A COMPILATION
OF THE PENAL CODE
OF THE STATE OF GEORGIA,
WITH THE FORMS OF BILLS OF INDICTMENT NECESSARY IN PROSECUTIONS UNDER IT,
AND THE RULES OF PRACTICE.

BY HOWELL COBB,
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MACON:
JOSEPH M. BOARDMAN.
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This volume completes the plan of the Compiler, in his arrangement of the laws; one object of that plan was to separate the civil and criminal law. Another object was, so to arrange the laws as to present suitable Forms which are required in practice. The Analysis accomplishes this, by presenting the law in subjects, and interspersing the Forms through the chapter. The present work presents the Penal Code as now amended; and, for the purpose of avoiding the difficulty of interspersing the Forms through the chapters, the corresponding number in the Forms, at the end of the chapter, designates the Form required.

With respect to the Penal Code, the Compiler does not hesitate to say, that it is correctly transcribed, and that if any error in this regard should be discovered, it is entirely the error of the Compiler, and no one else is blamable. In relation to the Forms, although the Compiler believes them to be sufficient, yet, as every pleader will examine the law before he uses them, it is hardly possible for a material error to occur.

It has been thought most proper to arrange some of the penal statutes in the chapters of the Penal Code; this part of the arrangement will be obvious from the fact, that the Penal Code proper is inserted in larger type than the addition made, and the addition is inserted in such manner as to leave the Code unbroken.
The Compiler would be doing violence to his own feelings, were he to permit this opportunity to pass, without returning his warmest acknowledgments to the gentlemen composing the Committee, (to wit: Judge Cole, Washington Poe, Esq., and Edwin R. Brown, Esq., appointed by his Excellency, Governor Towns, under the Resolution of the General Assembly,) for the purpose of examining the manuscript of this work. Those gentlemen, alike distinguished for their urbanity in social intercourse, courtesy in the practice, and eminence in their profession, have displayed, in their examination, not only a familiarity with the law, but an untiring patience and forbearance towards the Compiler, in their review of his work. The Compiler relies much upon the correctness of the work from the fact, that it has received the approbation and sanction of the gentlemen alluded to.

And now, in presenting the work to the public, the Compiler throws himself upon the known liberality of his professional brethren, and of the people at large. He hopes for this work, (as he has for the Analysis,) that he shall realize that indulgence and favor which is always extended to those who exert themselves to produce something of general benefit, however humble and unpretending that something, or the author of it, may be.

Perry, August, 1850.
CHAPTER I.

JUSTICES OF THE PEACE—WARRANTS, ETC.

2. The power, office, and duty of a justice of the peace depend on his commission, and on the several statutes which have created objects of his jurisdiction. His commission, first, empowers him singly to conserve the peace, and thereby gives him all the power of the ancient conservators at the common law, in suppressing riots and affrays, in taking securities for the peace, and in apprehending and committing felons and other inferior criminals. It also empowers any two or more to hear and determine all felonies and other offences, which is the ground of their jurisdiction at sessions, of which more will be said in its proper place. And as to the power given to one, two, or more justices by the several statutes, which from time to time have heaped upon them such an infinite variety of business that few care to undertake, and fewer understand the office, they are such and of so great importance to the public, that the country is greatly obliged to any worthy magistrate, that without sinister views of his own will engage in this troublesome service. And therefore, if a well-meaning justice makes any undesigned slip in his practice, great lenity and indulgence are shown to him in the courts of law, and there are many statutes made to protect him in the upright discharge of his office, which, among other privileges, prohibit such justices from being sued for any oversights without notice beforehand, and stop all suits begun, on tender made of sufficient amends. But, on the other hand, any malicious or tyrannical abuse of their office is usually severely punished, and all persons who recover a verdict against a justice, for any willful or malicious injury, are entitled to double costs.—1 Blac. Com. 353.

15. The justices of the peace of the respective counties shall be, and they are hereby declared to be liable to prosecution and trial, by indictment, for malpractice in office; and it shall be the duty of the attorney or solicitor-general, on complaint made to them, or either of them, on oath, by any person or persons, to frame and prefer a bill of indictment to the grand jury of the county in which the justice or justices complained of may reside, containing the merits of the complaint specially set forth; which indictment, if set forth by the grand jury, after hearing the evidence and the parties, shall be tried by a petit jury; and if convicted on such indictment, the judgment of the court may extend to fine and removal from office, or either, at discretion.—Act of 1811.

Any justice of the peace, charged with malpractice in office, by using oppression, tyrannical partiality, or any other conduct unbecoming his character as an upright magistrate, in the administration, and under color of his office, may be indicted, which indictment shall specially set forth the merits of the complaint, and a copy thereof be served on the defendant before the same is laid before the grand jury; and the prosecutor and the justice, and their witnesses,
JUSTICES OF THE PEACE.

shall all have the right of appearing and being heard before the grand jury, which indictment, if found true by the grand jury, shall, as in other cases, be tried by a petit jury—and if the defendant be convicted, he shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court; and shall moreover be removed from office, if still in office.

Item, for the better keeping and maintaining of the peace, the king will, that in every county good men and lawful, which be no maintainers of evil, or barrators in the county, shall be assigned to keep the peace. 1st Ewd. III. —Sch. Dig. 118.

Note.—To the above statute Judge Schley makes this note: "The preservation of the public peace has always been a favorite object of the common law; for peace is the very end and foundation of civil society. And, therefore, before the present constitution of justices was invented, there were peculiar officers appointed by the common law for the maintenance of the public peace. Of these, some had, and still have, this power annexed to other offices which they hold; others had it merely by itself, and were thence named custodes or conservatores pacis, conservators of the peace. Those that were so virtute officii, by virtue of their office, still continue; but the latter sort are superseded by the modern justices. —1 Blac. Com. 349."

Justices of the peace are appointed within certain limits for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge.—Dalt. c. 2; Clay. Jus. 231.

And a record or memorial made by a justice of the peace of things done before him judicially, in the execution of his office, shall be of such credit that it shall not be gainsaid; one man may affirm a thing, and another man may deny it, but if a record once say the word, no man shall be received to aver or speak against it; for if men should be admitted to deny the same, there would never be an end of controversies. And, therefore, to avoid all contentions, while one saith one thing and another saith another thing, the law reposeth itself wholly and solely in the report of the judge: and hereof it cometh that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him; great cause, therefore, have the justices to take heed that they abuse not this credit.—Lamb. 63, 66; Clay. Jus. 231.

The judges of the superior and justices of the inferior courts have, as incident to their offices, a general authority to keep the peace throughout the State, and to award process for the security of the peace, and to take recognition for it.—Clay. Jus. 231.

The general duty of the conservators of the peace by the common law is, to employ their own, and to command the help of others, to arrest and pacify all such, who, in their presence, and within their jurisdiction and limits, by word or deed, shall go about to break the peace.—Dalt. c. 1; Clay. Jus. 232.

If a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and fined.—Clay. Jus. 232.

And if the conservators of the peace have committed or bound over any offenders, they are then to send to, or be present at the next jail-delivery, or superior court, there to object against them.—Clay. Jus. 232.

Justices of the peace have a double power in relation to the arrest of wrongdoers, the first branch of which authority may be personally exercised on the commission of a felony or breach of the peace in their presence; the second by issuing a warrant on the evidence and complaint of another. And if a justice of the peace see a felony or breach of the peace committed, he may either himself arrest the parties offending, or verbally command any person to take them into custody. And it seems, that in order to prevent the riotous con-
sequences of a tumultuous assembly, he may command his servants or others to arrest the affrayers, though, in general, if an offence be committed in his absence, he must grant his warrant in writing to apprehend the offender. It is laid down, that any justice or the sheriff may take out of the county any number that he shall think meet, to pursue, arrest, and imprison traitors and felons, or such as break, or go about to break, or disturb the king's peace, and that every man being required, ought to assist and aid them, on pain of fine and imprisonment.

Where the magistrate is not present when a crime has been committed, he ought not, upon mere discretion, to send the party accused to prison, but upon due consideration of the evidence adduced before him. It was well observed by Ch. J. Pratt, that in case a magistrate has notice, or a particular knowledge, that a person has been guilty of an offence, yet it is not a sufficient ground for him to commit the criminal, but in that case he is rather a witness than a magistrate, and ought to make oath of the fact before some other magistrate, who should thereupon act the official part, by granting a warrant to apprehend the offender, it being more fit that the accuser should appear as a witness than act as a magistrate.—1 Chit. Crim. Law, 25.

