trial of such indictment, it shall be sufficient,
6 and shall not be deemed a variance, if there appear to be an
7 intent to defraud the United States, or any State, county, city,

8 town, parish or any body corporate, or any particular person or
9 persons whatever. N. Y. R. S. 703. M. R. S. 127, § 14.

10 SECT. 10. Every person who shall attempt to commit an
11 offence prohibited by law, and in such attempt shall do any act
12 towards the commission of such offence, but shall fail in the
13 perpetration, or shall be interrupted or prevented in the execu-
14 tion of the same, where no express provision is made by law for
15 the punishment of such attempt, shall be punished, when the
16 offence attempted to be committed is punishable with death, or
by imprisonment in the state prison for life, by imprisonment in
the state prison not more than ten years; and when any other
offence is so attempted to be committed, he shall be punished
by imprisonment in the state prison or in the county jail or by
fine, respectively, as the offence so attempted to be committed
is by law punishable; but in no case shall the punishment of
such last mentioned attempt exceed one half of the greatest
punishment which might have been inflicted, if the offence, so
attempted, had been committed.

N. Y. R. S. 698. M. R. S. 133, § 12.

SECT. 11. No convict shall be sentenced to the state prison
2 for a less term than one year; all imprisonments for a less term
3 shall be in the county jail or house of correction.

SECT. 12. When any person shall be convicted of a crime,
2 the punishment of which, shall be by imprisonment in the state
3 prison, and it shall be alleged in the indictment on which such
4 conviction is founded, and admitted or proved on trial, that such
5 person has been before convicted and sentenced to imprisonment
6 in any state prison, by any court of this State [or] of any other
7 State or of the United States, whether such convict shall have
8 been pardoned or not, he shall be punished by imprisonment in
9 the state prison for life or any term of years. 1824, 282, § 18.

SECT. 13. All fines and forfeitures, imposed as a punishment
2 for any offence, or for a violation or neglect of any duty im-
3 posed by statute, where no other appropriation thereof, is
4 expressly made by law, shall accrue to the use of the State.

SECT. 14. All fines and forfeitures given or limited by law,
2 in whole or in part to the use of the State, may be recovered by
3 indictment in the district court, when no other mode is expressly
4 provided.

SECT. 15. No person shall be prosecuted for any offence,
2 except treason, murder, arson or manslaughter, unless the indict-
3 ment shall be found within six years after the offence shall have
4 been committed, provided that the offender shall not flee from
5 justice; and that no other limitation for the prosecution of such
6 offender is provided by law; but any period, during which the
7 party charged was not usually and publicly resident within this
8 State, shall not be reckoned as a part of the said six years; and
9 provided that this section shall not extend to any crime com-
10 mitted before the said section shall take effect. 1839, 362.

CHAPTER 168.

OF SENTENCE AND EXECUTION THEREOF IN CRIMINAL CASES.

- Sect.* 1. What sentence to be passed, when none is provided by the statute.
 2. Where a convict in certain cases may be imprisoned.
 3. Punishment may be by conditional sentence.
 4. Sentence may be to pay a fine or be imprisoned.
 5. In all but capital cases, or when imprisonment for life may be inflicted, surety for keeping the peace may be part of the sentence.
 6. Form of mittimus in case of commitment to house of correction.
 7. When a person is sentenced to State prison, the measures to be taken.
 8. A person convicted and sentenced to suffer death, shall be also sentenced to state prison.
 9. Sentence of death not to be executed under one year, nor until the record of conviction and sentence is laid before the supreme executive, and a warrant has issued.
 10. *How* and *where* the sentence shall be executed.
 11. Sheriff and certain designated persons to be present.
 12. Warrant to be lodged in secretary's office, with a special return thereon.

SECT. 1. When a person shall be legally convicted of any
 2 offence for the punishment of which no provision is made by
 3 statute, the court shall award such sentence as is conformable
 4 to the common usage and practice in this State, according to
 5 the nature of the offence, and not repugnant to the constitution.
 1821, 54, § 1.

SECT. 2. Any person convicted before the supreme judicial
 2 court or district court of any crime or offence punishable in part
 3 or in whole by imprisonment in the county jail may be sentenced
 4 to suffer imprisonment, either in the county jail or house of cor-
 5 rection at their discretion, to be employed and kept at work
 6 there, in the same manner as rogues, vagabonds, and idlers are
 7 by law to be employed when committed to such house.
 1821, 110, § 7.

SECT. 3. Either of said courts may sentence any person con-
 2 victed of any offence mentioned in the preceding section, con-
 3 ditionally to pay a fine with costs of prosecution; or in case he
 4 do not pay the same within ten days, that he be immediately
 5 thereafter conveyed to the house of correction, and there be
 6 kept at work as aforesaid, for a term not exceeding six months.
 1821, 110, § 8.

SECT. 4. Whenever it is provided that an offender shall be
 2 punished by imprisonment and a fine, the court may sentence
 3 him to either of those punishments without the other, or to both.
 M. R. S. 139, § 4.

SECT. 5. Every court before whom any person shall be con-
 2 victed of an offence not punishable by death or confinement in
 3 the state prison, may, in addition to the punishment by law pre-
 4 scribed require such person to recognize to the State, with
 5 sufficient sureties in a reasonable sum to keep the peace or be of

6 good behavior or both, for a term not exceeding two years, and
7 stand committed till he shall so recognize. M. R. S. 139, § 5.

SECT. 6. When a person convicted of an offence, shall be
2 sentenced to pay a fine or costs, or to be imprisoned in the
3 county jail or house of correction, the clerk of the court shall
4 as soon as may be, make out and deliver to the sheriff or some
5 officer in court, a transcript of the minutes of the court of the
6 conviction and sentence duly certified by him; and this shall be
7 a sufficient authority for the officer to execute such sentence.

M. R. S. 139, § 7.

SECT. 7. When any convict is sentenced to confinement in
2 the state prison, the clerk of the court before whom the con-
3 viction may take place, shall make out a warrant under seal of
4 the court, directed to the warden of the prison, requiring him to
5 cause such convict, without needless delay, to be removed from
6 the county jail to the state prison; and the warden and all
7 sheriffs and jail keepers are required strictly to obey the direc-
8 tions of it, and the clerk shall as soon as may be, deliver the
9 same warrant to the sheriff of the county, who is required forth-
10 with to deliver the same to said warden. 1824, 282, § 1.

SECT. 8. When any person shall be convicted of any crime,
2 punishable with death, and sentenced to suffer such punishment
3 he shall, at the same time be sentenced to hard labor, in the
4 state prison, until such punishment of death shall be inflicted.

1837, 292, § 1.

SECT. 9. And no person so sentenced, and imprisoned shall
2 be executed in pursuance of such sentence, within one year from
3 the day such sentence of death was passed, nor until the whole
4 record of such proceedings or case shall be certified by the clerk
5 of said court, under the seal thereof, to the supreme executive
6 authority of the State, nor until a warrant shall be issued by said
7 executive authority, under the great seal of this State, directed
8 to the sheriff of the county, wherein the state prison shall be
9 situated, commanding the sheriff to cause the said sentence of
10 death to be carried into execution.

1837, 292, § 2. M. R. S. 129, § 13.

SECT. 10. The punishment of death shall in every case be
2 inflicted by hanging the convict by the neck until he is dead
3 and the sentence shall, at the time directed by the warrant, be
4 executed within the walls of the state prison, or the inclosed
5 yard of the same.

SECT. 11. The sheriff of the county shall be present at the
2 place of execution, unless prevented by sickness or other casual-
3 ty, and also two of his deputies designated by him. He shall
4 request the district attorney and twelve citizens including a
5 surgeon or physician, and shall permit the counsel of the prisoner,
6 such minister of the gospel as the criminal shall desire, and his
7 relations to be present, and such officers of the prison, deputies,
8 constables and military guard as he may see fit, but no others.

M. R. S. 139, § 14.

SECT. 12. Whenever a sheriff shall inflict the punishment of death upon any convict in obedience to a warrant from the governor, he shall make return thereof under his hand with his doings thereon, to the secretary's office as soon as may be, and shall also file in the clerk's office of the court where the conviction was had an attested copy of the warrant and return thereon, and the clerk shall place the same on file with the indictment and subjoin to the record of the sentence a brief abstract of the sheriff's return on the warrant. M. R. S. 139, § 15.

NOTES.

SECT. 5. From Mass. code, new, but seeming to give a useful power, as such a recognizance may operate as a salutary restraint upon him when enlarged.

SECT. 10. This is a new section as to place of execution. The commissioners were pleased to find that the Legislature of Massachusetts had enacted that part of the report of their commissioners which relates to that subject, and they have adopted it, hoping it will meet the approbation of the Legislature. Experience has proved that public executions only wound the feelings of the virtuous portion of the community; they only gratify the curiosity of the young and unthinking, and give to the unprincipled an opportunity to commit crimes of an inferior grade, while the wretched convict is ending his life in agonies. More people are injured by such spectacles, it is believed, than is generally supposed. Hearts are made harder by such appalling scenes.

SECT. 11. Official witnesses should be able to testify that the punishment has been inflicted.

SECT. 12. And the return of the warrant is record proof.

CHAPTER 169.

OF PROCEEDINGS FOR PREVENTION OF CRIMES.

- Sect.*
1. No person to be held to answer to any alleged offence unless on indictment, except, &c.
 2. Power of different courts and justices of the peace as to the preservation of public order.
 3. Duty of a magistrate, when a person is brought before him on a complaint.
 4. If proper—a warrant to be issued.
 5. Proceedings after arrest—and on examination.
 6. When to be discharged.
 7. When bound to recognize or be committed.
 8. If complaint is deemed unfounded, party to be discharged, and in certain cases to have costs.
 9. Persons complained of may be held to pay costs.
 10. Party may appeal to district court.
 11. In such case, magistrate to recognize witnesses to appear at court—what the court may order.
 12. Proceedings if appeal is not entered.

- Sect.* 13. When party is committed for not finding sureties, he may be discharged on giving surety.
14. Recognizance to be sent to district court.
15. Threats and disturbance before court or magistrate may be punished by commitment, or the offender held to find sureties.
16. Punishment for going armed, &c.
17. Penalty for recognizance may, on complaint be remitted in whole or part.
18. Surety may surrender his principal and be discharged and subsequent proceeding.

SECT. 1. No person shall be held to answer in any court for an alleged crime or offence, unless upon an indictment by a grand jury, except in the following cases—

4 *First*—When a prosecution by information is expressly authorized by statute.

6 *Second*—In proceedings before a municipal or police court; or a justice of the peace.

8 *Third*—In proceedings before courts martial.

SECT. 2. The justices of the supreme judicial court, of the district court, justices of municipal courts and police courts in vacation, as well as in open court; and justices of the peace, in their respective counties, shall have power to cause all laws, made for the preservation of the public peace to be kept; and in the execution of that power, may require persons to give security to keep the peace, or be of the good behavior or both, in the manner provided in this chapter.

M. R. S. 134, § 2.

SECT. 3. Any such magistrate, on complaint made to him, that any person has threatened to commit an offence against the person or property of another, shall examine the complainant on oath, and also any witnesses who are produced, and reduce the complaint to writing, and cause the complainant to subscribe the same.

M. R. S. 134, § 2.

SECT. 4. If there should appear to such magistrate on an examination of the facts, that there is just cause to apprehend and fear the commission of such offence, he shall issue a warrant under his hand and seal, containing a recital of the substance of the complaint, and commanding the officer to whom the same may be directed, forthwith to arrest the person complained of, and bring him before such magistrate or court, having jurisdiction of the case.

1821, 76, § 1.

SECT. 5. When the person complained of is brought before the magistrate, he may be required, after his defence has been heard, to enter into a recognizance, with sufficient sureties, in such sum as shall be ordered, to keep the peace towards all the people of the State, and especially towards the person requiring the security, for such term as the magistrate may order, not exceeding one year, but shall not be bound over to any court, unless he is also charged with some specific and other offence for which he ought to be held to answer at such court.

1821, 76, § 1.

SECT. 6. If the person complained of shall comply with the
2 order of such magistrate, he shall be discharged. 1821, 76, § 1.

SECT. 7. If the person shall refuse or neglect so to recognize,
2 the magistrate shall commit him to the county jail during the
3 period for which he was required to find sureties, or till he shall
4 so recognize, and the magistrate shall state in the warrant the
5 cause of commitment; and also the time and the sum for which
6 security was required. 1821, 76, § 1.

SECT. 8. When the magistrate on examination of the facts,
2 shall not be satisfied that there is just cause to fear the commis-
3 sion of any such offence, he shall immediately discharge the
4 party complained of; and if the magistrate shall judge the com-
5 plaint unfounded, malicious or frivolous, he may order the com-
6 plainant to pay the costs of prosecution, who shall thereupon be
7 answerable to the magistrate and officer for their fees, as for
8 his own debt. M. R. S. 134, § 7.

SECT. 9. When the person complained of is required to give
2 security for the peace, or for his good behavior, the court or
3 magistrate may further order that the costs of prosecution or
4 any part thereof, shall be paid by such person, who shall stand
5 committed until such costs are paid or he is otherwise discharged.

M. R. S. 134, § 8.

SECT. 10. Any person aggrieved by the order of such judge
2 of a municipal or police court or justice of the peace, in requir-
3 ing him to recognize as aforesaid, may on giving the security
4 required, appeal to the next district court, in the same county.

M. R. S. 134, § 9.

SECT. 11. When an appeal is taken from an order of such
2 justice or court, the magistrate shall require such witnesses as
3 he may think necessary to recognize for their appearance at the
4 court appealed to; and such court may affirm the order of the
5 judge or justice or discharge the appellant, or require him to
6 recognize anew with sufficient sureties as the court may deem
7 proper, and make such order as to the costs as may be deemed
8 reasonable. M. R. S. 134, § 10, 11.

SECT. 12. If the appellant shall fail to prosecute his appeal
2 his recognizance shall remain in full force, as to any breach of
3 the condition without an affirmation of the judgment or order,
4 and stand as a security for any costs which may be ordered by
5 the court to be paid by the appellant. M. R. S. 134, § 12.

SECT. 13. Any person committed for not finding sureties or
2 refusing to recognize, as required by the court or magistrate,
3 may be discharged by any judge or justice of the peace, on
4 giving such security as was required.

SECT. 14. Every recognizance taken pursuant to the forego-
2 ing provisions shall be transmitted to the district court, on or
3 before the first day of the next ensuing term, and shall there be
4 filed by the clerk as of record. M. R. S. 134, § 14.

SECT. 15. Whoever in the presence of any magistrate men-
2 tioned in the second section of this chapter, or before any court

3 of record, shall make any affray or threaten to kill or beat
 4 another or commit any violence against his person or property
 5 or shall contend with hot and angry words to the disturbance of
 6 the peace, may be ordered without process or any other proof, to
 7 recognize for keeping the peace, or being of the good behavior
 8 for a term not exceeding three months and in case of refusal,
 9 may be committed to prison as before directed.

M. R. S. 134, § 15.

SECT. 16. Any person going armed with any dirk, dagger,
 2 sword, pistol or other offensive and dangerous weapon, without a
 3 reasonable cause to fear an assault on himself, or any of his family
 4 or property may on the complaint of any person having cause to
 5 fear an injury or breach of the peace, be required to find sureties
 6 for keeping the peace for a term, not exceeding one year, with
 7 the right of appeal as before provided. 1821, 76, § 1.

SECT. 17. In a suit on such recognizance taken in a criminal
 2 case if a forfeiture is found or confessed, the court, on petition
 3 may remit the penalty or such part of it as they may think
 4 proper, on such terms as they may think right. 1821, 50, § 4.

SECT. 18. Any surety in a recognizance may surrender the
 2 principal in the same manner as if he had been his bail in a civil
 3 cause, and on such surrender shall be discharged from all liability
 4 for any act of the principal after such surrender which would
 5 be a breach of the recognizance, and upon such surrender the
 6 principal may recognize anew with sufficient surety or sureties
 7 for the residue of the term, before any justice of the peace; and
 8 shall thereupon be discharged. M. R. S. 134, § 18.

NOTES.

SECT. 2. This merely states certain *general powers* appertaining to the courts or officers therein mentioned. It is useful to have them distinctly known.

The last eight sections contain no new principles, but merely point out for the use of all magistrates the correct mode of proceeding in all stages of the business therein mentioned. They are taken from the revised statutes of Mass.

CHAPTER 170.

OF THE POWER AND PROCEEDINGS OF JUSTICES OF THE PEACE IN CRIMINAL CASES.

- Sect. 1. Every justice a conservator of the peace in his county.
 2. His jurisdiction as to offences.
 3. His duty when complaint is made to him.
 4. Justice to examine all persons—may try or bind over, &c.

- Sect.* 5. Cases of high and aggravated nature—his duty to bind over.
 6. Duty to arrest offenders, who appear guilty.
 7. May try offences within his jurisdiction and sentence offenders.
 8. Defendant may appeal.
 9. To produce copies of case, &c.
 10. Consequences of not doing it.
 11. May issue summonses, &c. for witness except, &c.
 12. Bound to account annually for all fines.
 13. May administer all necessary oaths.
 14. Power to issue search warrants.

SECT. 1. Every justice of the peace may, as a conservator of
 2 the peace, upon view of any affray, riot, assault or battery,
 3 within his county, without any warrant in writing, command the
 4 assistance of any sheriff, deputy sheriff or constable, and of all
 5 other persons present, for suppressing the same, and arresting
 6 all who are concerned therein as provided in this chapter.

1821, 76, § 1.

SECT. 2. Every justice of the peace within his county, may
 2 punish by fine not exceeding ten dollars, all assaults and bat-
 3 teries and other breaches of the peace, declared criminal by any
 4 statute or town by-law, when the offence is not of a high or
 5 aggravated nature, and cause to be stayed and arrested all
 6 affrayers, rioters, disturbers and breakers of the peace, and all
 7 who go armed offensively to the terror of the people, and such
 8 as utter threatening speeches, or are otherwise disorderly and
 9 dangerous.

1821, 76, § 2.

SECT. 3. When complaint shall be made in due form to any
 3 justice of the peace, alleging any offence to have been com-
 4 mitted, and praying for a warrant to be issued against the person
 5 charged, the justice shall carefully inquire of the complainant
 6 on oath, into the circumstances of the case, and if he shall be
 7 satisfied that the person charged committed the offence alleged,
 he shall issue his warrant.

1823, 235, § 1.

SECT. 4. All persons arrested by process conformable to the
 2 provisions of the constitution, for any of the offences before
 3 mentioned, shall be examined by the judge or justice before
 4 whom they are brought, and may be tried by him, and if found
 5 guilty, may be required to find sureties for keeping the peace
 6 and be further punished by fine as before provided.

1823, 235, § 1.

SECT. 5. When the offence is of a high and aggravated
 2 nature, the persons thus arrested and in custody, may be com-
 3 mitted or bound over for trial to the court, by law having juris-
 4 diction of the case as is provided in the

1823, 235, § 1.

SECT. 6. Every justice shall cause to be arrested, on proper
 2 complaint, all persons found within his county charged with
 3 any offences, and all persons who, after committing any offence
 4 within the county, shall escape out of the same. He shall also
 5 examine into all treasons, felonies, high crimes and misdemeanors

6 and commit or bind over for trial all persons who appear to be
7 guilty thereof. 1823, 235, § 1.

SECT. 7. He may also try all offences within his jurisdiction,
2 committed in his county and sentence all persons convicted
3 thereof, according to law. 1823, 235, § 1.

SECT. 8. Any person aggrieved at the sentence of any justice
2 of the peace, or judge of a municipal court, may appeal there-
3 from to the next district court to be holden in the same county ;
4 and before his appeal shall be granted he shall recognize to the
5 State in such reasonable sum not less than twenty dollars as the
6 justice shall order with sufficient surety or sureties for his pros-
8 ecuting his appeal. 1823, 235, § 3.

SECT. 9. And he shall be held to produce a copy of the whole
2 process, and of all writings filed before the justice, at the dis-
3 trict court.

SECT. 10. If he shall not prosecute his appeal and produce the
2 copies as aforesaid, his default shall be noted upon their record,
3 and the court may order the case to be laid before the grand
4 jury or may issue an attachment against the body of such appel-
5 lant and bring him into court, and may then affirm the sentence
6 of the justice, with all additional costs. 1823, 235, § 3.

SECT. 11. Any justice may issue summonses for witnesses to
2 appear before any judicial court or before himself, in any crim-
3 inal case ; but not for witnesses on the part of the State, without
4 the consent of the attorney general. 1823, 235, § 6.

SECT. 12. Every justice shall account annually with the
2 treasurer of the State, the treasurer of his county and the treas-
3 urer of the town, as the case may be for all fines by him received
4 or imposed, on pain of forfeiting thirty dollars to be recovered
5 by the treasurer, entitled to receive such fines. 1823, 235, § 7.

SECT. 13. Every justice of the peace may administer oaths
2 in all cases in which an oath shall be required, unless a different
3 provision shall be made by law.

SECT. 14. Any justice of the peace or other magistrate,
2 authorized to issue warrants in criminal cases, may within the
3 limits of his jurisdiction, issue warrants to proper officers to
4 search for persons, goods or articles, according to the principles
5 and provisions following and not otherwise ;
6 *First*, the application or complaint made to such justice or mag-
7 istrate, shall be in writing and signed by the complainant, and
8 he shall make oath to the truth of the facts therein stated.
9 *Second*, if the object of search shall be goods or articles, which
10 have been stolen, the complainant shall state that such articles
11 or goods have been stolen, and that he has reason to suspect
12 that they are concealed in some house, building or place, which
13 shall be specially designated in the complaint.
14 *Third*, if such goods or articles are suspected to be in possession
15 of any person, or in any of his buildings or on his premises, his
16 name shall be alleged in the complaint.

17 *Fourth*, such justice, or other magistrate, shall thereupon issue
 18 his warrant under his hand and seal and direct the same to a
 19 proper officer, or to any other person by name for service, and
 20 it shall contain a recital of all the essential facts alleged in the
 21 complaint, and may be made returnable before the justice or
 22 magistrate issuing it, or before any other justice or magistrate.
 23 *Fifth*, such warrant shall not authorize the person executing it,
 24 to search any dwelling house in the night time unless such
 25 authority shall be distinctly expressed and given in the warrant.

NOTES.

SECT. 13. A mere declaration of an existing power.

SECT. 14. It has been thought useful to insert this new section. The power to issue a search warrant and the limitations of the power, and the mode of its exercise are all important to be known to every magistrate; and the section is so framed, as, in the opinion of the commissioners, to have a salutary operation.

Since presenting this report the commissioners have proposed the following sections to be inserted in the place of section 14.

SEARCH WARRANTS.

SECT. 14. Any justice of the peace or other magistrate authorized to issue warrants in criminal cases, may within the limits of his jurisdiction, issue his warrant to search any house or place for property stolen, embezzled, or obtained by false tokens or pretences,—or for forged and counterfeit coins, banks bills, or other writings, or for any tools, machines, or materials used or designed for making the same,—or for any dead body, unlawfully disinterred, carried away, and concealed,—and in other cases, and for persons, when such search is authorized by law; which search warrant shall be issued according to the principles and provisions in the three following sections, and not otherwise.

SECT. 15. The application or complaint for search warrant made to the justice or magistrate shall be in writing, signed by the complainant and verified by his oath or affirmation. It shall specially designate the house or place to be searched, and the owner or occupant thereof, and the person or thing to be searched for, and shall also substantially allege the offence committed in relation to such person or thing, and that the complainant has probable cause to suspect, and does suspect that the same is concealed in the house or place designated as aforesaid.

Constitution, art. 1, § 5.

SECT. 16. Such justice or magistrate shall thereupon issue his warrant, under his hand and seal, and direct the same to a proper officer, or to any other person by name, for service, and it shall contain a recital of all the essential facts alleged in the complaint, and may be made returnable before the justice or magistrate issuing the same, or before any other justice or magistrate before whom shall also be directed to be brought the person or thing searched for, if found, and the person in whose possession or custody the same may be found, to be dealt with according to law.

SECT. 17. Such warrant shall not authorize the person executing it to search any dwelling house in the night time unless the justice or magistrate shall be satisfied that it is necessary in order to prevent the escape or removal of the person or property to be searched for, and unless such authority shall be distinctly expressed and given in the warrant,

Should this amendment be adopted the abstract may be amended by adding as follows :—

- Sect.* 15. Form of application.
 16. Form of warrant.
 17. When search may be made in the night time.

NOTES.

The authority of magistrates to issue warrants to search for property or persons is guarded with much caution by the English law. The constitution of this State has also a provision relating to unreasonable searches. Instances have occurred in which this power has been abused to the oppression of the subject.

In several chapters in the revised criminal code, authority is given for the issuing of these warrants, and these sections are referred to for its limitation and extent. The present sections specify certain cases in which warrants may issue, which are not provided for in other chapters, and it is believed to be necessary and useful that they should be thus particularly mentioned in order that magistrates and others could at once and without delay learn the extent of their authority in this respect and the manner in which it should be exercised.

CHAPTER 171.

OF COMMENCEMENT OF PROCEEDINGS IN CRIMINAL CASES.

- Sect.* 1. Jurisdiction of certain magistrates.
 2. Origin of proceedings by complaint.
 3. When the person accused has gone into another county the officer may pursue and take him.
 4. What proceedings may be had after his arrest.
 5. When his recognizance is taken, it may be sent to the justice who issued the warrant.
 6. If no bail is given in the county, where the arrest was, officer shall carry him to some justice in the county where the warrant was issued.
 7. When the offence is punishable with death or State prison the accused shall be committed in that county.
 8. When the warrant is returnable before the justice who issued it and no other; still if he cannot attend or be found, another justice may act in the case.
 9. Magistrate may adjourn an examination, and may recognize or commit the prisoner in mean time.
 10. If he does not appear, what proceedings to be had.
 11. What proceedings when he fails to recognize.
 12. Mode of examination before a justice.
 13. Same subject.
 14. Witnesses may be examined separately.
 15. Justices may require witnesses to sign statement of their testimony.
 16. Cases in which justice shall discharge prisoner.
 17. When he shall commit him or bail him.
 18. Magistrate to recognize witnesses.
 19. Witnesses may be held to recognize with sureties in certain cases.
 20. May commit him if he do not recognize.
 21. Any man may recognize for a married woman or minor, in certain cases she may recognize herself.
 22. Certain persons may be bailed by court or two justices.
 23. A justice may associate another one with him.
 24. Examinations taken by justice to be returned to court.

- Sect. 25. Prosecutions for assaults, &c. may be discharged, when compensation is made for civil injury.
26. The order of discharge to be filed in clerk's office.
27. When recognizance is defaulted, process to issue.
28. Surety may be discharged, by paying the money to county treasurer, &c.
29. Court may admit penalty of recognizance.
30. Judgment on recognizances, &c. not to be disturbed for matters of form.
31. Jury in certain cases may be summoned at a law term.

SECT. 1. The justices of the supreme judicial court and of the district court, the judges of municipal courts, police courts and justices of peace in their respective counties, as well in vacation as term time, for the apprehension of persons charged with offences, are authorized to issue process, to carry into effect the provisions of this chapter. M. R. S. 135, § 1.

SECT. 2. When a complaint is made to any judge of a municipal or police court or justice of the peace, that a criminal offence has been committed, he shall examine the complainant on oath, and any witnesses he may produce; and if it shall appear that any such offence has been committed, and that there is reason for believing the person charged to be guilty, the court or justice shall issue a warrant, stating the substance of the charge, and requiring the officer to whom it is directed, forthwith to arrest the person accused, and bring him before such court or justice or some other magistrate of the county to be dealt with according to law.

M. R. S. 135, § 2. 1823, 235, § 1.

SECT. 3. When a person against whom a warrant has been issued for an alleged offence, committed in any county, shall before or after issuing the warrant, have removed or escaped from or be out of the county, the sheriff or deputy, to whom the warrant is directed, may pursue and apprehend the party charged in any county in the State; and may, for that purpose, command aid as in his own county, and convey him into the county in which the offence was committed. 1824, 244, § 1.

SECT. 4. But where the offence charged in the warrant is not punishable with death or imprisonment in the state prison, the person arrested, if he shall request it, may be carried before any justice of the county in which the arrest was made, for the purpose of entering into a recognizance, without any trial or examination, and it shall be the duty of the officer so to carry him; and the justice may take a recognizance from the person arrested, with sufficient sureties for his appearance at the next court or before any justice of the peace, having cognizance of the offence in the county where the same is alleged to have been committed—and thereupon the party arrested shall be discharged. M. R. S. 135, § 4.

SECT. 5. The magistrate, having so taken the recognizance of the party charged, shall certify that fact on the warrant and deliver the same with the recognizance, to the person who made

4 the arrest, and it shall be his duty to cause the same to be
5 delivered without delay to the clerk of the court—before which
6 the person accused was recognized to appear.