Norm.—Judge Schley has the following note to the XV. ch. of the statute of 3d Edw. I. (statute of Westminster the first), containing very important duties of justices of the peace, in a condensed form; therefore, the compiler avails himself of it unhesitatingly: "By the ancient common law all felons were bailable, so that persons might be admitted to bail before conviction, almost in every case; and this statute is the first that declares who shall be bailable, and who not, 4 Blac. Com. 298. Sheriffs, bailiffs, &c., are named as having authority to let to bail; since, however, the institution of the office of justice of the peace, which was by 1 Edw. III. sta. 2, ch. 16, post. No. 30; and since by divers statutes, 3 Hen. VII. ch. 3, post. No. 47. 1 & 2 Phil. & Mary, ch. 13, post. No. 64. 2 & 3 Phil. & Mary, ch. 10, post. No. 65, justices of the peace are empowered to bail persons who by law are bailable; the sheriff never exercises this power; and indeed by the 1 Edw. IV., ch. 2, 2 Ruff. 5, this power is taken away from sheriffs and other inferior officers, and now resides only in justices of the peace and the superior judicial officers.—1 Jacob's Law Die. 217.

"The sheriff could in no case exercise this authority in Georgia, because he is only a ministerial, and not a judicial, officer, as in England. The king's bench in England (or any judge thereof in time of vacation) is not bound by this statute, but may bail for any crime whatsoever, be it treason, murder, or any other offence, according to the circumstances of the case.—4 Blac. Com. 299. The superior courts of this State (or any judge thereof) being the highest judicial tribunal known to the laws, have like powers as the king's bench, and are not bound by this statute, but may in all cases let to bail. Each justice of the inferior court is ex officio a conservator of the peace, and has the same power to commit or bail prisoners, under this statute, that justices of the peace have. And any judge of the superior court or (in his absence) the justices of the inferior court (a majority concurring in opinion) may on habeas corpus, in all cases, discharge, let to bail, or remand, any prisoner brought before them.—Act of 1823.

"For the information of justices of the peace, it may be proper to point out, first, for what crimes they cannot bail, but must commit the prisoner to jail, if there be sufficient cause of commitment; secondly, what crimes are bailable, or not, according to their discretion; thirdly, for what crimes they must let to bail, if sufficient surety is offered; fourthly, in what cases two justices at the least must sit together, and concur in opinion, in order to let to bail; and fifthly, when one justice alone has power to bail.

"And first, no justice of the peace can bail—1, upon an accusation of treason; nor 2, of murder; nor 3, of manslaughter, if the prisoner be clearly the slayer, and not barely suspected to be so—or if any indictment be found against him; nor 4, such as being committed for felony have broken prison; nor 5, approvers, and persons by them accused; nor 6, persons taken with the manor, or in the fact of felony; nor 7, persons charged with arson; nor 8, such as are charged with counterfeiting; nor 9, thieves openly defamed and known. All these are clearly not admissible to bail by justices of the peace.—4 Blac. Com. 298; 1 Com. Dig. 469.

"Secondly.—Justices of the peace may or may not, at their discretion, let to bail in the following cases, to wit: burglary, larceny, forgery, perjury, rape, polygamy, bestiality, robbery, persons charged with other felonies, or manifest and notorious offences, not being of good fame. And accessories to felony, that labor under the same want of reputation.—4 Blac. Com. 299.
JUSTICES OF THE PEACE.

"Thirdly.—The last class are such as must be bailed if sufficient surety is offered, viz.: persons of good fame charged with a bare suspicion of manslaughter, or other inferior homicide; such persons being charged with petit larceny, or any felony not before specified—or with being accessory to any felony; and all other persons charged with minor offences—as assault, battery, false imprisonment, adultery, fornication, riot, rescue, mayhem, affrays, fraudulent mischief, cheating, swindling, and generally misdemeanors of all kinds.

"Fourthly.—In cases of manslaughter, or felony, bailable by law, two justices at the least must sit together and concur in opinion; for one justice alone has no power to bail. 3 Hen. VII. ch. 5, post. No. 47; 1 & 2 Phil. & Mary, ch. 15, post. No. 64. And some of the offences comprehended in the term felony here used are burglary, larceny, forgery, perjury, rape, polygamy, bestiality, robbery, manslaughter, &c. &c. And in all such cases the justices are bound to take the examination of the prisoner, and information of those that bring him, of the facts and circumstances of the felony, and put the same in writing before any bailment or commitment made. And the said examinations and bail bond they must certify and send up to the next superior court for the county in which the crime was committed; 1 Phil. & Mary, ch. 13, post. No. 64; 2 & 3 Phil. & Mary, ch. 10, post. No. 65. The justices have also power, under these statutes, to bind over all witnesses by recognizance who know anything material to prove the felony, to appear at the next superior court to give evidence on the trial; and such recognizances they must also certify and return to the court, with the other proceedings. If the witnesses refuse to give bail, or be bound over, the justices may commit them to jail until they comply.—Ibid.

"Fifthly.—In all minor offences below the degree of felony one justice of the peace alone may let to bail, such for instance as assault, battery, adultery, fornication, riot, mayhem, rescue, affrays, swindling, cheating, false imprisonment, petit larceny, and misdemeanors generally.

"And in all cases brought before justices of the peace, they have power to inquire into the facts and circumstances of the transaction; and, if they are satisfied from the evidence either that no crime has been committed, or that the prisoner is clearly innocent of the charge, or that there is not sufficient cause of commitment, they may discharge him from confinement. 4 Blac. Com. 296; 2 John. Hep. 203; 1 Bac. Abr. 610. And in such case it is in their discretion to make the prisoner or the prosecutor pay the costs; Prin. Dig. 248. (New Prin. 508.) It is not to be understood, however, that the justice or justices are to exercise the province or functions of a jury by weighing the evidence, and deciding on the guilt or innocence of the prisoner. For if the justices have any doubt, or think from the evidence that there is probability of guilt, then he ought to be bailed or committed according to the offence.

"Justices of the peace have power also to bail persons who by law are bailable, notwithstanding that they have been committed, and are actually in jail. 1 Comyn's Dig. 472.

"To refuse bail when any one is bailable, on the one hand, or on the other to admit any to bail who ought not by law to be admitted, or to take slender bail, is an offence both at the common law and under this statute (3 Edw. I. ch. 15,) punishable by fine, &c., &c.—1 Jacobs, Law Dix. 219. But justices must take care, that under pretence of demanding sufficient surety, they do not make so excessive a demand as in effect amounts to a denial of bail: for this is expressly forbidden by 1 Wm. & Ma. sta. 2, ch. 2, Ap. No. 2; and also by the Constitution of the United States, 5th Art. of Amendments, Prin. Dig. 546 (New Prin. 900).—Sch. Dig. 85.

The term "felony," when used in this act, shall be construed to mean an offence for which the offender, on conviction, shall be liable by law to be punished by death or imprisonment in the penitentiary, and not otherwise.—Prin. Dig. 621.

Arrest.

First, then, of an arrest: which is the apprehending or restraining of one's person, in order to be forthcoming to answer an alleged or suspected crime. To this arrest all persons whatsoever are, without distinction, equally liable in all criminal cases; but no man is to be arrested, unless charged with such crime as will at least justify holding him to bail when taken. And, in general, an arrest may be made four ways: 1, By warrant; 2, By an officer without warrant; 3, By a private person, also without a warrant; 4, By a hue and cry.—4 Black. Com. 289.

1. A WARRANT may be granted in extraordinary cases by the privy council, or secretaries of state; but ordinarily by justices of the peace. This they may
do in any case where they have a jurisdiction over the offence, in order to compel the person accused to appear before them: for it would be absurd to give them power to examine an offender, unless they had also a power to compel him to attend, and submit to such examination. And this extends undoubtedly to all treasons, felonies, and breaches of the peace; and also to all such offences as they have power to punish by statute. Sir Edward Coke, indeed, hath laid it down that a justice of the peace cannot issue a warrant to apprehend a felon upon bare suspicion; no, not even till an indictment be actually found; and the contrary practice is by others held to be grounded rather upon comnniance, than the express rule of law; though now by long custom established. A doctrine which would, in most cases, give a loose to felons to escape without punishment; and, therefore, Sir Matthew Hale hath combated it with invincible authority and strength of reason: maintaining, 1, That a justice of the peace hath power to issue a warrant to apprehend a person accused of felony, though not yet indicted; and 2, That he may also issue a warrant to apprehend a person suspected of felony, though the original suspicion be not in himself, but in the party that prays his warrant; because he is a competent judge of the probability offered to him of such suspicion. But in both cases it is fitting to examine upon oath the party requiring a warrant, as well to ascertain that there is a felony or other crime actually committed, without which no warrant should be granted; as also to prove the cause and probability of suspecting the party against whom the warrant is prayed. This warrant ought to be under the hand and seal of the justice, should set forth the time and place of making, and the cause for which it is made, and should be directed to the constable, or other peace officer, (or, it may be, to any private person by name,) requiring him to bring the party either generally before any justice of the peace for the county, or only before the justice who granted it: the warrant in the latter case being called a special warrant. A general warrant to apprehend all persons suspected, without naming or particularly describing any person in special, is illegal and void for its uncertainty; for it is the duty of the magistrate, and ought not to be left to the officer, to judge of the ground of suspicion. And a warrant to apprehend all persons, guilty of a crime therein specified, is no legal warrant: for the point upon which its authority rests, is a fact to be decided on a subsequent trial; namely, whether the person apprehended thereupon be really guilty or not. It is therefore, in fact, no warrant at all; for it will not justify the officer who acts under it: whereas a warrant, properly penned, (even though the magistrate who issues it should exceed his jurisdiction,) will, by statute 24, Geo. II. c. 44, at all events indemnify the officer who executes the same ministerially. And when a warrant is received by the officer, he is bound to execute it, so far as the jurisdiction of the magistrate and himself extends. A warrant from the chief, or other justice of the court of king's bench, extends all over the kingdom; and is tested or dated, England; not Oxfordshire, Berks, or other particular county. But the warrant of a justice of the peace in one county, as Yorkshire, must be backed, that is, signed, by a justice of the peace in another, as Middlesex, before it can be executed there. Formerly, regularly speaking, there ought to have been a fresh warrant in every fresh county; but the practice of backing warrants had long prevailed without law, and was at last authorized by statutes 28, Geo. II. c. 26, and 24, Geo. II. c. 55. And now, by statute 13, Geo. III. c. 31, any warrant for apprehending an English offender, who may have escaped into Scotland, and vice versa, may be endorsed and executed by the local magistrates, and the offender conveyed back to that part of the united kingdoms in which such offence was committed.—4 Black. Com. 292.—1 Chit. Crim. Law, 25.—2 Swift's Dig. 387.