M. R. S. 135, § 5.

SECT. 6. If the magistrate in the county, where the arrest
2 was made, shall refuse to let to bail the person arrested and
3 brought before him, or if no sufficient bail be offered, the per-
4 son having him in charge, shall take him before some magistry
5 of the county in which the warrant was issued, to be proceeded
6 with as hereinafter mentioned.

M. R. S. 135, § 6.

SECT. 7. When the offence charged is punishable with death
2 or by imprisonment in the state prison, the officer making the
3 arrest in some other county, shall convey the prisoner to the
4 county where the warrant was issued, and he shall be proceeded
5 with in the manner directed in the following section.

M. R. S. 135, § 7.

SECT. 8. Every person arrested by warrant for any offence,
2 where no provision is made for his examination thereon, before
3 any other justice of the peace, shall be brought before the mag-
4 istrate who issued the warrant, or if he be absent or unable to
5 attend, before any other magistrate of the same county, and the
6 warrant with a proper return thereon, signed by the person who
7 made the arrest, shall be delivered to the magistrate.

M. R. S. 135, § 8.

SECT. 9. Any magistrate may adjourn an examination before
2 himself from time to time, not exceeding ten days at one time,
3 and may take the recognizance of the party accused with suffi-
4 cient sureties for his personal attendance for the purpose before
5 such magistrate; but if the party is charged with a capital
6 offence, he shall be committed to prison in the mean time.

1824, 244, § 2.

SECT. 10. If the party so recognized, shall not appear at any
2 time appointed, before the magistrate for further examination,
3 the magistrate shall record the default, and certify his recogni-
4 zance with the record of the default to the district court; and
5 the like proceedings shall be had thereon, as on a breach of the
6 condition of a recognizance for appearance before the court.

1824, 244, § 3.

SECT. 11. When such person shall fail to recognize, he may
2 be committed to prison by an order from the magistrate, stating
3 in a summary manner the offence with which he is charged and
4 that he committed him for further examination on a future day,
5 named in such order; and on the day appointed he may be
7 brought before the magistrate by his verbal order to the same
8 officer by whom he was committed, or by a written order to a
9 different person.

M. R. S. 135, § 11.

SECT. 12. When a person, charged with the commission of
2 an offence, is brought before a magistrate, he shall first examine
3 the complainant and witnesses to support the prosecution in
4 presence of the party charged, as to all pertinent facts and then

5 examine the witnesses for the prisoner; said witnesses being
6 first sworn. M. R. S. 135, § 12.

SECT. 13. After such proceedings are completed, the witnesses
2 for the prisoner shall [be] examined, and he may be assisted
3 by his counsel in the examination and in the cross examination
4 of the complainant and his witnesses. M. R. S. 135, § 13.

SECT. 14. The witnesses against and for the prisoner, may be
2 examined, each one separately from all the others, and the mag-
3 istrate may keep the witnesses for the prisoner separate from
4 those against him, during his examination, according to his sound
5 discretion. M. R. S. 135, § 14.

SECT. 15. When the magistrate may think it necessary he
2 shall reduce to writing the testimony of the witnesses examined,
3 and require such witnesses to sign it. M. R. S. 135, § 15.

SECT. 16. If on examination, it shall appear on the whole
2 evidence that no offence has been committed, or that there is
3 not probable cause for charging the prisoner with an offence,
4 he shall be discharged. M. R. S. 135, § 18.

SECT. 17. But if it shall so appear that an offence has been
2 committed, and that there is probable cause to believe the pris-
3 oner to be guilty; then if the offence be bailable by such mag-
4 istrate, and sufficient bail be offered, it shall be taken and the
5 prisoner discharged; but if the offence is not bailable by the
6 magistrate or no sufficient bail be offered, the prisoner shall be
7 committed to prison to await a trial. If the offence charged
8 be triable by such justice, he may try it. M. R. S. 135, § 17.

SECT. 18. And in either case the magistrate shall order such
2 of the witnesses against the prisoner as he may deem material
3 to recognize, to appear and testify at the next court having cog-
4 nizance of the offence and in which the prisoner shall be held
5 to answer. M. R. S. 135, § 20.

SECT. 19. When the magistrate shall be satisfied there is good
2 reason to believe that any such witness will avoid, and not per-
3 form the condition of his own recognizance, unless other security
4 be given, he may order such witness to recognize with sufficient
5 surety or sureties for his appearance at court.

M. R. S. 135, § 21.

SECT. 20. And when any such witness shall refuse to recog-
2 nize with or without surety as required for his appearance at
3 court as aforesaid, he may be committed to prison to remain till
4 by law discharged.

SECT. 21. Any person may recognize for the appearance at
2 court, as a witness, of a married woman or a minor, or the mag-
3 istrate may, in his discretion, recognize such married women or
4 minor in a sum not exceeding twenty dollars, which shall be valid
5 notwithstanding the disability of coverture or minority.

M. R. S. 135, § 20.

SECT. 22. Any justice of the supreme judicial court or district
2 court or any two justices of the peace and quorum for any
3 county on application of any prisoner, committed for a bailable

4 offence or for not finding sureties to recognize for him, may
5 inquire into the case and admit such person to bail.

1821, 68.

SECT. 23. Any magistrate before whom a prisoner is brought
2 may associate another magistrate with him, in performing the
3 duties before mentioned; but no fees shall be taxed for him.

M. R. S. 135, § 25.

SECT. 24. All examinations and recognizances taken by a
2 magistrate, pursuant to the provisions of this chapter, shall be
3 certified and returned to the county attorney or clerk of the
4 court, before which the party charged is bound to appear on or
5 before the first day of its session; and in case of neglect of
6 such justice, he may be compelled by rule of court, and if it be
7 disobeyed, by attachment for contempt. M. R. S. 135, § 26.

SECT. 25. Any person committed or recognized to answer to
2 a charge of assault and battery or other misdemeanor, for which
3 the party injured may have a remedy by civil action (except
4 when the offence was committed by or upon a sheriff or other
5 officer of justice, or riotously or with a felonious intent) if the
6 injured party, shall appear before the magistrate who made the
7 commitment or took the recognizance, and acknowledge in
8 writing that he had received satisfaction for the injury, the mag-
9 istrate, in his discretion, may on payment of all costs, discharge
10 the recognizance or supercede the commitment by an order
11 under his hand; and may also discharge the recognizances of
12 all the witnesses taken in the case. M. R. S. 135, § 25.

SECT. 26. Every such order of discharge of recognizances
2 shall be filed in the office of the clerk of the court, at which
3 the party and the witnesses were bound to attend; and every
4 order suspending the commitment of the party charged shall be
5 delivered to the keeper of the jail, and shall, (if so filed and
6 delivered and not otherwise) forever bar all remedy by civil
7 action for such remedy. M. R. S. 135, § 26.

SECT. 27. When any person under recognizance in any crim-
2 inal prosecution, shall fail to perform the condition thereof, his
3 default shall be recorded, and process shall be issued against
4 the person bound by such recognizance or against such of the
5 persons as the prosecuting officer shall direct; but in the suit,
6 no costs shall be taxed for travel. M. R. S. 135, § 27.

SECT. 28. Any surety in a recognizance may be forever dis-
2 charged from its obligations, by paying to the county treasurer,
3 either before or after process has been issued against him, the
4 amount for which he was bound as surety, or depositing the same
5 with the clerk of the court, where the recognizance is filed.

M. R. S. 135, § 28.

SECT. 29. When a scire facias is brought on behalf of the
2 State to recover the penalty of any recognizance taken in a
3 criminal prosecution of principals, sureties or witnesses, when
4 the penalty shall be forfeited, the court may on application of

5 the party, remit all or any part of the penalty of such recogniz-
6 ance, upon such terms as they may deem reasonable and just.

1821, 50, § 4.

SECT. 30. No action brought on recognizance, as mentioned
2 in the preceding section, shall be barred or defeated, nor shall
3 judgment thereon be arrested by reason of any omission to
4 record the default of any principal or surety at the proper term
5 —nor by reason of any defect in the form, if it can be suffi-
6 ciently understood from its tenor and at what court the party or
7 witness was bound to appear, and that from the description of
8 the offence charged, the magistrate was authorized to require
9 and take the same. 1823, 242.

SECT. 31. Whenever any person shall be in prison charged
2 with any crime or offence cognizable by the supreme judicial
3 court in any county, where no traverse jury has been ordered
4 and summoned to attend, and the attorney general or county
5 attorney, or the person so imprisoned shall by himself or his
6 attorney request said court in session or any justice thereof
7 in vacation to summon a jury for the trial of such prisoner, it
8 shall be the duty of such court or justice so to summon such
9 jury, unless a continuance, on the application of the prosecuting
10 attorney or the prisoner, and upon legal ground or consent shall
11 be granted. 1836, 196, § 2.

NOTES.

SECT. 1. This contains a declaration of the powers of the several officers therein named, which are not so distinctly expressed elsewhere; but which should be well known. The limitation as to time, respecting certain offences is new, and taken from the Mass. code. It is submitted to the Legislature as a useful provision.

SECT. 2. This is merely affirmative of the common practice.

SECTS. 4, 5 and 6. These sections contain provisions in aid of the statute cited in the third section, and pointing out how the aid may be best afforded. They seem calculated to promote the convenience of all concerned and secure all rights.

SECT. 8. This provision seems much needed, when the warrant is not made returnable before *any other* justice, as well as the one who issued the warrant.

SECTS. 11, 12, 13, 14, 15, 17, 18, 19, 20, 21. All these sections are declarative of the law, as understood and practiced upon by the best informed and correct magistrates, and by being enacted in statute form, they show the course of proceeding in all the cases mentioned. They are all borrowed from the Mass. code.

SECT. 23. This merely sanctions a principle and practice well known.

SECT. 24. This is deemed a useful provision to insure the return of recognizances.

SECTS. 25 and 26. These sections give a new power to the court, in prosecutions for minor offences; it is copied from the Mass. code. It is respectfully submitted whether it may not be a mode, in which the injured party may be compensated for the injury he has sustained, when perhaps it could not be obtained in a civil suit.

SECT. 28. This is new but designed to relieve a surety from *costs*.

CHAPTER 172.

OF PROCEEDINGS IN COURT IN CRIMINAL CASES.

- Sect.*
1. Duty of clerk of court to have jury lists prepared.
 2. Empannelling grand jury ; form of oath.
 3. Certain jurors may affirm.
 4. Jury to elect their foreman.
 5. In special cases they may elect a new one.
 6. Foreman may swear witnesses in jury room.
 7. Duties of grand jury.
 8. May appoint one of their number to take minutes.
 9. In certain cases the jury though dismissed, may be recalled.
 10. Grand jurors must not disclose certain facts.
 11. Same subject.
 12. Prisoner to be discharged, if not indicted at second term in certain cases.
 13. In counties where court sits but once in a year, prisoner shall be bailed or discharged after six months imprisonment if not indicted.
 14. A person in prison, under indictment, shall be tried or bailed at the first term, unless, &c.
 15. All persons indicted for felony, shall be tried at second term.
 16. Proceeding when prisoner stands mute.
 17. Prisoner in capital trial, shall challenge peremptorily not more than twenty jurors.
 18. A person indicted for a capital crime may be arraigned by the judge, and sentenced, if he plead guilty,
 19. Proceedings when he pleads not guilty.
 20. Special term of supreme judicial court, may be had in certain cases for a capital trial.
 21. How sheriff is to notify it.
 22. A person indicted for capital offence, shall have a right to copy of indictment, &c.—his witnesses summoned by the State.
 23. A person indicted for an offence punishable in State prison, may have copy without expense.
 24. Attorney general or prosecuting officer may summon witnesses.
 25. In certain cases when the injured party has been compensated, proceedings may be stayed.
 26. A useless form dispensed with.
 27. Plea in abatement to be verified by oath.
 28. On motion of defendant, depositions of witnesses living out of the State may be taken, and the attorney may join in a commission for that purpose.
 29. Interrogatories to be annexed to commission as in civil cases.
 30. Issues of fact to be tried as in civil cases ; but no member of the grand jury which found the indictment, shall sit on the jury of trial of the same.
 31. Same challenges allowed as in civil cases.
 32. Certain persons not allowed as jurors in capital cases.
 33. Form of oath to witnesses.
 36. Court may order a view.
 37. In cases not capital, court may stop or postpone a cause and discharge the jury and continue the cause.
 38. No indictment or complaint or proceedings to be quashed for certain formal omissions, &c.
 39. Court may remit penalty of recognizance.
 40. Persons may file exceptions to ruling and instructions of a judge in S. J. court, or district court, as in civil cases.
 41. Exceptions may be alleged in S. J. court to the ruling or opinion of a judge of that court ; or such questions may be reserved in judge's report.

SECT. 1. Prior to the commencement of each term of the
 2 supreme judicial court, in each county, and prior to the term of
 3 the district court, in each county, to which grand jurors shall be
 4 returned, it shall be the duty of the clerk of the court to make
 5 out returns on the venires for grand jurors, an alphabetical list
 6 of such jurors. 1821, 84, § 10.

SECT. 2. When the grand jury is to be empanelled, the clerk
 2 shall cause the first two persons, named on the list to be first
 3 called, and the following oath shall be administered to them :—
 4 “ You as grand jurors of this inquest for the body of this county
 5 of —— do solemnly swear, that you will diligently inquire
 6 and true presentment make of all such matters and things as
 7 shall be given you in charge. The State’s counsel, your fellows
 8 and your own, you shall keep a secret. You shall present no
 9 man for envy, hatred or malice ; neither shall you leave any man
 10 unrepresented, for love, fear, favor, affection or hope of reward ;
 11 but you shall present things truly as they come to your knowl-
 12 edge, according to the best of your understanding. So help you
 13 God.” The other jurors shall then be called, in such divisions
 14 as the court may order, and the following oath shall be admin-
 15 istered to them :—“ The same oath which your fellows have
 16 taken on their part, you and each of you, on your behalf, shall
 17 well and truly observe and keep. So help you God.”

1821, 84, § 12.

SECT. 3. When any person returned as grand juror, is con-
 2 scientiously scrupulous of taking an oath, he shall be allowed
 3 to make affirmation, substituting the word “ affirm ” instead of
 4 “ swear ; ” and also the words “ this you do under the pains and
 5 penalties of perjury ” instead of “ so help you God.”

1821, 84, § 12.

SECT. 4. The grand jury having been empanelled and
 2 instructed by the court, shall retire, in company with an officer,
 3 to their room, and there elect by ballot one of their number to
 4 be their foreman ; and give notice thereof to the court, and the
 5 clerk shall record it. 1821, 84, § 13.

SECT. 5. Such foreman shall continue in office during the
 2 term or year for which he was returned ; but in case of his sick-
 3 ness or absence, the jury may in like manner elect and announce
 4 to the court, the choice of another foreman. 1821, 84, § 13.

SECT. 6. The foreman of each grand jury, the attorney gen-
 2 eral or county attorney, in the presence of the grand jury, shall
 3 have power to swear or affirm any witness to testify before such
 4 jury ; and the foreman shall return to the court which empan-
 5 nelled them, a list of all the witnesses so sworn, before the
 6 grand jury are discharged by the court, which list shall be filed
 7 and entered on record by the clerk. 1821, 84, § 13.

SECT. 7. It shall be the business of the grand juries to present
 2 all crimes and offences and breaches of law cognizable by the
 3 respective courts, at which they attend. 1821, 84, § 15.

SECT. 8. Any grand jury may appoint one of their number to
 2 act as clerk in taking minutes of the proceedings before them ;

3 which shall be delivered to the attorney general or county attor-
 4 ney—when the jury shall so direct. M. R. S. 136, § 10.

SECT. 9. When a grand jury attending any court, shall have
 2 been dismissed before the court, is adjourned, they may on any
 3 special occasion, be summoned to attend again, at such time as
 4 the court shall direct. M. R. S. 136, § 11.

SECT. 10. No grand juror or officer of the court, shall disclose
 2 the fact, that an indictment for a felony has been found against
 3 any person, who is not in custody or under recognizance, except
 4 by issuing process on the indictment, until such person shall
 5 have been arrested. M. R. S. 136, § 12.

SECT. 11. No grand juror shall be allowed to state or testify
 2 in what manner he or any member of the jury voted on any
 3 question before them, or what opinion was expressed by any
 4 juror relating to such a question. And it shall be the duty of
 5 the court, in charging the grand jury, to impress on their minds
 6 the provisions of this and the preceding sections. M. R. S. 136, § 13.

SECT. 12. Any person held in prison on suspicion of having
 2 committed a crime, for which he may be sentenced to suffer
 3 death, shall be bailed or discharged if he is not indicted at the
 4 second term of the supreme judicial court, in the county where
 5 the crime is alleged to have been committed, when there are
 6 two terms of said court each year, in such county. 1821, 59, § 44.

SECT. 13. And in those counties where such court sits but
 2 once in a year, the accused shall be bailed or discharged, if he
 3 is not indicted at the first term, provided such person shall have
 4 been held in prison for the space of six months next before the
 5 sitting of such court. 1821, 59, § 44.

SECT. 14. When any person shall be held in prison, under
 2 indictment, if he demands the same, he shall be tried or bailed
 3 at the first term, next after the finding of the indictment, unless
 4 the court shall be satisfied that the witnesses or some of them,
 5 on the part of the State, have either been enticed away, or are
 6 detained by some inevitable accident or cause beyond their
 7 control from attending. 1821, 59, § 44.

SECT. 15. All persons under indictment for felony, shall be
 2 tried or bailed at the second term after the finding of the indict-
 3 ment. 1821, 59, § 44.

SECT. 16. When any person indicted for any crime or offence
 2 shall stand mute and make no answer to the charge, the court
 3 shall order the plea of not guilty to be entered, and the same
 4 proceedings shall be had, as if he pleaded not guilty. 1821, 59, § 42.

SECT. 17. No person indicted for an offence, the punishment
 2 of which, on conviction of the offender is declared by law to be
 3 death, shall be allowed to challenge peremptorily more than
 4 twenty persons of the jury. 1821, 59, § 42.

SECT. 18. Any person indicted for a crime punishable with death, may be arraigned before the supreme judicial court, when held by one justice thereof; and if the person so indicted, shall plead guilty as charged in the indictment, such justice may proceed and pass sentence according to law.

1826, 347, § 6.

SECT. 19. If the prisoner plead not guilty, such justice after appointing counsel for the prisoner, and doing all things proper to be done preparatory for trial, and assigning a time therefor, shall give notices to the other judges thereof, so that a majority of the justices may be present at the trial.

1826, 347, § 6.

SECT. 20. When an indictment is found for a capital offence and the supreme judicial court, shall not by law hold a session in the same county, in which the indictment is found within six months after the finding of the same, a special term of said court may be held for the purpose of trial of the accused, by a majority of the court, at such time and place as they may direct, by their order in writing, to the sheriff of the same county.

1837, 292, § 3.

SECT. 21. The sheriff shall give such notice of the intended special term, as the court shall have prescribed in their order to him; and the clerk shall issue venires for jurors and all necessary preparations shall be made by the sheriff as for a regular term, but shall dispose of no civil action without consent of parties.

1837, 292, § 3.

SECT. 22. Any person indicted for a crime punishable with death or by imprisonment in the state prison for life, shall be entitled to have a list of the jurors returned delivered to him or his counsel; a copy of the indictment and process to summon his witnesses, at the expense of the State, all which it shall be the duty of the clerk to furnish without expense to the prisoner.

SECT. 23. A person indicted for any offence, punishable by confinement in the state prison, shall be entitled to a copy of the indictment without paying any fees therefor.

SECT. 24. The attorney general or other prosecuting officer, shall have the same power to issue a summons for witnesses as a justice of the peace or clerk of the court, in criminal cases, and in all cases, when a witness is summoned on behalf of the State, it shall not be necessary to tender him any fees.

M. R. S. 136, § 25, 26.

SECT. 25. When a person indicted for an assault and battery or other misdemeanor, for which the party injured may have a remedy by a civil action, except felonious assaults or assaults upon an officer of justice, or resisting him while in the execution of his office, or assaults and batteries of such officers, if the injured party shall appear in court and acknowledge satisfaction for the injury, the court may on payment of all costs, order a stay of all further proceedings and discharge the defendant from the indictment, which shall bar all remedy by action for the injury.

M. R. S. 136, § 27.

SECT. 26. When a person shall be arraigned on any indictment, it shall not be necessary to ask him how he will be tried.

M. R. S. 136, § 28.

SECT. 27. When a plea in abatement, or other dilatory plea to an indictment, shall be offered, the court may refuse to receive it, until the truth of it shall be proved by affidavit or other evidence.

M. R. S. 136, § 31.

SECT. 28. On the application of a defendant in any criminal prosecution, the court may grant a commission to examine any material witness residing out of this State, in the same manner, as in civil causes; and the prosecuting officer may, if he shall see fit, join in such commission, and name therein any material witness to be examined on the part of the State.

M. R. S. 136, § 32.

SECT. 29. The interrogatories, when settled, shall be annexed to the commission, which shall be executed as in civil causes; and the depositions taken under such commission shall be read in the cause, with like effect, and subject to the same exceptions, as in civil causes. But if the defendant shall decline to use, on the trial, the depositions so taken for him, those taken on the part of the State, shall not be read or used.

M. R. S. 136, § 33.

SECT. 30. Issues of fact joined on indictment, shall be tried by a jury drawn and returned in the manner by law prescribed for the trial of civil causes; but no member of the grand jury, which found the indictment, shall be allowed to sit in the trial of such indictment, if challenged for that cause by the defendant.

13 Mass. 221.

SECT. 31. The same challenges of jurors shall be allowed in criminal as in civil causes; to the attorney general or other prosecutor and to the defendant.

M. R. S. 137, § 3.

SECT. 32. No person shall be allowed to sit as a juror in the trial of a capital cause, who cannot conscientiously find a man guilty of an offence, which is punishable with death.

M. R. S. 137, § 6.

SECT. 33. The following oath shall be administered to jurors, in all criminal cases, not capital. "You swear that you will well and truly try the issue between the State and the defendant, (or defendants as the case may be) according to your evidence—So help you God." In capital cases the following oath shall be administered to the jurors. "You swear that you will well and truly try, and true deliverance make, between the State and the prisoner at the bar, whom you shall have in charge, according to your evidence: So help you God."

1821, 84, § 12.

SECT. 34. Any juror conscientiously scrupulous of taking an oath may *affirm*, substituting the words "this you do under the pains and penalties of perjury," instead of the words "so help you God."

1821, 84, § 12.

SECT. 35. No person indicted for felony shall be tried, unless present during the trial; but persons indicted for less offences,

3 may at their own request, and by leave of court, be put on trial
4 in their absence, by their attorney. M. R. S. 137, § 9.

SECT. 36. The court may order a view by any jury in a crim-
2 inal case. M. R. S. 137, § 10.

SECT. 37. Whenever in the trial of any cause, except for a
2 capital offence, it shall appear to the court that justice would be
3 promoted thereby, they may at their discretion suspend or post-
4 pone such trial to a future day, during the same term, or discharge
5 the jury from the trial of the cause, and continue such indict-
6 ment as to the court, may seem just and reasonable.

1822, 186, § 2.

SECT. 38. No indictment or complaint shall be quashed, nor
2 judgment thereon be rendered or affected by reason of the
3 omission or misstatement of the title, occupation, estate or degree
4 of the defendant or of the name of the city, town or county of
5 his residence, nor by reason of the omission of the word "felo-
6 niously" or of the words "force and arms" or the words "against
7 the peace"—or the omission to charge any offence to have been
8 committed, contrary to the form of the statute or statutes, pro-
9 vided that such omission or misstatement do not tend to the
10 prejudice of the defendant. M. R. S. 137, § 14.

SECT. 39. Whenever the forfeited penalty of recognizance
2 for the prosecution of an appeal has been paid to the clerk of
3 the court or county treasurer, and any portion of such penalty
4 shall accrue to any person by reason of the offence of which
5 the appellant was convicted, the court may award to him such
6 sum as he may be entitled to out of it. M. R. S. 138, § 9.

SECT. 40. Any person convicted of an offence in the district
2 court may allege exceptions to any opinion, direction or judg-
3 ment of the said court, and thereupon such proceedings shall
4 be had in said court, and also in the supreme judicial court, as
5 are prescribed in the nineteenth section of the ninety-seventh
6 chapter, establishing the said district court.

SECT. 41. And in criminal trials in the supreme judicial
2 court, any person convicted of any offence, tried before any one
3 justice of said court, may, in the manner mentioned in the pre-
4 ceding section, allege exceptions to any opinion direction or
5 judgment of such justice, to be allowed and signed by him; or
6 any questions of law, which may be so reserved on exceptions,
7 as above stated, may be reserved on a report signed by such
8 justice, who may require such defendant to recognize with suffi-
9 cient sureties to appear at the next term of said court and abide
10 the judgment which the full court shall render in the cause; or
11 commit him on his neglecting so to recognize.

NOTES.

SECT. 8. The provision is new—it may be a useful way of preserving facts.

SECT. 9. This section may not often be needed, but sometimes is, and much expense may be saved by giving power to the court.

SECTS. 10 and 11. These sections are designed to furnish stronger guard against the evils arising from disclosure of facts before grand jurors, and settling the law as to some points about which there has often been doubt and discussion. The above sections are taken from the Mass. code.

SECT. 24. A new power given to prosecuting officer, for convenience.

SECT. 25. See note to 25th and 26th sections of chapter as to commencement of criminal proceedings.

SECTS. 28 and 29. These two sections are new and they introduce a new principle and practice; that of using depositions in a criminal trial. By the constitution a defendant in such a trial has a right to the personal presence of every witness who is to testify against him; but if the defendant waives this right and asks for permission to introduce the depositions of any witnesses on his part, consenting also that any witnesses on the part of the State may also testify by deposition, both may so testify—provided the witnesses reside without the State.

SECT. 31. New section, but enacts a settled principle.

SECT. 32. New—designed to protect impartial justice from the influence of prejudice in a juror's mind, or rather a principle, which will prevent his doing what the law requires to be done—on legal proof.

SECT. 38. This section is partly borrowed from the Mass. code and partly inserted by the commissioners. It will in practice have a most salutary influence in preventing matters of *form* from disturbing matters of substance.

SECT. 39. This seems to be a useful provision. The court can best exercise the power it gives.

CHAPTER 173.

AS TO THE DISPOSAL OF INSANE PERSONS, WHEN PROSECUTED FOR CRIMES OR OFFENCES.

- Sect.* 1. When a person is not indicted, or is acquitted on ground of insanity, the jury to assign the reason.
2. Person to be committed and detained at his own expense if able.
 3. Any judge may liberate him, or two justices, if it may be done with safety.
 4. Two justices may deliver him to his friend, or any judge, they giving bond for his safe keeping.
 5. Or such magistrate may deliver him to overseers of poor—on terms.
 6. Towns whose overseers take him to be answerable for all damages, by reason of his going at large.

SECT. 1. When any person indicted for any crime, shall be
 2 acquitted by the jury of trials, by reason of insanity or mental
 3 derangement, they shall state that fact to the court when they
 4 return their verdict; and when the grand jury shall, for the same
 5 reason omit to find an indictment against any person, who has
 6 been arrested by legal process to answer for any crime or offence,
 7 they shall certify to the court the above mentioned reason for

8 such omission; and the court shall have power to commit such
9 person to prison, there to remain until restored to his right mind,
10 or otherwise delivered by due course of law. 1821, 58, § 1.

SECT. 2. And the person so committed, shall be kept in prison
2 at his own expense, if he have sufficient property for the pur-
3 pose; otherwise of the person or town that would have been
4 chargeable for his maintenance, if he had not been committed.
1821, 58, § 1.

SECT. 3. Any justice of the supreme judicial court, or of the
2 district court, or any two justices of the peace and *quorum*,
3 within their county may discharge such person from confinement,
4 on satisfactory proof, that his going at large, will not be danger-
5 ous to the safety of the citizens and peace of the State.
1821, 58, § 3.

SECT. 4. Upon application of any friend of such insane per-
2 son to any justice of either of said courts, or to two justices of
3 the peace and *quorum*, he or they may commit such insane
4 person to the custody and safe keeping of such friend, such
5 applicant first giving bond, with sufficient sureties to the judge
6 of probate for the county in which such insane person is con-
7 fined, conditioned for his safe keeping and for the payment of
8 all damages which any person may sustain by reason of the acts
9 of such insane person, such bond to be approved by the justices
10 of the court, or said two justices. 1821, 58, § 4.

SECT. 5. And any justice of either of said courts, or any two
2 justices of the peace and *quorum*, within such county may, on
3 application in writing of the overseers of the poor of the town
4 chargeable with the maintenance of such insane person order
5 him to be delivered to such overseers—if it shall appear that
6 such town has provided a safe and convenient place for keeping
7 him. 1835, 143, § 1.

SECT. 6. The town whose overseers shall have taken the
2 custody of such insane person, shall be responsible for his safe
3 keeping, until his lawful liberation, and for all damages which
4 any person may receive by reason of the acts of such insane
5 person, if suffered to go at large, without written permission as
6 aforesaid.

CHAPTER 174.