But in case of an act, if the act directed that a justice shall grant a warrant, and doth not say to whom it shall be directed, by consequence of law it must
be directed to the constable, and it cannot be directed to the sheriff unless such power is given in the act.—L. Raym. 1192; 2 Salk. 331.

The warrant may be styled in divers manners: as, 1st. In the name of the State, and yet the teste must be under the name of the justice that grants it; or, 2d. It may be styled or made only in the name of the justice; or, 3dly. It may be made without any style, and only under the teste of the justice, or only subscribed by him.

Regularly the warrant, especially if it be for the peace or good behavior, or the like, where sureties are to be found or required, ought to contain the special cause and matter whereupon it is granted, to the intent that the party upon whom it is to be served may provide his sureties ready, and take them with him to the justice to be bound for him; but if the warrant be for treason, murder, or felony, or other capital offence, or for great conspiracies, rebellious assemblies, or the like, it hath been said that it needeth not contain any special cause, but the warrant of the justice may be to bring the party before him, to make answer to such things or matters generally as shall be objected against him on the State's behalf.—Dalt. c. 169; 2 Haw. 85; 2 H. H. 111.

Every warrant made by a justice of the peace, ought to comprehend the special matter upon which it proceedeth; and as for the form, that is commonly used to answer to such things as shall be objected, and such like; they were not fetched out of the old learned precedents, but lately brought in by such as either knew not or cared not what they writ.—Lamb. 87.

The warrant ought regularly to mention the name of the party to be attached, and must not be left in general, or with blanks to be filled up by the party afterward.—2 H. 114; Dalt. c. 169. —Clay. Jus. 359.

10. Where any person or persons charged with any offence, and brought before a justice or justices of the peace, shall be discharged for want of sufficient cause of commitment, the justice or justices may, in his or their discretion, discharge the party with cost, or direct the cost to be paid by the prosecutor. —Act of 1811.

Assault and Battery.

Assault, **assultus**, from the French **assayler**, is an attempt or offer, with force or violence, to do a corporal hurt to another, as by striking at him with or without a weapon, or presenting a gun at him, at such a distance to which the gun will carry; or pointing a pitchfork at him, standing within reach of it; or by holding up one's fist at him; or by any other such like act, done in an angry, threatening manner.—1 Hawk. 133.

An assault is an attempt to commit a violent injury on the person of another.

And from hence it clearly follows that one charged with an assault and battery, may be found guilty of the assault and yet acquitted of the battery; but every battery includes an assault, therefore on an indictment of assault and battery, in which the assault is ill-laid, if the defendant be found guilty of the battery it is sufficient.—1 Hawk. 134, 263.

It seems agreed at this day, that no words whatever can amount to an assault, notwithstanding the many ancient opinions to the contrary.—1 Hawk. 134, 263. —Clay. Jus. 27.

Battery, (from the Saxon **batte**, a club, or **beaten**, to beat, from whence cometh also the word battle,) is, when any injury whatsoever, be it ever so small, is actually done to the person of another, in any angry, or revengeful, or rude, or insolent manner, as by spitting in his face, or any way touching him in anger, or violently jostling him out of the way, and the like.—1 Hawk. 134.

Battery is the unlawful beating of another. On the trial of any indictment
for an assault, or an assault and battery, the defendant may give in evidence to the jury any opprobrious words or abusive language used by the prosecutor, or person assaulted or beaten; and such words and language may or may not amount to a justification, according to the nature and extent of the battery; all which shall be determined by the jury.

Form of the Warrant.

STATE OF GEORGIA, Before me, a Justice of the Peace for said county, personally came John Doe, who, being duly sworn, deposeth and saith, that Richard Roe, of said county, on the tenth day of April, in the year eighteen hundred and fifty, at Perry, in the county aforesaid, made a violent assault upon deponent, and then and there beat him. Sworn to and subscribed, before me, this May 1, 1850.

John Doe.

James Mack, J. P.

STATE OF GEORGIA, To any constable of said county, and to all lawful officers, to execute and return. Whereas, complaint hath been made before me, James Mack, one of the justices of the peace in and for the said county, on the oath of John Doe, that Richard Roe did, on the tenth day of April, eighteen hundred and fifty, violently assault and beat him, the said John Doe, at Perry, in the county aforesaid: These are, therefore, to command you, forthwith, to apprehend the said Richard Roe, and to bring him before me, or some other justice of the peace, for the said county, to answer the said complaint, and to be further dealt with according to law. Given under my hand and seal, this May 1, 1850.

James Mack, J. P. [L. S.]

Note.—The affidavit is not a part of the warrant, but it is always best that it should accompany the warrant, that its legality may appear to the officers required to act under it. When the executing officer returns the warrant to a justice of the peace, he must enter his proceedings upon the warrant; if the person named in the warrant is apprehended, the officer must endorse on the warrant, thus:

Constable's Return.

Executed the within warrant, by taking the body of Richard Roe, who is in my custody, this May 1, 1850.

John Jacobs, Constable.

Defence.

A man may justify an assault in defence of his person, or his wife, or master, or parent, or child within age, and may even wound in defence of his person, though not of his possessions.—3 Salk. 46.

If an officer authorized by warrant lay hands on another to arrest him, or if a parent, in a reasonable manner, chastise his child, a master his servant, a schoolmaster his scholar, or a jailor his prisoner; or if one confine a friend by force, who is mad, or if one wrest a sword from another who offers violence therewith, in all these cases, and many others of a similar nature, it is justifiable.—1 Hawk. 130.

Also, if a person comes into my house, and will not go out, I may justify laying hold of him and turning him out.—3 Black. Com. 120.

So, also, one may justify assaulting another who attempts to force him from his water-course, or highway, or any other legal possession.—Pult. 42.
And whenever a man in his own defence beats another who first assaults him, he may take advantage thereof, both upon an indictment, and an action; but with this distinction, that on the indictment he may give it in evidence upon the plea of not guilty, but in an action he must plead it specially.—1 Hawk. 134.

If the justice believes the complaint to be well founded and properly supported, of which, to be the better able to judge, he ought to hear the evidence on both sides, and if necessary to give reasonable time to produce the evidence, he must bind over the offending party, to appear at the next superior court thereafter.

**Recognizance.**

**STATE OF GEORGIA,** Know all men by these presents, that we, Richard Roe and Charles Smith, security, of the county aforesaid, do acknowledge ourselves held and firmly bound unto his excellency George W. Towns, governor, for the time being, of the State of Georgia, and his successors in office, in the just and full sum of five hundred dollars, for the payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this first day of May, eighteen hundred and fifty.

The condition of this recognizance is such, that if the above-bound Richard Roe shall, personally, appear at the next Superior Court, to be held in and for the county of Houston, on the fourth Monday in October next, to answer such matters as shall be, then and there, charged against him by John Doe, concerning an Assault and Battery committed by him, the said Richard Roe, on the said John Doe, and do not thence depart without leave of said court, then this recognizance to be void; or else, to remain in full force and virtue.

Signed, sealed, and acknowledged, in presence of James Mack, J. P.

Richard Roe, [L. S.]
Charles Smith, Sec'y. [L. S.]

1. From and after the passing of this act, when any person or persons shall enter into any recognizance, or obligation, for the appearance of another, to answer any indictment, information, or presentment of a grand jury for any offence committed against the laws of this State, or who shall be bound in any recognizance, bond, or obligation, to prosecute or to answer to any criminal charge, or to give evidence in any criminal case whatever, and shall fail to produce the body of his, her, or their principal or principals, at the court, according to the tenor and effect of said recognizance, bond, or obligation, when required so to do, then, and in that case, it shall be the duty of the solicitor-general or prosecuting officer to the several courts of this State, to which said recognizance, bond, or obligation shall be returned, to forfeit said recognizance, bond, or obligation in the manner heretofore practiced in this State.