OF FUGITIVES FROM JUSTICE AND CONDITIONAL PARDONS.

SECT. 1. In any case authorized by the constitution and laws
2 of the United States, the governor may appoint an agent to
3 demand and receive of the executive authority of any other
4 State, any fugitive from justice, charged with treason, felony or
5 any other crime in this State; and the accounts of such agent,

6 shall be audited and paid by order of the governor and council,
7 from the treasury. 1838, 330, § 1.

SECT. 2. That whenever such demand shall be made upon
2 the executive authority of this State, and the governor shall be
3 satisfied on examination of the grounds of the demand, that the
4 same is made according to law, and ought to be complied with,
5 he shall issue his warrant under seal of the State, authorizing
6 the agent who may make the demand, at such time as shall be
7 designated in the warrant to take and transport such person to
8 the line of this State, at the expense of such agent; and shall
9 also by such warrant require the civil officers of this State to
10 afford all needful aid in its execution. 1838, 330, § 2.

SECT. 3. The governor, whenever he shall deem it necessary,
2 is hereby authorized to offer and pay a suitable reward, not
3 exceeding one thousand dollars in any one case, to any person
4 who shall, in consequence of such offer, apprehend and bring
5 back and secure any person escaping from any prison in this
6 State, convicted of a capital crime or other high-handed offence
7 and misdemeanor or charged therewith; and also to offer and
8 pay a like reward for apprehending any person, having com-
9 mitted any such crime or offence, where it cannot be done in
10 in the ordinary course of proceeding—and the governor with
11 advice of council may draw his warrant on the treasurer for the
12 payment of such reward. 1821, 112.

SECT. 4. Whenever any person who has been or shall here-
2 after be sentenced by the supreme judicial court to suffer the
3 punishment of death, shall make application to the governor for
4 a pardon and the governor shall think proper, by and with advice
5 and consent of the council, to grant such pardon on condition
6 that the person thus sentenced be imprisoned or confined to
7 hard labor during his natural life, or for any certain term of
8 years, in the condition of such pardon to be expressed, the gov-
9 ernor be and hereby is authorized in order to carry the same
10 into effect, to issue his warrant, directed to all proper officers,
11 and they shall be held to serve and obey the same in the same
12 manner as if such imprisonment or confinement had been the
13 punishment awarded in the original sentence. 1821, 32.

CHAPTER 175.

OF THE LIBERATION OF POOR CONVICTS.

- Sect. 1. When a convict in prison, does not comply with the sentence in three months, on what terms he may be discharged by the sheriff.
2. The note given in payment of fine, &c. to be and remain a lien on any property of the convict, till paid.
3. If the note should be sued, by the county treasurer, proceedings on the execution as in other cases.
4. Penalty for swearing falsely to statement.

SECT. 1. When any person convicted of a criminal offence, shall be sentenced to pay a fine and costs, or costs only, and stand committed until sentence be performed, if the sentence be not complied with by payment of the sum due within three months, next following, the sheriff may liberate him from prison (if committed for no other cause) upon his giving his promissory note for the amount due, payable to the treasurer of the county where he was committed, in one year from date with interest, accompanied with a written schedule, containing a true account of all his property of every kind, by him signed and sworn to; which note and schedule, shall be by such sheriff, delivered within three months next following, to said treasurer for the use of the county. 1821, 83, § 1, 2. 1822, 190, § 1, 2.

SECT. 2. And said promissory note, and the sum due thereon, shall be, and continue to be a lien on any real estate of said convict, until payment of said sum. 1822, 190, § 1, 2.

SECT. 3. If judgment should be rendered on said note in an action brought thereon by said treasurer, the same proceedings may be had on the execution, as in other cases of contract. 1822, 190, § 2.

SECT. 4. If such convict shall knowingly and wilfully make any false schedule on oath, relating to the amount or nature of his property, and be thereof convicted, he shall receive no benefit from his liberation, but may again be imprisoned till performance of the original sentence. 1821, 83, § 2.

CHAPTER 176.

OF CORONER'S INQUEST.

- Sect.* 1. Every coroner shall take inquests, on view of dead bodies.
 2. When notified of such dead body, the measures he shall pursue.
 3. Constables shall summon a jury.
 4. Oath to be administered by coroner to jury.
 5. Constable may, in certain case, appoint talismen.
 6. Form of oath to witnesses.
 7. Coroner may summon witnesses.
 8. In certain cases, he may recognize witnesses.
 9. Coroner's charge to the jury.
 10. Form of jury's verdict.
 11. Any person charged by such verdict, may be arrested by warrant from coroner, &c.
 12. Body to be buried by coroner, &c.—and how expense to be paid.

SECT. 1. Every coroner shall take inquests upon the view of dead bodies of such persons only as shall appear, or be supposed to have come to their death by violence; and not when the death is believed to have been occasioned by casualty. 1821, 93, § 1.

SECT. 2. Every coroner shall as soon as he is notified of the
 2 dead body of any person, supposed to have come to his death
 3 by violence, and lying within his county, shall make out his
 4 warrant, in the form following, directed to the constable of the
 5 same town, or any constable of one of the adjoining towns in the
 6 same county, requiring him forthwith to summon a jury of six
 7 good and lawful men, of the same town or towns, to appear
 8 appear before him at the time and place mentioned in said
 9 warrant.

10 (L. s.) To either of the constables in the town of _____ in the
 11 county of _____ Greeting.

12 In the name of the State of Maine, you are hereby required
 13 immediately to summon six good and lawful men of said town
 14 of _____ to appear before me one of the coroners of the
 15 county of _____ at the dwelling house of _____ or at the
 16 place called _____ within said town of _____ at the hour of
 17 _____ then and there to inquire upon and view the body of
 18 _____ there lying dead, how and in what manner he came to
 19 his death. Fail not, herein at your peril.

20 Given under my hand and seal at _____ the _____ day of
 21 _____ in the year eighteen hundred and _____

22 _____ S. F.
 1821, 93, § 2.

SECT. 3. The constable to whom such warrant shall be di-
 2 rected and delivered, shall forthwith execute the same, and
 3 repair to the place where the dead body is, at the time appointed,
 4 and make return of the warrant with his doings to the coroner
 5 who granted it, or he shall forfeit the sum of ten dollars, and
 6 every person summoned as a juror, who without reasonable
 7 excuse, shall neglect to attend at the time and place appointed,
 8 shall forfeit the sum of seven dollars, to be recovered in an
 9 action of debt, in the name of the coroner, or the county and
 10 for the use of the county. 1821, 93, § 2.

SECT. 4. The coroner shall administer to the jurors who shall
 2 appear, in view of the body the following oath:—You solemnly
 3 swear that you will diligently inquire, and true presentment
 4 make on behalf of this State, how, when, and in what manner
 5 the person whose body here lies dead, came to his death, and
 6 you shall return to me a true inquest thereof, according to your
 7 knowledge, and such evidence as shall be laid before you. So
 8 help you God. 1821, 93, § 2.

SECT. 5. If the six jurors summoned should not all appear as
 2 commanded, the coroner may require the constable or any other
 3 person whom he shall appoint to return jurors from the by-stand-
 4 ers to complete the number. 1821, 93, § 2.

SECT. 6. An oath of the following form, shall be administered
 2 by the coroner to the witnesses.

3 “ You solemnly swear that the evidence which you shall give
 4 to this inquest, concerning the death of the person here lying

5 dead, shall be the truth, the whole truth and nothing but the
6 truth. So help you God." 1821, 93, § 2.

SECT. 7. The coroner may issue subpoenas for witnesses to
2 be served as in other cases, and the officer serving them, shall
3 be entitled to the like fees; and the fees for the attendance of
4 persons thus summoned shall be the same as if they had been
5 summoned on behalf of the State to attend a justice's court.

1821, 93, § 2.
SECT. 8. The evidence of all the witnesses, shall be in writ-
2 ing and signed by them; and if such evidence relate to the
3 trial of any person concerned in the death, then the coroner shall
4 bind such witness by recognizance, in a reasonable sum, for their
5 personal appearance, at the next supreme judicial court, to be
6 held in the same county, to give their testimony accordingly;
7 and on their refusal or neglect so to recognize, he shall commit
8 them to prison, and shall return to the same court, the inquisi-
9 tion, written evidence, and recognizance by him taken.

1821, 93, § 2.
SECT. 9. The jurors having been sworn, the coroner shall
2 give them in charge, to declare of the death of the person,
3 whether he died of felony, mischance or accident; if of felony,
4 who were principals and accessories, the instrument employed,
5 and of all important circumstances; if by mischance, how, and
6 in what manner; if by his own hand, the manner and all attend-
7 ing circumstances; and he shall make proclamation of all per-
8 sons who can give any evidence, to draw near and be sworn.

1821, 93, § 2.
SECT. 10. The jury having examined the body, heard the
2 evidence, and made all useful inquiries; they shall draw up and
3 deliver to the coroner, their verdict in writing, under their hand
4 and seals, in substance as follows—
5 "An inquisition taken at _____ within the county of _____
6 "the day of _____ in the year _____ before S. F. one of the
7 "coroners of said county, upon view of the body of _____
8 "there lying dead, by the oaths of _____ good and lawful
9 "men, who being charged and sworn to inquire for the State,
10 "when, how and by what means the said _____ came to his
11 "death, upon their oaths say" (then insert, *how, when, and by*
12 *what means*, and with what instrument he was killed.) "In
13 "testimony whereof the said coroner, and the jurors of this
14 "inquest, have hereunto set their hands and seals, the day and
15 "year above said."

SECT. 11. If any person charged by the inquest, with having
2 caused the death of the person whose body lies dead before
3 them, shall not then be in custody, the coroner shall then have
4 the same power as a justice of the peace, to issue a warrant for
5 the apprehension of such accused person, which may be returned
6 before any judge or justice of the peace, who shall proceed
7 therein according to law. 1821, 93, § 2.

SECT. 12. Every coroner within his county, after the return
 2 of an inquisition of the jury, upon view of the dead body of a
 3 stranger, shall bury the body in a decent manner, and all the
 4 expenses attending the burial, and the expenses of the inquisi-
 5 tion, shall be paid to the coroner out of the state treasury; pro-
 6 vided the coroner shall certify under oath, that the deceased was
 7 a stranger, not belonging to the State according to his best
 8 knowledge and belief; otherwise the expenses of burial, shall
 9 be paid to the coroner, by the town where the body was found,
 10 and repaid to such town by the town, to which he belonged in
 11 the State, and the expenses of the inquisition by the county.

CHAPTER 177.

OF THE STATE PRISON.

- Sect.*
1. Location of the prison; convicts sentenced for less than one year.
 2. Sentences to be confined to hard labor.
 3. Convicts sentenced by courts of United States, to be received.
 4. Organization of the prison.
 5. Inspectors and warden, how appointed, &c. Warden to give bond.
 6. Other officers how appointed, &c.—clerk to give bond.
 7. Duty of inspectors; to meet, visit the prison, &c.
 8. To audit warden's accounts, and report to governor.
 9. To inquire into officer's conduct, &c. examine witnesses, &c.
 10. To order convicts to be punished.
 11. To establish rules and regulations, to be approved, &c.
 12. Duty of warden—conditions and restrictions.
 13. To inspect convicts, punish disobedience, &c.
 14. To execute process within the prison, &c.
 15. To advertise for supplies for the prison.
 16. Offers for supplies to be accepted or rejected by inspectors.
 17. If offers are rejected, how warden is to make contracts.
 18. Warden to take bills, and exhibit them to clerk.
 19. Contracts to be made by warden under inspectors' direction.
 20. Warden to remove convicts to the prison.
 21. Jailors to receive convicts in certain cases.
 22. Warden may bring actions on account of the prison; how.
 23. May refer to arbitrator.
 24. Warden not to be arrested on civil process, till removed.
 25. Deputy warden's duty, in warden's absence or vacancy.
 26. To give bond in certain cases, or warden pro tempore appointed.
 27. Duty of clerk and commissary.
 28. Duty of overseers; certain officers to obey warden and inspectors.
 29. Penalty for misconduct of subordinate officers.
 30. Volunteer company organized as a guard; ammunition, &c.
 31. Officers of the prison to belong to it. Its powers, &c.
 32. Penalty for not appearing at the prison on alarm, &c.
 33. Chaplain to be appointed and his duties.
 34. Sunday school to be established, books, &c.
 35. Physician to be appointed—his duties, &c.
 36. Provision in case of pestilence, contagion, &c.
 37. Punishment of officers for voluntary escape.
 38. Punishment for negligence in suffering convicts to be at large.

- Sect.* 39. Punishment for rescue of a convict, &c.
 40. Punishment for conveying articles into prison, &c.
 41. Punishment of a convict for life for assaulting an officer, or escape.
 42. Do. of a convict for a limited time, as above.
 43. Solitary confinement, how inflicted.
 44. Duty of officers to enforce obedience, &c.
 45. Duty of all citizens to suppress insurrections, &c.
 46. Warden may offer rewards for apprehension of convicts.
 47. Punishment of convicts on second conviction.
 48. Convicts not to be discharged till sentence performed; how computed.
 49. Convict's property to be received and taken care of.
 50. Warden may give a discharge to convict and certificate.
 51. Warden's fee for admitting company.
 52. How alterations in the prison may be made.
 53. Compensation of inspectors.
 54. Salary and compensation of warden.
 55. Compensation of chaplain, physician and others.
 56. Governor and council to draw warrants for payments.

SECT. 1. The state prison at Thomaston in the county of
 2 Lincoln shall continue to be maintained as the prison and pen-
 3 itentiary of this State, in which convicts sentenced to hard
 4 labor for life, or any term of time, not less than one year, shall
 5 be confined, employed and governed as hereinafter provided.

1823, 226, § 1. 1824, 282, § 1.

SECT. 2. All punishment in the state prison, by imprisonment,
 2 shall be by confinement to hard labor, and not by solitary
 3 imprisonment; but solitary imprisonment may be used as a
 4 prison discipline for the government and good order of the con-
 5 victs, as hereinafter mentioned. 1827, 368, § 2.

SECT. 3. Convicts sentenced to hard labor in the state prison
 2 for life, or any term not less than one year, by any court of the
 3 United States, held within this State, shall be received into the
 4 prison by the warden thereof, when delivered by the authority
 5 of the United States, and there kept in pursuance of their sen-
 6 tences. 1824, 282, § 2.

SECT. 4. The state prison shall be under the government and
 2 direction of three inspectors, one warden, one deputy warden,
 3 one person to perform the duties of clerk, commissary and such
 4 number of overseers, not exceeding ten, as the inspectors
 5 shall determine to be necessary.

1824, 282, § 3, 4, 7. 1830, 477, § 1.

SECT. 5. The inspectors and warden shall be appointed by
 2 the governor with the advice of council, and be commissioned
 3 to hold their offices during the pleasure of the executive, but
 4 not more than four years under one appointment; one of the
 5 inspectors shall in his commission be designated as chairman,
 6 and all of them shall reside within six miles of the prison. The
 7 inspectors and warden, before entering on the discharge of their
 8 respective duties, shall take and subscribe the oaths of office,
 9 and the warden shall also give bond to the State in the sum of
 10 ten thousand dollars, with sufficient sureties, to be approved by

11 the governor and council, conditioned that he shall account for
 12 all monies that shall come to his hands as treasurer of the state
 13 prison; that he will not be concerned in the business of trade
 14 or commerce, during his continuance in office, and that he will
 15 faithfully perform all the duties incumbent on him as warden of
 16 said prison; which bond shall be filed in the office of the sec-
 17 retary of State.

1824, 282, § 3, 4. 1831, 499, § 2.

1824, 282, § 3. 1836, 230, § 1.

SECT. 6. The other officers before mentioned shall be subor-
 2 dinate to the warden, and shall be appointed by warrant under
 3 the hand and seal of the warden, and subject to the approval or
 4 disapproval of the inspectors at their next meeting, to whom the
 5 warden shall make report thereof; they shall hold their offices
 6 during the pleasure of the inspectors and warden; but the
 7 inspectors, without the concurrence of the warden, may remove
 8 any of such officers for negligence or unfaithfulness in the dis-
 9 charge of their duties, and appoint others in their place; and
 10 if the warden should think any subordinate officer ought to be
 11 removed, and the inspectors will not consent thereto, the warden
 12 may appeal to the governor and council, who, after reasonable
 13 notice to the inspectors, may make such removal, and appoint
 14 such other person as they may deem proper. The said subor-
 15 dinate officers shall take and subscribe the oaths of office, and
 16 the deputy warden and the clerk and commissary shall also give
 17 bond to the State, with sufficient sureties, the former in the sum
 18 of five hundred dollars, and the latter in the sum of one thousand
 19 dollars, to be approved by the inspectors, conditioned for the
 20 faithful performance of their respective duties; which bonds
 21 shall be filed in the office of the secretary of State.

1830, 477, § 1.

SECT. 7. It shall be the duty of the inspectors to meet
 2 together at stated times, at the state prison, once at least in
 3 every three months, and oftener, if necessary, to attend to, and
 4 inspect the concerns of the prison, the manner of keeping the
 5 books and accounts, and the register of punishments kept by
 6 the warden; and from time to time carefully to examine the
 7 same, and to keep a record of their doings; one of them, at
 8 least, shall visit the prison as often as once in every week, to
 9 examine into all the concerns thereof, and to see that the laws
 10 and regulations thereof are duly observed, and the duties of the
 11 several officers are faithfully performed, and to advise with the
 12 warden of the prison on the concerns thereof, whenever thereto
 13 requested; and each of them, shall at all times have free access
 14 to all parts of the prison, and be allowed to inspect and examine
 15 all the books, accounts and writings pertaining to the prison, or
 16 the business, management and government thereof. And the
 17 inspectors, as soon as may be after each stated meeting, or
 18 oftener, if necessary, shall transmit to the governor and council
 19 a transcript of the record of their doings, and such other infor-
 20 mation relative to the concerns of the prison, as they may deem
 21 proper.

1824, 282, § 8. 1831, 499, § 2.

SECT. 8. It shall be the duty of the inspectors in the month
 2 of January annually, to audit, correct and settle the accounts of
 3 the warden with the prison and the State, for the year ending
 4 on the last day of December preceding, and make report thereof,
 5 in said month of January, to the governor and council, to be
 6 laid before the Legislature; which report shall exhibit an
 7 account of the stock on hand of different kinds, as well at the
 8 beginning as at the close of the year, the several sums expended
 9 for materials, provisions, fuel, clothing, bedding, lights, tools
 10 and other articles; the amount of manufactures of each kind,
 11 and all other articles sold from the prison; the profits or loss
 12 upon each branch of business, and all other particulars neces-
 13 sary to give the Legislature a full understanding of the fiscal
 14 and other concerns of the prison; and shall at the same time,
 15 furnish an estimate of the probable income and expense of the
 16 prison for the ensuing year. 1837, 303. 1830, 477, § 8.

SECT. 9. It shall be the duty of the inspectors to inquire into
 2 any improper conduct which may be alleged to have been com-
 3 mitted by the warden, or any subordinate officer of the prison
 4 in relation to the concerns thereof; and for that purpose may
 5 issue subpoenas for witnesses to compel the attendance of wit-
 6 nesses and the production of papers and writings; and may
 7 examine witnesses under oath, to be administered by the chair-
 8 man, and may adjudicate on such alleged improper conduct in
 9 like manner and with like effect as in cases of arbitration.

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SECT. 10. The inspectors shall examine into all disorderly
 2 conduct among the prisoners; and when it shall appear to them
 3 that any conduct is disorderly, refractory or disobedient, they
 4 may order such corporeal punishment as they may deem neces-
 5 sary to enforce obedience, and as shall not be inconsistent with
 6 humanity, or as may be authorized by the rules and regulations
 7 established for the government of the prison.

1830, 477, § 10.

SECT. 11. The inspectors shall from time to time establish
 2 such rules and regulations, consistent with the laws of the State,
 3 as they may deem necessary and expedient for the direction of
 4 the officers, agents and servants of the prison in the discharge
 5 of their respective duties, or for their respective compensation,
 6 not established by law, for the government, instruction and dis-
 7 cipline of the convicts, and for their clothing and subsistence;
 8 and for the custody, preservation and management of the pub-
 9 lic property; and so soon as may be, after the establishment of
 10 the same by the inspectors, they shall cause a copy thereof to
 11 be laid before the governor and council, who may approve,
 12 annul or modify the same, and make and establish such other
 13 rules and regulations, consistent with the laws of the State, as
 14 to them shall seem fit; and the governor shall communicate all
 15 such rules and regulations as shall be thus approved or estab-
 16 lished by the governor and council, to the next Legislature after
 the same shall have been so approved and established; and the

17 inspectors shall cause a copy of such rules and regulations to
18 be certified by the clerk, and delivered to the warden.

1824, 282, § 4. M. R. S. 144, § 9.

SECT. 12. The warden shall not carry on or be concerned in
2 the business of trade or commerce, during his continuance in
3 office; he shall reside constantly within the precincts of the
4 prison, and shall have the care, custody and charge of the prison
5 and of the convicts therein, in conformity to their respective
6 sentences, and of the lands, buildings, machines, tools, stock,
7 provisions and of every other kind of property, belonging to or
8 within the precincts of the same. He shall be the treasurer of
9 the prison, and receive, pay out, and be accountable for all
10 monies granted for maintaining the same, or derived from the
11 manufactures or other concerns thereof; and shall make or
12 cause to be made in the books of the prison, regular entries of
13 all pecuniary and other concerns of the prison, and on, or
14 before the first Wednesday of January of each year he shall
15 render to the inspectors a fair account of all the expenses and
16 disbursements, receipts and profits of the prison, with sufficient
17 vouchers for the same, and a statement of its general affairs, for
18 the year then past, including the number of convicts received
19 and discharged during the year, and the number remaining;
20 and a similar account and statement, examined and approved by
21 the inspectors, the warden shall also render, under oath, in the
22 month of January annually to the Legislature.

1836, 230, § 1. 1824, 282, § 3. 1823, 226, § 3. 1830, 477, § 6.

SECT. 13. It shall be the duty of the warden to inspect and
2 oversee the conduct of the convicts and cause all the rules and
3 regulations of the prison to be strictly and promptly enforced;
4 he shall give immediate information of any officer who shall
5 refuse or neglect to enforce the discipline established, to the
6 inspectors, who shall forthwith remove any officer who shall be
7 guilty of such neglect of duty. He shall have authority to
8 punish any convict for disobedience, disorderly behavior or
9 indolence, in such manner as shall be directed by the inspectors
10 or prescribed in the rules and regulations, and shall keep a regis-
11 ter of all such punishments and the cause for which they were
12 inflicted.

1824, 282, § 5.

SECT. 14. The warden or his deputy shall serve, execute and
2 return all process within the precincts of the state prison, and
3 such process shall be directed to him or his deputy accordingly;
4 and for the doings of his deputy, the warden, as well as the
5 deputy himself, shall be answerable. The warden shall have
6 the command of all the force for guarding the prison, and of all
7 officers and persons employed under him in overseeing, guarding
8 and governing the same.

1824, 282, § 3, 7.

SECT. 15. All articles of food, clothing, bedding, raw mate-
2 rials for manufactures, fuel and other articles that may be
3 necessary for the use of the prison, shall be contracted for by
4 the year, when such contracts can be advantageously made, in

5 the following manner:—The warden shall make an estimate of
 6 the quantity of each article necessary for the then next ensuing
 7 year, commencing on the first day of January, and ending on the
 8 last day of December of each year, and advertise that he will
 9 receive sealed proposals for furnishing and delivering at the
 10 prison, said articles or any of them, until the first day of October
 11 then next ensuing; for which payment shall be made quarterly,
 12 stating the quantity and quality of each article required; the
 13 time or times when each article must be delivered, and the terms
 14 of payment; which advertisement he shall cause to be inserted
 15 in one or more of the newspapers printed in Portland, and in one
 16 or more of the newspapers printed in each of the counties of
 17 Lincoln and Kennebec, three weeks successively; the last publi-
 18 cation to be at least one month before the first day of October
 19 in each year. 1830, 477, § 4.

SECT. 16. The inspectors shall meet at the prison within five
 2 days next after the first day of October, and having first esti-
 3 mated the lowest price at which each article advertised for, can
 4 be procured, shall proceed to open and examine the proposals;
 5 and the lowest offer for furnishing any article, not being above
 6 the market price, shall be accepted, if good security be given to
 7 the warden for the faithful performance of the contract.

SECT. 17. If no such offer should be made below the esti-
 2 mated market price, or if any article should not be included in
 3 such advertisement, or if the inspectors should deem it expe-
 4 dient to decline any or all of such offers, the warden shall
 5 procure such articles as may be necessary for the prison by
 6 advertising anew or in such manner as may be prescribed by the
 7 inspectors.

SECT. 18. The warden shall take bills of the quantity and
 2 price of supplies furnished for the prison at the time of delivery,
 3 and shall exhibit the same to the clerk, who shall compare the
 4 bills with the articles delivered; if the bills are found correct,
 5 he shall enter them with the date, in a book to be kept for that
 6 purpose; in like manner bills shall be taken and entered, of all
 7 services rendered for the prison; if any such bill be found
 8 incorrect, the clerk shall omit to enter it, and immediately give
 9 notice to the warden, that the error may be corrected.

N. Y. R. S. 764. M. R. S. 144, § 24.

SECT. 19. All sales of limestone, granite or other articles
 2 from the prison, and the letting to hire of such of the convicts
 3 as the inspectors may deem expedient, and all other contracts
 4 on account of the prison, shall be made with the warden in such
 5 manner, as shall be prescribed by the inspectors. No such con-
 6 tract shall be accepted by the warden, unless the contractor
 7 shall give satisfactory security for the performance of it, and no
 8 officer of the prison shall be directly or indirectly interested in
 9 any contract as aforesaid. 1830, 477, § 6.

SECT. 20. When the warden shall receive from the sheriff of
 2 any county a warrant as prescribed in the two hundred and sixty-

3 eighth chapter, requiring him to remove a convict to the state
4 prison, he shall by himself, or such other person as he shall
5 appoint or contract with for that purpose, forthwith cause such
6 warrant to be executed according to the precept thereof in the
7 least expensive manner that will be consistent with the security
8 of the convict; and said warrant, with his return thereon of the
9 manner of executing the same, he shall file in his office, and
10 shall cause a copy of the same to be filed in the office of the
11 clerk of the court from which it issued.

1824, 282, § 1. 1830, 477, § 6. M. R. S. 144, § 29.

SECT. 21. Whenever it shall be necessary or convenient dur-
2 ing the conveyance of any such convict to the state prison, in
3 pursuance of his sentence, that he should be lodged for safe
4 keeping in any county jail, till the residue of such conveyance
5 can be conveniently performed, it shall be the duty of the keeper
6 of such jail to receive such convict, and safely keep and provide
7 for him until called for by the person employed to convey him
8 as aforesaid, into whose custody he shall be delivered; and the
9 said jail-keeper shall be allowed his reasonable charge and
10 expenses incurred thereby, to be paid from the treasury of the
11 State. 1832, 28, § 1.

SECT. 22. All actions founded on any contract made with the
2 warden in his official capacity, may be brought by or against
3 the warden for the time being; and any actions for injuries done
4 or occasioned to the real or personal property belonging to the
5 State, and appropriated to the use of the state prison, or being
6 under the management of the warden thereof, may be prosecu-
7 ted in the name of the warden for the time being; and no such
8 action shall abate by the warden's ceasing to be in office; but
9 his successor, upon notice, shall be required to assume the prose-
10 cution or defence of the same. In said actions the warden shall
11 be a competent witness, and neither his person or property shall
12 be taken or attached in any such suit, nor shall any execution
13 issue against him on any judgment therein, but such judgment
14 shall stand as an ascertained claim against the State.

1824, 282, § 6. 1831, 499, § 1. 1830, 477, § 5.

SECT. 23. Whenever any controversy shall arise respecting
2 any contract or claim on account of the state prison, as men-
3 tioned in the preceding section, or any suit shall be pending
4 thereon, the warden may submit the same to the determination
5 of arbitrators or referees to be approved by the inspectors.

N. Y. R. S. vol. 2, 763. M. R. S. 144, § 20.

SECT. 24. The warden shall not be arrested on any civil pro-
2 cess or execution while he is in office; but execution upon any
3 judgment against him personally, and not in his official capacity,
4 may be issued against his goods and estate, but not against his
5 body; and if such execution shall be returned unsatisfied, the
6 said warden shall be liable to be removed by the governor with
7 advice of council in like manner as a sheriff may be removed
8 from office when an execution against him is returned unsatisfied.

1824, 282, § 7.

SECT. 25. Whenever the office of warden shall be vacant or
 2 the warden shall be absent from the prison, or unable to perform
 3 the duties of his office, the deputy warden shall have the powers,
 4 perform the duties and be subject to all the obligations and lia-
 5 bilities of the warden. M. R. S. 144, § 26.