**Mode of Forfeiting Recognizance.**

Note.—In the case of Park vs. the State of Georgia, 4 Kel. 323, the court made this decision, relative to the forfeiture of recognizance: "It is the opinion of this court, that before bail can be made liable, the record must show that the principal was called, and did not appear. There must appear upon the record, a judgment of forfeiture, and the omission in this case is essential and fatal. An entry of the judge on the criminal docket will not suffice. Burney, appellant, vs. Boyett, 1 Howard's, 39. Neither will the indorsement of the solicitor-general upon the bond or bill of indictment. The judgment nisi is matter of substance; it involves serious consequences to the parties; it is of such absolute verity, that nothing can be averred against it. The fact of forfeiture can only be denied by pleading nulli null record. The regular mode of proceeding, to prevent a forfeiture from accruing, from the ignorance or inattention of the accused, is to call such person, and to warn him and his securities of the consequence of his non-appearance; and then, upon failure, the entry
WARRANTS, COMMITMENTS, ETC.

of the judgment nisi, should be in the following terms: "This day came G. W. Jones, solicitor of the Cherokee circuit, who prosecutes for the State of Georgia, and shows, that herto-
fore, to wit, on the 26th day of September, 1844, W. H. Park and Augustus M. Park entered into an obligation before C. W. Bond, Sheriff of Murray county, by which they acknowledge themselves to owe and be justly indebted to George W. Crawford, governor of said state, and his successors in office, in the sum of five hundred dollars, to be void on con-
dition that the said Wallace H. Park: make his personal appearance before the next Superior court to be hold for said county, to answer for the offence of libel. Now, on this day, the said Wallace H. Park having been solemnly called to come into court, to answer said charge, and the said Augustus M. Park, his bail, having been warned to present the body of his principal whom he engaged to be present this day, to answer said charge; and the said parties respectively, having wholly made default; it is therefore considered by the court, that the said Wallace H. Park and Augustus M. Park forfeit their obligation, and that the said George W. Crawford, (or, his successor,) recover against the said Wallace H. Park and Augustus M. Park the sum of five hundred dollars, the amount of their obligation, so forfeited as aforesaid, unless, at the next term of this court, they show sufficient cause why this order should not be made final, and a scire facias is ordered to issue."

2. It shall be the duty of the clerks of the several superior courts aforesaid to issue a scire facias on all forfeited recognizances, bonds, or obligations, against the principal and security, which shall be served by the sheriff or his deputy under the same rules which govern service of writs in civil cases, re-
turnable to the next court from whence the scire facias issued, and if no sufficient cause shall be shown to the contrary, judgment shall be entered up by motion against the principal and security for the penalty mentioned in said recognizance, bond, or obligation. If good cause be shown at that term, but not such cause as amounts to an entire discharge of the principal or his se-
curity, the scire facias shall stand to be answered to in like manner at the next term, and if sufficient cause be not then shown, judgment shall be entered up against principal and security, after which the parties to said recognizance, bond, or obligation, shall become absolute debtors to the State, for the sum or penalty mentioned in said recognizance, bond, or obligation; Provided, nothing herein contained shall affect the rights of academies.

3. Security shall be at liberty to surrender their principal in vacation to the sheriff, or in open court, in discharge of themselves from their liability.—Act of 1831.

Note.—The writ of scire facias must be issued by the clerk of the court of the county where the recognizance is forfeited, and be directed to the sheriff of that county. The suit by sci. fea. is not an original suit within the meaning of the constitution, so as to require it to be brought in the county where the defendant resides.—Garvin vs. Gallaher, 1 Kel. 316. When the defendant resides out of the county and cannot be served personally, the sheriff should return nihil, and a second writ is then issued, and if that be returned nihil and the defendant fails to plead, judgment may be entered against him without the intervention of a jury. If the defendant appears and tenders an issuable plea, it should be submitted to a jury.—Reed vs. Sullivan, 1 Kel. 322.

That from and after the passage of this act, it shall not be lawful for any person or persons whomsoever, to give bail more than twice for the same offence, before trial therefor.—Act of 1832.

Note.—If the offender refuses to enter into a recognizance, or be unable to give sufficient security, he must be forthwith committed to jail.

Commitment.

Upon the whole, if the offence be not bailable, or the party cannot find bail, he is to be committed to the county jail by the mittimus of the justice, or war-
rant under his hand and seal containing the cause of his commitment: there to abide till delivered by due course of law. But this imprisonment, as has been said, is only for safe custody, and not for punishment; therefore, in this dubious interval between the commitment and trial, a prisoner ought to be used with the utmost humanity; and neither be loaded with needless fetters,
nor subjected to other hardships than such as are absolutely requisite for the purpose of confinement only; though what are so requisite, must too often be left to the discretion of the jailors, who are frequently a merciless race of men, and by being conversant in scenes of misery, steeled against any tender sensation. Yet the law (as commonly held) would not justify them in fettering a prisoner, unless where he was unruly, or had attempted to escape; this being the humane language of our ancient lawgivers, "custodes poenam sibi commissorum non augeant, nec eos torquent, sed omni saevitia remota, pietateque adhibita, judicia debile exequantur."—4 Black. Com. 300.

Though it has been said that a commitment need not be drawn with the same precision as an indictment, yet it is very important that it should be framed with accuracy, or the party may, though prosecuted for a felony, be discharged out of custody, or, if he escape, the officer may not be punishable. The formal requisites of the commitment may be considered under the following heads:

Every final commitment MUST BE IN WRITING UNDER HAND AND SEAL, AND SHOW THE AUTHORITY OF THE MAGISTRATE, AND THE TIME AND PLACE OF MAKING IT. A magistrate, however, may, by parole, order a party to be detained a reasonable time, until he can draw out a formal commitment. And it is said that though advisable, it is not absolutely necessary to state that the commitment was made by the justice in that character, for though his authority do not appear at the beginning of the mittimus, it may be supplied by averment. In order, however, to show the jurisdiction of the magistrate, to take cognizance of, and commit for an offence perpetrated out of his county, on the ground of the party having been apprehended there, as in case of a person arrested in one county for bigamy committed in another, it is usual to state the fact in the commitment.

The mittimus may be made either in the king's name, or that of the justice awarding it, but the latter is the most usual.

The mittimus should be directed to the gaoler or keeper of the prison, and not be generally to carry the party to prison. But a commitment to the Tower of London, is said to be a good commitment to the lieutenant of the Tower. The magistrates' commitment to the police offices for the metropolis, is merely directed to the gaoler. But in other counties and places the justice's warrant and commitment is usually directed to a constable, and to the keeper of the proper gaol, commanding the former to convey the prisoner into the custody of the latter, and the latter to receive and keep him.

The prisoner should be described by his name and surname if known, and if not known, then it may suffice to describe the person by his age, stature, complexion, color of hair, and the like, and to add, that he refuses to tell his name.

It is said that it is safe to state that the party has been charged upon oath; but this is not necessary, for it has been resolved, that a commitment for treason, or for suspicion of it, without setting forth any particular accusation or ground of suspicion, is valid. And it was recently decided not to be necessary, because a commitment may be super visum, and then an oath is not requisite, and for the same reason it is not necessary to state any part of the evidence adduced before the magistrate, or to show the grounds on which he has thought fit to commit the defendant.

But it is necessary to set forth the particular species of crime alleged against the party, with convenient certainty, whether the commitment be by a justice of the peace, a secretary of state, the privy council, or any other authority. There appear to be several reasons for requiring that the cause of the commitment should be distinctly stated, for if no cause be shown, and the prisoner escape, it is said that the officer is not punishable, nor will it be an offence under the statute 16 Geo. II. c. 31, to enable the prisoner to escape from the
WARRANTS, COMMITMENTS, ETC. 15

prison. And the sheriff is to make a calendar of the prisoners in his gaol, and deliver it to the justices of gaol-delivery, stating the prisoners, and the crime for which they are detained in custody. And lastly, because the court before whom the prisoner is removed by habeas corpus, ought to discharge or bail him. And this rule applies not only where no cause at all is expressed in the commitment, but also when it is so loosely set forth, that the court cannot judge whether it were a reasonable ground of imprisonment. And, therefore, if the commitment be for felony, it ought not to be generally profelonia, but it must contain the special nature of the felony briefly, as for felony of the death of J S, or for burglary in breaking the house of J S, &c.

It is not necessary, however, to allege in the mittimus that the offence was feloniously committed, and it is sufficient, if enough appear upon the face of it, that the charge was for a felony, and the court of king's bench will, upon a habeas corpus, accordingly bail or remand the prisoner. And though the commitment itself be informal, yet, if the corpus delicti appear in the deposition returned to the court, the defendant will not be bailed, but remanded. And in a late case, it was stated to be a general rule, that upon application to bail, upon a habeas corpus, the court requires to see the depositions, and from thence, if they see just cause, without regarding the regularity or irregularity of the commitment, discharge or bail the prisoner, and the court, in such a case, never form any judgment whether the facts amount to felony or not, but merely whether enough is charged to justify a detainer of the prisoner, and put him upon his trial.

The commitment should point out the place of imprisonment, and not merely direct that the party should be taken to prison. We have already considered the proper prison to which he ought to be conveyed.

With respect to the time and mode of imprisonment, it is observed that the commitment should have an apt conclusion, namely, to detain the party "until he shall be discharged by due course of law:" these words alone are proper where the party is committed for an offence not bailable, but where he is committed for want of sureties for a bailable offence, it is usual to direct the gaoler to keep the prisoner in his said custody for want of sureties, or until he shall be discharged by due course of law." When the offence is not bailable, the party may be committed until the time of trial, as "until the next general gaol-delivery of the said county," or "the next general quarter sessions of the peace, to be held in and for the said county." But the most usual and comprehensive words are, "until he shall be discharged by due course of law."—1 Chit. Crim. Law, 89.

Form of Mittimus.

STATE OF GEORGIA, ) By James Mack, one of the justices assigned to
Houston County. ) keep the peace, in and for said county.

To John Jacobs, one of the constables for the county aforesaid, and to the keeper of the common jail of said county.

These are to command you, in the name of the State, forthwith to convey and deliver into the custody of the keeper of the said jail, the body of Richard Roe, charged before me, on the oath of John Doe, with having, on the tenth day of April, eighteen hundred and fifty, at Perry, in the county aforesaid, made a violent Assault upon him, the said John Doe, and, then and there, beat him. And you, the said keeper, are hereby required to receive the said Richard Roe (he having failed and refused to give bail, as required,) into your custody, in the said jail, and him there safely keep, until he be thence delivered by due course of law.

Given under my hand and seal, this May 1, 1850.

James Mack, J. P. [L. S.]


**JUSTICES OF THE PEACE.**

**Bond to Prosecute.**

2. That from and after the passage of this act, it shall not be lawful for any magistrate to commit a criminal to jail, for any offence against the State, without first compelling the prosecutor to give bond and security to prosecute, according to law.—Act of 1803.

**Form of Bond.**

STATE OF GEORGIA, | Know all men by these presents, that we,  
Houston County. | John Doe and Roger Small, security, of said  
county, are held and firmly bound unto his excellency, George W.  
Towns, Governor of said State, for the time being, and his successors  
in office, in the just and full sum of five hundred dollars, for the true  
payment of which, we bind ourselves, our heirs, executors and adminis-  
trators, jointly and severally, firmly by these presents; sealed with  
our seals, and dated this May 1, 1850.

The condition of the above obligation is such, that whereas the  
above-bound John Doe did, this day, appear before James Mack, a  
justice of the peace, in and for said county, and prayed the issuing of  
a warrant against Richard Roe, of said county, for an Assault and  
Battery, committed at Perry, in said county, on the person of him,  
the said John Doe, by him, the said Richard Roe, on the tenth day of  
April, last past, which warrant having been issued, and said Richard  
Roe having been arrested thereupon, and brought before me, and  
said Richard Roe having been required to give bond and security, for  
his personal appearance, at the next Superior Court, to be held in and  
for said county, at Perry, on the fourth Monday in October next, and  
said Richard Roe having failed and neglected to give security as afore-  
said, is about to be committed to jail, to answer said charge: Now,  
should said John Doe well and truly be and appear at said Superior  
Court, at the time and place aforesaid, and then and there prefer a  
bill of indictment against the said Richard Roe, for the offence afore-  
said, and well and truly prosecute said bill of indictment to its final  
issue, then this bond to be void; else, to remain in full force and  
virtue.

Tested and approved, by  
James Mack, J. P.  

John Doe. [L. S.]  
Roger Small, Sec’ty. [L. S.]

Note.—By making suitable alterations, the above form will answer in all cases where a bond to prosecute is required.

**Recognizance.**

A recognizance is a bond or obligation of record, testifying the cognizor to owe a certain sum of money to the State, and the acknowledging the same is to remain of record; and none can take it but a judge, or justice, or officer of record.

If a justice compounds recognizances, and does not return them to the court, he may be indicted.

As soon as it is taken or acknowledged, and reduced to writing by a judge or justice, or other proper officer, it is a record.

Whenever any statute or act of Assembly gives power to a justice or justices to take a recognizance, or to bind over any man to appear at the county or superior court, or take securities for any matter or cause, or where they have this latter power as incidental to their office, (as in requiring securities for the
WARRANTS, COMMITMENTS, ETC.

peace, or good behavior,) or wherever they have authority given them to cause a man to do a thing, they may bind the party by recognizance, or send him to jail if he refuses to be bound, or will not find sufficient securities. In cases to be tried, or where the party is to appear in the superior court, the recognizances must be sent to that court. In other cases to the county courts.

The parties bound need not set their names to the recognizance.

A married woman, or an infant under the age of twenty-one years, may not be personally bound. They must find sureties, or be committed.—Dalt.

If the sureties die, the recognizance is good against their executors; but though forfeited, the judges can award no process upon it: because these records must be certified into a court.

Whatever is a breach of the peace, is a forfeiture of recognizance, if it be taken for the peace, or good behavior; but opprobrious or affronting words and gestures are not a breach, so as to make a man forfeit his recognizance; for though such words or gestures may be provocations to break the peace, yet they do not immediately tend to it, as assaulting and threatening do.—4 Inst. 180, 181.

If the recognizance is not forfeited, it is discharged by the death of the cognizor.—Clay. Jus. 286.

Appearance Bond.

STATE OF GEORGIA, 

Know all men by these presents, that we, Richard Roe and Thomas West, security, of said county, do acknowledge ourselves held and firmly bound unto his excellency, George W. Towns, Governor of said State, for the time being, and his successors in office, in the just and full sum of five hundred dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1850.

The condition of this recognizance is such, that if the above-bound Richard Roe shall personally appear at the next Superior Court, to be held in and for said county, on the fourth Monday in October next, to answer such matters as shall be, then and there, charged against him, by John Doe, concerning an Assault and Battery, committed by him, the said Richard Roe, on the said John Doe, at Perry, in said county, on the tenth day of April, last past, and do not thence depart, without leave of said court, then this recognizance to be void; or else, to remain in full force and virtue.

Signed, sealed, and acknowledged, in presence of James Mack, J. P.

Richard Roe. [L. S.]

Thomas West, Sec'y. [L. S.]

Affrays.

AFFRAYs (from affrayer, to terrify,) are the fighting of two or more persons in some public place, to the terror of his majesty's subjects; for, if the fighting be in private, it is no affray, but an assault. Affrays may be suppressed by any private person present, who is justifiable in endeavoring to part the combatants, whatever consequences may ensue. But more especially the constable, or other similar officer, however denominated, is bound to keep the peace; and to that purpose, may break open doors to suppress an affray, or apprehend the affrayers; and may either carry them before a justice, or imprison them by his own authority for a convenient space, till the heat is over; and may then, perhaps, also make them find surety for the peace.—4 Blac. Com. 145.

Affrays are the fighting of two or more persons in some public place, to the terror of the citizens, and disturbance of the public tranquillity.
Upon complaint made to a justice of the peace, he may issue his warrant to apprehend the offender; but if it be upon the application of any particular person, the party applying should first make the following affidavit.—Clay. Jus. 12.

Form of the Warrant.

STATE OF GEORGIA, Personally, came before me, James Mack, one of the justices of the peace for said county, John Doe, who, being duly sworn, deposeth and saith, that on the tenth day of April, last past, Richard Roe and Charles Smith, of said county, in the town of Perry, in the county aforesaid, in a tumultuous manner, made an Affray, by fighting together, to the terror of the citizens, and disturbance of the public tranquillity.

Sworn to and subscribed, Before me, this May 1, 1850.
James Mack, J. P.

NOTE. When the offender is apprehended by this warrant, and brought before the justice, he may admit him to bail, on due consideration of the nature and circumstances of the case. The sum in which the offender and his securities should be bound is left to the discretion of the magistrate; but it should be recollected, that excessive bail should in no instance be required, from the express letter of the constitution.

NOTE. If the offenders be bound over to court, the following is the form of the recognizance, to wit:

STATE OF GEORGIA, Know all men by these presents, that we, Richard Roe, Charles Smith, as principals, John Stiles and Jacob Saunders, as securities, of the county aforesaid, do acknowledge ourselves held and firmly bound unto his excellency, George W. Towns, governor of said State, for the time being, and his successors in office, in the just and full sum of five hundred dollars, for the payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1850.

The condition of this recognizance is such, that if the above-bound Richard Roe and Charles Smith, shall personally appear at the next Superior Court, to be held in and for the county of Houston, on the fourth Monday in October next, to answer such matters as shall, then and there, be charged against them, by John Doe, of said county, concerning the assaulting, beating and wounding of him, the said John Doe, by them, the said Richard Roe and Charles Smith, and concerning other misdemeanors, tending to a breach of the peace; and if they do
not depart, without leave of the court, then this recognizance to be void; else, to remain in full force and virtue.

Signed, sealed, and acknowledged, in presence of:

James Mack, J. P. [L. S.]

Richard Roe. [L. S.]

Charles Smith. [L. S.]

John Stiles, Sec'ty. [L. S.]