SECT. 26. If the office of warden shall become vacant when
 2 the governor and council are not in session, the inspectors may
 3 require the deputy warden to give bond to the State in the sum
 4 of five thousand dollars with sufficient sureties, to be by them
 5 approved, with condition for the faithful discharge of the duties
 6 incumbent on him as deputy warden and treasurer; and from
 7 the time such bond shall be approved, the deputy shall receive
 8 the salary and emoluments of the warden, in lieu of his former
 9 pay, so long as he shall perform the duties of the office; if the
 10 deputy warden shall not give such bond when required, the
 11 inspectors may remove him from office, and appoint a warden
 12 pro tempore, who shall give bond similar to the one required of
 13 the deputy warden; and shall have the power and authority,
 14 and perform the duties and receive the salary and emoluments
 15 of the warden, until a warden shall be duly appointed, and enter
 16 upon the discharge of the duties of his office.

M. R. S. 144, § 27.

SECT. 27. It shall be the duty of the clerk and commissary
 2 to keep an account of all supplies purchased for the use of the
 3 prison, as mentioned in the preceding eighteenth section, and
 4 of all articles sold, and delivered from the same, and to assist
 5 in effecting sales and purchases in such manner as the warden
 6 may direct; he shall attend the meetings of the inspectors, when
 7 they shall request, keep a record of their proceedings and per-
 8 form such other services pertaining to his employment and the
 9 superintending of the prison, as shall be directed by the inspec-
 10 tors or warden.

SECT. 28. Persons who have suitable knowledge and skill in
 2 the branches of labor and manufactures carried on in the prison
 3 shall, when practicable, be employed as overseers, and they
 4 shall respectively superintend such portions of the labor of the
 5 convicts, for which they are most suitably qualified, and which
 6 shall be assigned to them by the warden; and all of them, as
 7 well as the other subordinate officers of the prison, shall per-
 8 form such services in the management, superintending and
 9 guarding of the prison, as shall be prescribed by the rules and
 10 regulations or directed by the warden. 1830, 477, § 1.

SECT. 29. If any subordinate officer of the prison shall be
 2 guilty of negligence or unfaithfulness in the discharge of his
 3 duties, or of a violation of any of the laws or rules and regula-
 4 tions for the government of the prison, the warden, with the
 5 approbation of the inspectors may deduct from the pay of such
 6 officer, a sum, not exceeding his pay for one month.

1830, 477, § 2.

SECT. 30. There shall continue to be organized by the gov-
 2 ernor and council a volunteer company of riflemen, or other

3 militia in the immediate vicinity of the state prison, to consist
 4 of not more than sixty persons, and if necessary, enlistments
 5 may be authorized for that purpose, from any of the companies
 6 of militia, now formed and each private and non-commissioned
 7 officer of said company shall be bound to be well armed and
 8 equipped at all times; to keep constantly on hand twenty-four
 9 rounds of good ammunition, which it shall be the duty of the
 10 warden to furnish at the expense of the State; to parade at or
 11 near the state prison on the first Tuesday of May annually for
 12 inspection; and at all times, in case of alarm or insurrection at
 13 the state prison, forthwith to appear, armed and equipped, at
 14 the prison, and there obey the orders of the warden in suppress-
 15 ing any such insurrection, and preventing the escape of any of
 16 the convicts. The said company shall be attached to the reg-
 17 iment within the limits of which they reside, but shall be
 18 exempted from all military duty, other than what is herein
 19 required, except in cases of invasion or insurrection.

1826, 339, § 4. 1839.

SECT. 31. All officers of the state prison, and other persons
 2 employed therein for the safe keeping of the convicts and super-
 3 intending the prison, liable to do military duty shall belong to
 4 said volunteer company; and the officers, non-commissioned
 5 officers, clerk and privates thereof shall respectively have the
 6 like power and command, be subject to the like duties, control
 7 and subordination, and be liable to the like penalties as provided
 8 in the sixteenth chapter, when it is not otherwise provided in
 9 this chapter.

1826, 339, § 4. 1839.

SECT. 32. If any non-commissioned officer or private of said
 2 company shall neglect forthwith to appear, armed and equipped,
 3 at the prison in case of alarm or insurrection, upon any verbal
 4 or other notice being given him by direction of the warden or
 5 any officer of the company, or being there, shall refuse to obey
 6 the lawful commands of the warden or any officer of said com-
 7 pany, he shall forfeit and pay for each neglect, refusal or defi-
 8 ciency, a sum not exceeding ten dollars, and not less than two
 9 dollars; and if any non-commissioned officer or private of said
 10 company shall unreasonably neglect to be provided with the
 11 arms and ammunition herein before required, he shall forfeit the
 12 sum of two dollars to be recovered by the clerk in an action of
 13 debt before a justice of the peace.

1824, 282, § 26.

SECT. 33. The inspectors and warden shall appoint some
 2 suitable person to officiate as chaplain of the state prison, whose
 3 duty it shall be, at stated times, as directed by the inspectors,
 4 and warden, to perform divine service at the state prison; to
 5 visit the sick on proper occasions and to use his endeavors,
 6 according to the means at his disposal, for the moral and
 7 religious improvement of the convicts.

1824, 282, § 24.

SECT. 34. The warden, under the advice and direction of the
 2 inspectors, when they deem it practicable, shall establish at the
 3 prison, a sunday school to be kept at such hours and under such

4 regulations as they shall prescribe, for the instruction of the
 5 convicts in the rudiments of learning, religion and morality. And
 6 the chaplain, when it shall not interfere with his other duties,
 7 and such of the subordinate officers as the warden shall desig-
 8 nate shall assist in the school; and the warden may admit such
 9 voluntary assistance as shall be tendered for that purpose by the
 10 moral and benevolent, having regard to the characters of the
 11 persons tendering it, and the security of the convicts. The
 12 warden, under the direction of the inspectors, shall purchase
 13 suitable books for the use of the school, and each convict, who
 14 can read and shall request it, shall be furnished with a bible.

1830, 477, § 3.

SECT. 35. The inspectors and warden shall appoint some
 2 suitable person to be a physician and surgeon of the state prison
 3 whose duty it shall be to visit the prison whenever requested by
 4 the warden, prescribe for the convicts who may be sick, see that
 5 proper attention be paid to the clothing, regimen and cleanli-
 6 ness of such as may be in the hospital, and advise when illness
 7 of any convict may require his removal to the same, and upon
 8 such advice, and in other cases when he shall deem it necessary
 9 the warden shall cause any sick convict to be forthwith removed
 10 to the hospital, and there to receive such care and attention,
 11 and be furnished with such medicines and diet as his situation
 12 may require, until the physician shall determine that he may
 13 leave it without injury to his health. 1832, 28, § 3.

SECT. 36. In case of any pestilence or contagious sickness
 2 breaking out among the convicts in the prison, the inspectors
 3 and warden may cause the convicts confined therein, or any of
 4 them, to be removed to some suitable place of security, where
 5 such of them as are sick shall receive all necessary care and
 6 medical assistance. Such convicts shall be returned as soon as
 7 may be to the state prison, to be confined according to their
 8 respective sentences, if the same be unexpired.

N. Y. R. S. Vol. 2, 771.

SECT. 37. If any officer or other person, employed in the
 2 state prison or its precincts, shall voluntarily suffer, aid or con-
 3 nive at the escape of any convict from the same, he shall be
 4 punished by imprisonment in the state prison for any term of
 5 time, not more than the whole term during which such convict
 6 was sentenced to be imprisoned. 1824, 282, § 9.

SECT. 38. If any officer or other person employed in the
 2 state prison or its precincts, shall negligently suffer any convict
 3 confined therein, to be at large, without the precincts of the
 4 prison, or out of the cell or apartment assigned to him, or to be
 5 conversed with, relieved or comforted, contrary to law, or the
 6 rules and regulations of the prison, he shall be punished by a
 7 fine, not exceeding five hundred dollars. 1824, 282, § 10.

SECT. 39. If any person shall forcibly rescue or attempt to
 2 rescue any convict, sentenced to the state prison, from the legal
 3 custody of any officer or other person, or from the state prison,

4 or from any jail or other place, where he may be legally con-
 5 fined ; or shall convey or cause to be conveyed to such convict
 6 or into such jail or other place or into the state prison, any tool,
 7 instrument, weapon or other aid, with intent to enable such con-
 8 vict to escape, whether such escape be effected or not, he shall
 9 be punished by imprisonment in the state prison, not more than
 10 twenty years, or by fine not exceeding five hundred dollars.

1824, 282, § 11.

SECT. 40. If any officer, contractor or teamster or other per-
 2 son shall deliver, or have in possession with intent to deliver to
 3 any convict confined in the state prison, or shall deposit or con-
 4 ceal in any place in or about the state prison or its precincts,
 5 or in any wagon or other vehicle going thereto, any article, with
 6 intent that any convict therein should obtain the same, without
 7 the consent or knowledge of the warden or deputy warden, the
 8 person so offending shall be punished by imprisonment in the
 9 state prison not more than two years, or by fine not exceeding
 10 five hundred dollars and imprisonment in the county jail not
 11 more than six months.

1830, 477, § 9.

SECT. 41. If any convict, sentenced to the state prison for
 2 life, shall assault any officer or other person employed in the
 3 government thereof, or shall break or escape therefrom, or forc-
 4 bly attempt so to do, he may be punished, upon conviction
 5 thereof in the supreme judicial court, by solitary imprisonment
 6 in the state prison, not more then one year, and be afterwards
 7 held in custody on his former sentence.

1824, 282, § 12.

SECT. 42. If any convict, sentenced to the state prison for a
 2 limited term, shall assault any officer or other person employed
 3 in the government of said prison, or shall break or escape there-
 4 from, or forcibly attempt so to do, he may be punished, upon
 5 conviction thereof in the supreme judicial court, by solitary con-
 6 finement in the state prison, not more than three months to
 7 commence after his solitary confinement and the completion of
 8 his former sentence.

1824, 282, § 13.

SECT. 43. Every convict sentenced to solitary confinement,
 2 as mentioned in the two preceding sections, or on whom it is
 3 inflicted, as a punishment for the violation of the rules and regu-
 4 lations of the prison, shall be confined in a solitary cell, and
 5 during such confinement shall be fed on bread and water only,
 6 unless the physician shall certify to the warden that the health
 7 of such convict requires other diet.

M. R. S. 144, § 32.

SECT. 44. If any convict, sentenced to the state prison, shall
 2 resist the authority of any officer, or refuse to obey his lawful
 3 commands, it shall be the duty of such officer immediately to
 4 enforce obedience by the use of such weapons or other aid as
 5 may be effectual ; and if in so doing, any convict, thus resisting,
 6 shall be wounded or killed by such officer or his assistants, they
 7 shall be justified and held guiltless.

1824, 282, § 14.

SECT. 45. It shall be the duty of all officers and other citizens
 2 of the State, by every means in their power to suppress any

3 insurrection among the convicts sentenced to the state prison,
 4 and to prevent the escape or rescue of any such convicts there-
 5 from or from any other legal confinement, or from any person in
 6 whose legal custody they may be; and if in so doing, or in
 7 arresting any convict who may have escaped, such officer or
 8 other person shall wound or kill such convict, or other person
 9 aiding and assisting such convict, they shall be justified and held
 10 guiltless. 1824, 282, § 15.

SECT. 46. When any convict shall escape from the state
 2 prison, it shall be the duty of the warden to take all proper
 3 measures for his apprehension; and for that purpose he may
 4 offer a reward, not exceeding fifty dollars, to be paid by the
 5 State for the apprehension and delivery of such convict.

N. Y. R. S. Vol. 2, 769.

SECT. 47. When it shall appear to the warden of the state
 2 prison that any convict confined therein, in pursuance of his
 3 sentence, has been before sentenced by the authority of this, or
 4 any other State, or of the United States, to confinement in any
 5 state prison, it shall be the duty of the warden to give notice
 6 thereof to the attorney general or the attorney for the county of
 7 Lincoln, as soon as may be, who shall by information or other
 8 legal process make the same known to the supreme judicial
 9 court or district court, when held within and for the county of
 10 Lincoln. The court to whom such information is made shall
 11 cause such convict to be brought before them to answer to the
 12 same; and if by confession of such convict or by verdict or
 13 otherwise according to law, it shall appear that such information
 14 is true, the said convict, instead of the punishment for which he
 15 stands sentenced, shall be punished by imprisonment for life, or
 16 any term of years; and if the said charge shall not be estab-
 17 lished, the convict shall be remanded to the state prison, to be
 18 held on the original sentence. 1824, 282, § 19.

SECT. 48. No convict shall be discharged from the state
 2 prison until he shall have remained the full term for which he
 3 was sentenced, to be computed from, and including the day on
 4 which he was received into the same, exclusive of the time he
 5 may have been in solitary confinement for any violation of the
 6 rules and regulations of the prison, unless he shall be pardoned
 7 or otherwise released by legal authority. 1826, 282, § 16.

SECT. 49. It shall be the duty of the warden to receive and
 2 take care of any property that a convict may have with him at
 3 the time of his entering the state prison, and when it may be
 4 convenient to place the same at interest for the benefit of such
 5 convict; of which property the warden shall keep an account
 6 and pay the same to said convict on his discharge, or in case of
 7 his death, to his representatives, unless the same shall have been
 8 otherwise legally taken and disposed of.

N. Y. R. S. Vol. 2, 768.

SECT. 50. When any convict is discharged from the state
 2 prison, who shall have conducted well during his imprisonment,

3 the warden, at his discretion may give to such convict from the
4 funds of the prison, a sum not exceeding five dollars, and if he
5 shall request it, a certificate of such good conduct, and shall
6 take care that every convict on his discharge from prison is pro-
7 vided with decent clothing.

1824, 282, § 22. 1826, 389, § 3. M. R. S. 144, § 53.

SECT. 51. The warden shall have authority to demand and
2 receive of each person who shall visit the prison for the purpose
3 of viewing the interior or precincts, such sum, not exceeding
4 twenty-five cents, and under such regulations as the inspectors
5 shall prescribe, for which the warden shall account to the State.

SECT. 52. The warden shall have power upon the recommen-
2 dation of the inspectors, and with the approbation of the gover-
3 nor and council, to make or cause to be made such additional
4 buildings or alterations within the prison or its precincts, as they
5 shall deem to be necessary and proper. 1824, 282, § 8.

SECT. 53. The inspectors shall receive for their services such
2 compensation as shall from time to time be allowed by the gov-
3 ernor and council. 1824, 282, § 4.

SECT. 54. The warden shall receive in full compensation for
2 his services in that office the annual salary of seven hundred
3 dollars, and the exclusive use and occupation of such parts of
4 the keeper's house and of the lands and buildings appurtenant
5 to the prison and its precincts, as the governor and council may
6 direct, and also the use of store room and fuel which shall be
7 furnished him by the prison without charge. 1824, 282, § 23.