Jacob Saunders, Sec'ty. [L. S.]

Note.—If the offenders, when brought before the justice, refuse to enter into recognizance, or are unable to give security, they must be forthwith committed to jail, by such justice.

Form of the Commitment.

STATE OF GEORGIA, To the sheriff of Houston county, or keeper of the jail of said county.

These are, in the name of the State, to command you to receive into the jail of said county, the bodies of Richard Roe and Charles Smith, taken by my warrant, and brought before me, being charged upon oath, by John Doe, of said county, with assaulting, beating, and wounding him, the said John Doe, in an affray, by the said Richard Roe and Charles Smith, lately made, on the tenth day of April, last past, in the town of Perry, in the county aforesaid; (they having failed and refused to give bail as required.) And that you safely keep them, in your said jail and custody, until they be thence discharged, by due course of law.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Recognizance of Bail in a Criminal Case.

STATE OF GEORGIA, Know all men by these presents, that we, John Doe and Richard Roe, security, are held and firmly bound, unto his excellency, George W. Towns, governor of said State, for the time being, and his successors in office, in the just and full sum of one thousand dollars; for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1850.

The condition of the above obligation is such, that if the above-bound John Doe shall personally appear at the Superior Court, to be held in and for said county, on the fourth Monday in October next, (or from day to day of the present term of the court, as the case may be,) then and there, to answer the State aforesaid, for and concerning [the felonious taking and stealing a black-sheep, or whatever the charge may be,] the property of Robert Smith, with which the said John Doe stands charged, before me, and shall not depart thence without the leave of said court, then the above obligation to be void; else, to remain in full force.

Acknowledged before me,

James Mack, J. P. [L. S.]

Richard Roe. [L. S.]

Recognizance of a person to appear and give evidence.

STATE OF GEORGIA, Know all men by these presents, that we, John Doe and Richard Roe, security, are held and firmly bound unto his excellency, George W. Towns, governor of said
JUSTICES OF THE PEACE.

State, for the time being, and his successors in office, in the just and full sum of one thousand dollars, for the true payment of which, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1850.

The condition of the above obligation is such, that if the above-bound John Doe shall personally appear at the Superior Court, to be held for said county, on the fourth Monday in October next, then and there, to give evidence in behalf of the State, on a bill of indictment to be preferred, (or now therein pending, as the case may be,) against Peter Smith, [for larceny,] and not depart thence, without leave of the court, then this obligation to be void; else, to remain in full force.

Acknowledged before me, { John Doe. [L. S.]
James Mack, J. P. } Richard Roe, Sec'y. [L. S.]

Good Behavior.

Security for the peace or good behavior consists in being bound, with one or more sureties, in a recognizance or obligation to the State, entered on record, and taken in some court, or by some judicial officer, such as a justice of the peace, judge, &c., whereby the parties acknowledge themselves to be indebted to the State in the sum required, with condition to be void and of non-effect if the party shall appear in court such a day, and in the mean time keep the peace, either generally towards all the citizens of the State, or particularly also with regard to the person who craves the security; or if it be for the good behavior, then on condition that he shall demean and behave himself well, (or be of good behavior,) either generally or specially for the time therein limited, as for one or more years, or for life. This recognizance, if taken by a justice of the peace, must be certified to the next superior court, and if the condition of such recognizance be broken by any breach of the peace, in the one case, or any misbehavior in the other, the recognizance becomes forfeited or absolute; and thereupon a scire facias issues against the party and his sureties, to which they plead and join issue; or make default, and the court proceeds to give judgment and award execution as in other cases.

Any justices of the peace, by virtue of their commission, or those who are ex officio conservators of the peace, as the judges of the superior and justices of the inferior courts, may demand such security; or according to their discretion they may commit all breakers of the peace, or bind them in recognizance to keep it. Also constables may apprehend all breakers of the peace, and commit them till they find sureties for the keeping of it. Security of the peace may be granted by justices of the peace and judges, at the request of any citizen, upon due cause shown; or if the justice of the peace is averse to act, it may be granted by a mandatory writ, called a supplicavit, issuing out of the superior court, which will compel the justice to act as a ministerial, and not as a judicial officer; and he must make a return to such writ, specifying his compliance under his hand and seal; or the superior court may take such recognizance themselves. A justice of the peace may require sureties of any person being compos mentis, whether a fellow justice or other magistrate, or whether he be merely a private man. Wives may demand it against their husbands, or husbands, if necessary, against their wives; but married women, and infants under age, ought to find security by their friends only, and not to be bound themselves, for they are incapable to engage themselves to answer any debt, which is the nature of those recognizances or acknowledgments.

A recognizance may be discharged by the death of the principal party bound thereby, if not before forfeited; or by order of the court to which such recognizance is certified by the justice, if they see sufficient cause; or if he, at whose
WARRANTS, COMMITMENTS, ETC. 21

request it was granted upon a private account, will release it, or does not make his appearance to pray that it may be continued.

Thus far what has been said is applicable to both species of recognizances for the peace and for the good behavior; but as these two species of securities are in some respects different, especially as to the cause of granting, or the means of forfeiting them, they are now to be considered separately.

Justices of the peace may bind over to the good behavior all those that be not of good fame, wherever they may be found. Under which general words, a man may be bound to his good behavior for causes of scandal against morality, as well as against the peace;—as for haunting bawdy houses with women of bad fame, or for keeping such women in his own house, or for words in abuse of the officers of justice in the execution of their office; all night-walkers; eaves-droppers; such as keep suspicious company, or are reputed to be pilferers or robbers; such as sleep in the day and wake in the night; common drunkards, whoremasters; the putative fathers of bastards; cheats; idle vagabonds, and other persons whose misbehavior may reasonably bring them within the general words, "persons not of good fame,"—an expression that leaves much to be determined by the discretion of the magistrate himself: but if he commits a man for want of sureties, he must express the cause thereof with convenient certainty; and take care that such cause be a good one.—Clay. Jus. 68.

Any person wandering or strolling about, or leading an idle, immoral, or profligate course of life, who has no property to support himself or herself, and who is able to work or otherwise to support himself or herself in a respectable way, shall be deemed and considered a vagrant, and shall be indicted as such, as in other cases, and on conviction, shall be punished by confinement and hard labor in the penitentiary for any time not less than two years, nor longer than four years: Provided, nevertheless, That after such indictment has been found against any person, such person shall be discharged and released from prosecution, if he or she, after the indictment has been found, and before the trial, shall tender in open court a bond, with sufficient security, for his or her good behavior and future industry for one year: Provided, also, That the said bond shall be for any amount not more than four hundred dollars.—Act of 1847.

A recognizance for the good behavior may be forfeited by all the same means as one for the security of the peace may be; and also by some others, as by-going armed with unusual attendance, to the terror of the people; by speaking words tending to sedition; or by committing any of those acts of misbehavior the recognizance was intended to prevent; but not barely going fresh cause of suspicion of that which perhaps may never actually happen; for although it is just to compel suspected persons to give security to the public against misbehavior that is apprehended, yet it would be hard, upon such suspicion, without the proof of any actual crime, to punish them by a forfeiture of their recognizance.—Clay. Jus. 61.

WARRANT FOR GOOD BEHAVIOR.

STATE OF GEORGIA, } To the Sheriff of said county, and to all lawful officers.

Houston County.

Forasmuch as I, James Mack, one of the justices of the peace in and for the said county, am given to understand, by the information, testimony, and complaint of many credible persons, on oath, (or upon the oath of James Thomas,) that John Doe, of the county aforesaid, and Richard Roe, of the county aforesaid, are not of good name and fame, nor of honest conversation, but evil-doers, rioters, barrators, and die-
turbers of the peace of this State; so that murders, homicide, strife, and other grievances and damages against the citizens of this State, (and particularly James Thomas,) concerning their bodies, are likely to arise thereby: These are, therefore, to command you, and every of you, that you do apprehend the aforesaid John Doe and Richard Roe, and have them before me, or some other justice of the peace for said county, as soon as they can be taken, (or thus, before the Superior Court, to be next holden for said county,) to find before me (or the said court) sufficient sureties for their good behavior towards this State, and all the citizens thereof, (and particularly towards said James Thomas.) And this you shall in no wise omit, on the peril that shall ensue thereon; and have you before me (or said court) this precept.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Keep the Peace.

Any justice of the peace, by virtue of his office, may bind all those to keep the peace who in his presence make any affray, or threaten to kill or beat another, or contend together with hot, angry words, or go about with unusual weapons or attendance, to the terror of the people, and all such as he knows to be common barrators, and such as are brought before him by the constable for the breach of the peace in his presence, and all such persons as having been before bound to the peace have broken it and forfeited their recognizance. Also when any private man hath just cause to fear that another will burn his house, or do him a corporal injury by killing, imprisoning, or beating him, or that he will procure others to do so, he may demand surety of the peace against such person; and every justice of the peace is bound to grant it, if he who demands it will make oath that he is actually under fear of death or bodily harm, and will show that he has just cause to be so, by reason of the other’s menaces, attempts, or having lain in wait for him, and will also further swear that he does not require such surety out of malice, or for mere vexation.

This is called swearing the peace against another, and if the party does not find such sureties as the justice in his discretion shall require, he may be immediately committed till he does.

An Act to Regulate the Action of Magistrates upon Peace Warrants.

WHEREAS, it is the practice of justices of the peace, to grant Peace Warrants, upon an affidavit being made according to law, and of binding or committing the accused party without a hearing, which is contrary to justice—for remedy whereof:

That hereafter, when Peace Warrants are granted upon such principles as the law now prescribes, that after the party is arrested and brought before the magistrate, or committing officer, the party in arrest shall be permitted to introduce testimony, in order to show there is no just ground for the warrant.—Act of 1850.

Such a recognizance for keeping the peace, when given, may be forfeited by any actual violence, or even an assault and menace to the person of him who demanded it, if it be a special recognizance; or if the recognizance be general, by any unlawful action whatsoever that either is or tends to a breach of the peace, as by joining in any riot, rout, or unlawful assembly, or by hunting, or appearing by day or night disguised or with painted faces, for any unlawful purpose, or knowingly sending a letter without a name, or with a fictitious
name, demanding money or other valuable things, or threatening to kill, or
burn the house of any person, or committing any affray, or any forcible entry
or detainer, or riding or going armed with dangerous or unusual weapons, under
such circumstances as are apt to terrify the people, or spreading false news to
terrify the people, or making false and pretended prophecies with intent to dis-
turb the peace, or challenging to fight by word or letter, or by being the bearer
of such challenge, or making, publishing, or communicating any libel, or by
manslaughter, rape, robbery, unlawful imprisonment, or the like, or by lying in
wait for any person to kill or beat him, or the like, or by any private violence
committed against any of the citizens.

But a bare trespass upon the lands or goods of another, which is a ground for
a civil action, unless accompanied by a willful breach of the peace, is no forfeit
ure of the recognizance, neither are mere reproachful words, as calling a man a
knife, rogue, or liar, any breach of the peace, so as to forfeit one's recognizance,
(being merely the effect of heat and passion,) unless they amount to a challenge
to fight.—Clay. Jus. 60.

Form of the Warrant.

STATE OF GEORGIA, j You shall swear, that you are in fear of death,
Houston County. j (or some bodily hurt to be done, or to be procured
to be done to you,) by John Doe, of the county aforesaid, (or that he
will burn your house,) and that you do not require surety of the peace
against him out of malice, or for mere vexation, but for the cause
foresaid: so help you God.
Sworn to and subscribed,
before me, this May 1, 1850.
James Mack, J. P.

Form of the Recognizance.

STATE OF GEORGIA, ) Know all men by these presents, that we, John
Houston County. Doe and Charles Smith, security, are held and
firmly bound unto his excellency, George W. Towns, governor of
said State for the time being, and his successors in office, in the just
and full sum of one thousand dollars, for the true payment of which
we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this May 1, 1850.

The condition of this recognizance is such, that if the above-bound John Doe shall, personally, appear at the Superior Court, to be held for the said county, on the fourth Monday in October next, to do and receive what shall, then and there, be enjoined him by the court, and in the mean time shall keep the peace towards this State and all the citizens thereof, and especially towards Richard Roe, of the said county, then the said recognizance shall be void; or otherwise, remain in full force.

Acknowledged before me,

James Mack, J. P.  

Charles Smith, Sec'y. [L. S.]

Form of the Mittimus.

STATE OF GEORGIA,  

To John Jacobs, one of the constables of said county, and to the keeper of the common jail of and for the said county.

Whereas, John Doe, of the said county, is now brought before me, James Mack, one of the justices of the peace in and for the said county, charged with breaking the peace, requiring him to find sufficient securities, to be bound with him in a recognizance for his personal appearance, at the next Superior Court, to be holden in and for the said county, and in the mean time to keep the peace towards the State and all the citizens thereof, and especially towards Richard Roe, of the said county. And whereas he, the said John Doe, hath refused, and doth now refuse, before me, to find such securities: These are, therefore, to command you, the said constable, forthwith, to convey the said John Doe to the common jail of the said county, and to deliver him to the keeper thereof, together with this precept. And I also hereby command you, the said keeper, to receive the said John Doe into your custody in said jail, and him there safely keep, until he shall find securities aforesaid, or be otherwise discharged by due course of law.

Given under my hand and seal, this May 1, 1850.

James Mack, J. P. [L. S.]

An Act to Regulate the Proceedings on Bonds taken for the Security of the Peace, and for other Purposes.

In all cases where any judge of the inferior court or justice of the peace shall take a bond or bonds for the security of the peace, or where any such judge or justice shall commit any person or persons charged with an intent to violate the peace, to the common jail of the county, or any other place of confinement, on account of the unwillingness or inability of such person or persons to give such bonds, that then and in such case, it shall be the duty of such judge or justice forthwith to make a return of such bond, together with the affidavit or affidavits, and other evidence on which the said bond was required, or in case of no bond, to make a return of the affidavits and evidence on which the person or persons were committed to jail, to the next term of the superior, inferior, or city court, which may first thereafter hold their sittings; and it shall be the duty of the officer prosecuting for the State in the said court, on the first day of the said term, or as soon thereafter as he can be heard, to move the judge or judges presiding in the said court to take the
same into consideration; and it shall be the duty of the said judge or judges, when the case is so presented to him or them, to examine the evidence so returned and presented, and if thereupon he shall be of opinion that there was no sufficient ground for requiring such bond, or for the imprisonment of such person or persons, then and in such case, the said judge or judges are hereby required to cause the bond or bonds, so taken, to be canceled, or to discharge the said person or persons from confinement, as the case may be; and if he shall be of opinion that there was no reasonable ground for requiring such bond or bonds, to order and direct that the prosecutor shall pay all the costs and expenses of the said proceedings, which cost shall be collected and recovered in the same manner as fees of witnesses are; provided, that if the said judge or judges shall have any doubt upon the evidence presented, he, or they, may receive additional affidavits from either of the parties touching the conduct of the parties in relation to the causes from which such proceedings originated.—Act of 1827.

**Supersedeas.**

NOTE.—If afterwards, or whilst the warrant is out against him, he finds sureties before a justice of the peace, then the justice issues a supersedeas.

An apprehension under a warrant may, in many cases, be prevented by a party's going before a justice of the peace, and finding sufficient sureties for his appearance to answer any indictment, and obtaining the supersedeas of the magistrate. Thus it is said, that where an assault has been committed, and the offender has not entered into a recognizance before a justice to answer the complaint, but has reason to believe that a bill of indictment will be preferred against him at the next sessions, he may search the office of the clerk of the peace to see whether any indictment has been found, and if he should find that to be the case, may plead not guilty, and enter into a recognizance with sufficient sureties to appear and try at the ensuing sessions. Or he may apply to the clerk of the peace immediately after the termination of the sessions, for a certificate of the finding of the bill; and after obtaining it, may procure a supersedeas by producing the certificate before a judge or justice, finding sufficient sureties, and entering into proper recognizances to appear at succeeding sessions. By this means he may avoid an arrest; for a judge's warrant cannot operate after the granting of a supersedeas by a justice of the peace, nor can a justice's warrant be executed after the supersedeas of a judge. This protection the defendant should keep in his possession, to produce it to any officer who may attempt to apprehend him. The supersedeas recites that the party has found sufficient sureties to answer the indictment, and commands all officers to forbear from arresting him. The legality of this practice of granting a supersedeas has been questioned, and, at all events, it is confined to cases where the offence is clearly bailable.—1 Chit. Crim. Law, 38.

**Form of the Supersedeas.**

STATE OF GEORGIA, 

James Mack, Esq., one of the justices of the peace in and for the said county, to the sheriff, constables, and other the ministers and citizens, of the said State.

Forasmuch as John Doe, of the said county, hath personally been before me, at Perry, in said county, and hath found sufficient surety, that is to say, Philip Doe, of said county, and Charles Smith, of said county, each of whom hath undertaken for the said John Doe, under the pain of five hundred dollars, and he, the said John Doe, hath undertaken for himself, under the pain of two hundred dollars, that he, the said John Doe, shall personally appear at the next Superior Court, to be held for the said county, then and there to do and receive what
shall be enjoined him by the said court, and in the mean time shall
well and truly keep the peace towards the said State and all the citizens
thereof, and especially towards Richard Roe, of the said county: These
are, therefore, to command you, and every of you, that you utterly
forbear and surcease to arrest, take, imprison, or otherwise, by any
means, for the said cause, to molest the said John Doe; and if you
have, for the said occasion, and none other, taken and imprisoned him,
the said John Doe, that then him you deliver, or cause to be delivered,
and set at liberty, without further delay.