SECT. 55. There shall be annually appropriated for the com-
2 pensation of the person appointed to officiate as chaplain of the
3 state prison, a sum not exceeding one hundred dollars; and for
4 the use of the Sunday school a sum not exceeding fifty dollars,
5 and for the compensation of the physician and surgeon and for
6 medicines, a sum not exceeding one hundred and fifty dollars
7 annually; and the subordinate officers and other persons em-
8 ployed in managing, guarding and superintending the prison
9 shall, at stated times, receive such compensation as shall be
10 established in the rules and regulations of the prison or allowed
11 by the inspectors and warden, with the approbation of the gov-
12 ernor and council. 1824, 282, § 24. 1832, 28, § 4, 3.

SECT. 56. The governor with the advice of council is author-
2 ized to draw warrants on the treasury of the State in favor of
3 the warden for all such sums of money or parts thereof, as they
4 may from time to time deem proper which have been appropri-
5 ated by the legislature for the support of the state prison.

1824, 282, § 25.

CHAPTER 178.

OF HOUSES OF CORRECTION.

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- Sect.*
1. Houses of correction, and their object.
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 4. County commissioners to make rules and orders.
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 30. Power of overseers to commit persons to such house.
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SECT. 1. There shall be erected, or otherwise provided by
 2 the county commissioners, in every county within this State, at
 3 the charge of such county, a fit and convenient house or houses
 4 of correction, where not already provided, with convenient
 5 accommodations thereunto adjoining and belonging, to be used
 6 and employed for the keeping, correcting and setting to work of
 7 rogues, vagabonds, common beggars, idlers and disorderly per-
 8 sons, and all other offenders, who may be committed thereto, in
 9 due course of law. 1821, 111, § 1.

SECT. 2. Until such house or houses of correction, be erected
 2 or otherwise provided, the common prison in each county, may
 3 be made use of for that purpose. 1821, 111, § 1.

SECT. 3. The commissioners, in their respective counties,
 2 shall appoint a suitable person to be master of each house of
 3 correction, and to hold his office during their pleasure.

1821, 111, § 2.

SECT. 4. The commissioners shall also establish such rules
2 and orders, not repugnant to the laws of this State, as they shall
3 deem necessary for restraining, employing, governing and
4 punishing the persons there confined, and for managing the
5 prudential concerns of the institution. 1821, 111, § 2.

SECT. 5. The commissioners in their respective counties,
2 where circumstances may require it, shall appoint, annually,
3 three or five suitable and discreet persons of their county, living
4 near the house of correction, to be overseers of such house ;
5 who shall see that the rules established for the government of
6 such house and the persons therein confined, be duly observed,
7 and also shall examine the accounts of the master relating to
8 the earnings of the prisoners, and the expenses of the institution,
9 and they shall also keep a fairly written register of all their
10 official proceedings.

SECT. 6. The overseers shall have power to make contracts
2 for work to be done in the house with any person disposed to
3 supply the materials, and to make contracts for letting out any
4 of the persons confined to employers living near enough, in
5 their opinion, to the house of correction, for the overseers or
6 master, to have general inspection of the conduct of persons,
7 so let out, and of the treatment, they receive. 1821, 111, § 3.

SECT. 7. The overseers, shall receive out of the earnings of
2 the prisoners, or if the same be insufficient, from the county
3 treasury, a reasonable compensation to be allowed by the com-
4 missioners. 1821, 111, § 3.

SECT. 8. The commissioners may remove any of the over-
2 seers, during the year and may fill all vacancies, happening by
3 removal, resignation or otherwise. They shall also at least as
4 often, as every regular session, inquire into the state of the house
5 of correction, and examine the register and accounts of the
6 overseers, and master and make such further regulations and
7 alterations in the treatment and government of the prisoners for
8 the time being, as circumstances may render expedient, not
9 being contrary to the laws of the State. 1821, 111, § 4.

SECT. 9. Any justice of the peace, within his county, on com-
2 plaint under oath, and any district court in any county within its
3 district on indictment, for the terms provided in the following
4 section, may send and commit to the said house to be kept,
5 employed and governed, according to the rules and orders
6 thereof, all rogues, vagabonds, and idle persons, going about in
7 any town or place in the county, begging ; or persons using any
8 subtle craft, juggling or unlawful games or plays, or for the sake
9 of gain or emolument, feigning themselves to have knowledge,
10 in physiogomy, palmistry or for the like purpose, pretending
11 that they can tell destinies or fortunes, or discover where lost or
12 stolen goods may be found ; common pipers, fiddlers, runaways,
13 common drunkards, common night walkers, pilferers, persons
14 wanton, or lascivious in speech or behavior, common railers or
15 brawlers, such as neglect their callings or employments, mispend

16 what they earn, and do not provide for the support of them-
 17 selves and their families. 1821, 111, § 5.

SECT. 10. Persons convicted of the aforesaid offences, or any
 2 of them before any justice of the peace may be committed as
 3 aforesaid for a term not exceeding thirty days, and such as are
 4 convicted before any district court, may be committed for a
 5 term not exceeding six months, such term of confinement being
 6 subject to extension, as provided in the two following sections.

1825, 297, § 1. 1821, 111, § 8.

SECT. 11. At the expiration of the term of confinement in
 2 either case the persons committed shall not be entitled to their
 3 discharge, until they pay all arrears of costs and expenses attend-
 4 ing their commitment, support and employment in such house
 5 of correction; unless the overseers of the poor, where such
 6 house is, or of the town to which such persons belong, shall pay
 7 such arrears of costs and expenses and in writing certify to the
 8 master of the house, that in their opinion the public good, will
 9 not require the longer confinement of such persons.

1825, 297, § 1.

SECT. 12. Or, notwithstanding the payment of such costs and
 2 expenses, if the persons so confined are paupers, or likely imme-
 3 diately to become such, the overseers of the poor, in either of
 4 the towns aforesaid may, on complaint to any justice of the
 5 peace in the county or to the district court, under whose sen-
 6 tence the persons were before committed, procure an extension
 7 of the confinement, for not more than thirty days, at one time
 8 before a justice of the peace, nor more than six months before
 9 the district court, such application to be afterwards renewed, if
 10 occasion should require on like complaint; in all such cases,
 11 the party under confinement being brought before such justice
 12 or court to answer to such complaint.

1825, 297 § 1.

SECT. 13. Any two justices of the peace, one of them being
 2 of the quorum, on complaint under oath and a hearing before
 3 them, that any person is insane and suffered to go at large, and
 4 so furiously mad, that the public safety requires his immediate
 5 restraint may on adjudging the facts so to be, by a joint warrant
 6 under their hands and seals, commit such person to the house
 7 of correction, there to be detained and put to work, if practica-
 8 ble, till he becomes of sound mind, or till the overseers of the
 9 poor where such house is, or where such person belongs, shall
 10 pay the arrears of costs and expenses, and in writing certify to
 11 the master of the house that in their opinion, it will be safe to
 12 release him, or until he is discharged, pursuant to the provisions
 13 of chapter

1821, 111, § 6. 1835, 143, § 1.

SECT. 14. The commissioners, in their respective counties,
 2 shall provide and cause to be kept, at the expense of their
 3 respective counties, suitable materials, implements and other
 4 necessaries, sufficient at all times to employ and keep at work,
 5 such as or may be legally committed to the house of correction.

1821, 111 § 9.

SECT. 15. The master of such house may set to work all such
 2 persons as are committed to his custody, so far as they may be
 3 able, during the time of their confinement, and if their deport-
 4 ment render it expedient, he may put shackles or fetters upon
 5 them to prevent resistance or escape, without unnecessarily
 6 inflicting pain or interrupting their labor. 1821, 111, § 10.

SECT. 16. Should any person so committed, be stubborn, dis-
 2 orderly, idle or refractory, or refuse to perform his appointed
 3 task in a proper manner, the master may abridge him of his food
 4 until he shall comply with the reasonable requirements of the
 5 master and overseers. 1821, 111, § 10.

SECT. 17. The persons committed, shall be allowed only two
 2 third parts of their net earnings for their support, and the resi-
 3 due shall be to the use of the master, unless such persons are
 4 heads of families, then the whole net profit of their labor, or so
 5 much thereof, as the county commissioners shall order, shall be
 6 for the relief and support of such persons and their families.

1821, 111, § 9.

SECT. 18. If any person committed, as aforesaid, from sick-
 2 ness or other cause, shall be unable to work, so as to support
 3 himself out of his share of earnings, the master shall then com-
 4 fortably provide for and take care of him, and be reimbursed as
 5 hereinafter provided. 1821, 111, § 9.

SECT. 19. The master of every such house, shall keep an
 2 exact account of all profits and earnings, that shall arise from
 3 the labor of all such as shall be committed to his care and cus-
 4 tody and of his disbursements for their support and maintenance,
 5 specifying the times of their commitment and liberation, and
 6 present the same account, upon oath if required, unto the com-
 7 missioners for the same county annually, and as much oftener
 8 as he shall be thereunto directed. The commissioners may
 9 make such further allowance, as they think reasonable in special
 10 cases, for the care, labor and services of the master, besides the
 11 allowance of one third part of the earnings, provided in the
 12 seventeenth section of this chapter. 1821, 111, § 11.

SECT. 20. Whenever there shall be due to any master of
 2 such house from any person therein committed, any sum of
 3 money under the provisions of this chapter, and the account of
 4 such master shall have been duly proved, and certified to be
 5 correct by the commissioners, he shall have a right to demand
 6 the same of the person, committed if of age, otherwise of his
 7 parent, master or guardian; and if there be not sufficient estate
 8 of the parties liable as aforesaid, the same may be demanded of
 9 the overseers of the town, wherein such person shall have his
 10 legal settlement. 1821, 111, § 12.

SECT. 21. Fourteen days after demand made in writing upon
 2 either of the parties liable by virtue of the preceding section,
 3 if the money so ascertained to be due, shall remain unpaid, the
 4 master of such house of correction, within two years after the
 5 date of the certificate of allowance, may commence and prose-

6 cute his action at law for the same, declaring as upon an implied
7 promise and recover so much of the same, as shall be found
8 justly due, of the person committed, his parent, master, guar-
9 dian, or town as the case may require, with legal interest from
10 the date of such demand and costs—if the party against whom
11 the action shall be brought, were duly notified previously to the
12 allowance of said account by the commissioners, the certificate
13 of the commissioners shall be presumptive evidence of the cor-
14 rectness of the claim, but in either case, it shall be liable to be
15 disproved by evidence to be offered on the part of the respondent.

1821, 111, § 12. 7 Pick, 336.

SECT. 22. If there be kindred, who by law may be obliged
2 to maintain the person, so committed, as provided in the sixth
3 section of chapter thirty-two—the master of such house or the
4 town, if obliged to pay the same, may have like remedy for
5 recovering the same from such kindred as is provided in the
6 seventh section of the same chapter for towns, which have
7 incurred expense, for the relief and support of paupers.

1821, 111, § 12.

SECT. 23. When any person convicted before the supreme
2 judicial court, or before any district court for an offence pun-
3 ishable by imprisonment or fine, shall be committed to the
4 house of correction as provided in the second section of chapter
5 two hundred and sixty-eighth, the expenses of keeping, supporting
6 and employing such offender, after deducting the net amount of
7 his earnings, shall be allowed by the commissioners of the
8 county and paid to the master of such house, out of the county
9 treasury and with the same right of reimbursement, from the
10 treasury of the State, as the accounts of jailors for the prison
11 charges persons confined for offences against the State.

1821, 111, § 8.

SECT. 24. Any town may build and maintain at its own
2 expense a house of correction, or may appropriate in part or in
3 whole any work house, belonging to such town, or in which it
4 has an interest, for such purpose; and any person belonging to
5 or found in any town having such house of correction, who may
6 be liable to be sent by a justice of the peace, to the county
7 house of correction, may be sent to such town house of correc-
8 tion, by any justice, resident in such town and by the like
9 process; provided that the provisions of this section, shall not
10 restrain any such justice from ordering the commitment of any
11 person so liable to the county house of correction, and the party
12 aggrieved by any such order, may exercise the same right of
13 appeal as in other cases.

1825, 297, § 2, 6, 7.

SECT. 25. The selectmen of any town, erecting or otherwise
2 procuring any such house of correction, shall annually, appoint
3 three, five or seven discreet persons to be the overseers of such
4 house, and may make and establish such rules and orders not
5 repugnant to the laws of this State, as from time to time they
6 may deem necessary, for ruling, governing and punishing such
7 persons, as may be there committed.

1829, 429.

SECT. 26. When any work-house shall be appropriated for the purposes of such house of correction, the master of such work-house, shall also be master of such house of correction; but in other cases the overseers provided for in the preceding section, shall appoint some suitable person to be master of the house of correction, who shall be removable at their pleasure.

1829, 429, § 1.

SECT. 27. The overseers and master of such town house of correction, shall have such compensation for their services, as shall be annually voted by their town.

1825, 277, § 5.

SECT. 28. The overseers, shall from time to time examine into the prudential concerns and management of such house, and see that the master faithfully discharges his duty.

1825, 277, § 5.

SECT. 29. Every person committed to such town house of correction, shall be supplied by the keeper thereof with a suitable quantity of bread and water, or other nourishment as the overseers may order, while so confined; and all expenses incurred for commitment and maintenance, exceeding the earnings of the person confined, shall be paid by the parties liable for similar charges, in the case of persons committed to any county house of correction.

1825, 277, § 5.

SECT. 30. The overseers of any such town house of correction may commit thereto for a term not exceeding forty-eight hours any person publicly appearing in a state of intoxication, or in any manner violating the public peace, whenever the safety of the person intoxicated, or the good order of the community require it, for the purpose of security if necessary till such persons can be conveniently carried before a magistrate and restrained by complaint and warrant in the usual course of criminal prosecutions.

1825, 277, § 4.

SECT. 31. The form of the order for commitment may be in substance as follows:—To A. B. master of the house of correction in the town of ——— You are hereby required to receive and keep C. D. in the said house of correction for the term of ——— hours, unless sooner discharged by our order.

E. F. } Overseers of said house
G. H. } of correction.

And it shall be the duty of any sheriff, deputy sheriff, constable or other person, to whom such order shall be given by said overseers, forthwith to apprehend and convey such person to said house of correction and deliver him to the master thereof, who shall take and keep such person agreeably to the order;—The officer or other person, serving such order, shall be entitled to receive from the town such fees for service and travel, as is allowed for service of warrants.

1825, 277, § 4.