Given under my hand and seal, at Perry, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

**Burglary.**

Burglary, or nocturnal house-breaking, *burgi latrocinium*, which by our
ancient law was called *hameseken*, as it is in Scotland to this day, has always
been looked upon as a very heinous offence; not only because of the abundant
terror that it naturally carries with it, but also as it is a forcible invasion and
disturbance of that right of habitation which every individual might acquire even
in a state of nature; an invasion which, in such a state, would be sure to be
punished with death, unless the assailant were the stronger. But in civil society,
the laws also come in to the assistance of the weaker party: and, besides that
they leave him this natural right of killing the aggressor, if he can, (as was
shown in a former chapter,) they also protect and avenge him, in case the
might of the assailant is too powerful. And the law of England has so partic-
ular and tender a regard to the immunity of a man's house, that it styles it
his castle, and will never suffer it to be violated with impunity: agreeing herein
with the sentiments of ancient Rome, as expressed in the words of Tully: "Quid
enim sanctius, quid omni religione munitius, quam domus unius cujusque civium?"
For this reason no outward doors can in general be broken open to execute any
civil process; though in criminal cases, the public safety supersedes the pri-
vate. Hence also in part arises the animadversion of the law upon eaves-dro-
pers, nuisancers, and incendiaries: and to this principle it must be assigned,
that a man may assemble people together lawfully (at least if they do not ex-
ceed eleven) without danger of raising a riot, rout, or unlawful assembly, in
order to protect and defend his house; which he is not permitted to do in any
other case.—4 Blac. Com. 223.

The word burglary is thought to have been brought into England by the
Saxons from Germany, in whose language *burg* signifies a house, and *larron* a
thief, probably from the Latin *latro*.—Clay. Jus. 63.

Burglary is the breaking and entering into the dwelling or mansion-house of
another, with intent to commit a felony. All out-houses contiguous to, and
within the curtilage or protection of the mansion-house, shall be considered as
parts of the mansion or dwelling-house—a hired room or apartments in a public
tavern, inn, or boarding-house, shall be considered as the dwelling-house of the
person or persons occupying and hiring the same. Burglary may be committed
in the day or night.

Burglary in the day-time, shall be punished by imprisonment and labor in
the penitentiary for any time not less than three years, nor longer than five
years.

Burglary in the night, shall be punished by imprisonment and labor in
the penitentiary for any time not less than four years, nor longer than seven
years.
Form of the Warrant.

STATE OF GEORGIA, } In person appeared before me, James Mack, 
Houston County. } one of the Justices of the Peace in and for said 
county, John Doe, of said county, who being duly sworn, deposeth and 
saith, that on the tenth day of April, last past, in the night, the dwell-
ing-house of him, the said John Doe, at Perry, in the county aforesaid, 
was feloniously and burglariously broken open and robbed, of the 
value of fifty dollars, of the goods and chattels of him, he said John 
Doe, feloniously and burglariously stolen and carried away from thence; 
and that he hath just cause to suspect that Richard Roe, late of Lanier, 
in the county of Macon, the same felony and burglary did commit.

Sworn to and subscribed, before me, this May 1, 1850. 
James Mack, J. P.

STATE OF GEORGIA, } To the Sheriff of said county, to the Constables 
Houston County. } of said county, and to all other lawful offi-
cers.

Forasmuch as John Doe, of said county, hath this day made oath 
before me, James Mack, one of the justices of the peace in and for 
said county, that on the tenth day of April, last past, in the night, the 
dwelling-house of him, the said John Doe, at Perry, in the county of 
Houston, was feloniously and burglariously broken open and robbed, of 
the value of fifty dollars, of the goods and chattels of him, the said John 
Doe, feloniously and burglariously stolen and carried away from thence; 
and that he hath just cause to suspect that Richard Roe, late of Lanier, in the county of Macon, the said felony and burglary did commit. These are, therefore, to command you, that immediately 
upon sight hereof, you do apprehend the said Richard Roe, and bring 
him before me, or some other justice of the peace, to answer the prem-
ises, and be further dealt with according to law; herein fail not.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Form of the Commitment.

STATE OF GEORGIA, } By James Mack and Thomas Rose, justices of 
Houston County. } the peace in and for said county, John Jacobs, 
one of the constables of said county, and to the keeper of the common 
 jail of said county.

Whereas, Richard Roe, late of Lanier, in the county of Macon, has 
been arrested, on a suspicion of burglary, committed by him, the said 
Richard Roe, in feloniously and burglariously breaking and entering 
the dwelling-house of John Doe, at Perry, in the county of Houston, 
on the tenth day of April, last past, and stealing and carrying away 
from said dwelling-house fifty dollars, of the goods and chattels of 
him, the said John Doe, feloniously and burglariously stolen and car-
ried away from thence; whereupon, the said Richard Roe hath been 
duly examined before us concerning the same, and the examination 
before us taken doth induce a strong presumption that said Richard 
Roe is guilty of the charge made against him; These are, therefore, 
to command you, the said John Jacobs, constable, safely and securely, 
to convey the said Richard Roe to the jailor of said county, and you, 
the said jailor, to receive the said Richard Roe into your custody, in
Cheating.

Cheating is another offence, more immediately against public trade: as that cannot be carried on without a punctilious regard to common honesty, and faith between man and man. Hither, therefore, may be referred that prodigious multitude of statutes, which are made to restrain and punish deceits in particular trades, and which are enumerated in Hawkins and Burn, but are chiefly of use among the traders themselves. The offence also of breaking the assize of bread, or the rules laid down by law, and particularly by the statute 31 Geo. II. c. 29, 3 Geo. III. c. 11, and 13 Geo. III. c. 62, for ascertaining its price in every given quantity, is reducible to this head of cheating: as is likewise in a peculiar manner the offence of selling by false weights and measures; the standard of which fell under our consideration in a former volume. The punishment of bakers breaking the assize, was anciently to stand in the pillory, by statute 51 Hen. III. c. 6, and for brewers (by the same act) to stand in the tumbril or dung-cart: which, as we learn from doomsday book, was the punishment for knavish brewers in the city of Chester so early as the reign of Edward the Confessor. "Malam cerevisiam faciens, in cathedra ponobatur stercoris." But now the general punishment for all frauds of this kind, if indicted (as they may be) at common law, is by fine and imprisonment: though the easier and more usual way is by levying on a summary conviction, by distress and sale, the forfeitures imposed by the several acts of parliament. Lastly, any deceitful practice, in cozening another by artful means, whether in matters of trade, or otherwise, or by playing with false dice, or the like, is punishable with fine, imprisonment, and pillory. And by the statutes 33 Hen. VIII. c. 1, and 30 Geo. II. c. 24, if any man defrauds another of any valuable chattels by color of any false token, counterfeit letter, or false pretence, or pawns or disposes of another's goods without the consent of the owner, he shall suffer such punishment, by imprisonment, fine, pillory, transportation, whipping, or other corporal pain, as the court shall direct. —4 Blac. Com. 157.

Cheats, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavoring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice, or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment, or by suppressing a will, against which common prudence and caution may be a sufficient security. —1 Hawk. 188.

It seemeth to be the better opinion, that the deceitful receiving of money from one man to another's use, upon a false pretence of having a message and order to that purpose, is not punishable by a criminal prosecution, because it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security. —1 Hawk. 188.

A person, for a counterfeit pass, was adjudged to the pillory and fined. —

Dalt. c. 32.
On an indictment against the defendant, a miller, for changing corn delivered to him to be ground, and giving bad corn instead of it, it was moved to quash the same, because it was only a private cheat, and not of a public nature. It was answered, that being a cheat in the way of trade, it concerned the public, and therefore was indictable. And the court was unanimously agreed not to quash it.—T. 16. G. 2. K. and Wood. Sess. c. v. 1.

A person falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him: and being indicted for the same, the court held the indictment to be good.—T. 3. c. Serlestead’s case, 1. Latch. 202.

As there are frauds which may be relieved civilly, and not punished criminally (with the complaints whereof the courts of equity do generally abound,) so there are other frauds which in a special case may not be helped civilly, and yet shall be punished criminally. Thus, if a minor goes about the town, and pretending to be of age, defrauds many persons by taking credit for considerable quantities of goods, and then insists on his non-age; the persons injured cannot recover the value of their goods, but they may indict and punish him for a common cheat.—Barl. 100.

If any person, by false representation of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit, and thereby defraud any person or persons of any money, goods, chattels, or any other valuable thing: or if any person shall cause or procure others to report falsely of his honesty, respectability, wealth, or mercantile character, and by thus imposing on the credulity of any person or persons, shall obtain a credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or any other valuable thing or things, such person so offending shall be deemed a cheat and swindler, and on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court; and such person shall moreover be compelled, by the order and sentence of the court, to restore to the party injured the property so fraudulently obtained, if it can be done.

If any person or persons shall, by any fraud or shift, circumvention, deceit, or unlawful trick or device, or ill-practice whatever, in playing at cards, dice, or any game or games, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do or shall play, obtain or acquire to him or themselves, or to any other or others, any money, or other valuable thing or things whatever, such person or persons so offending shall be indicted, and on conviction, shall be deemed a cheat, and shall be sentenced to pay a fine of five times the value of the money or other things so won, as aforesaid, and shall also be imprisoned in the common jail of the county, at the discretion of the court.

Any baker or other person selling bread under the assize established by the corporation of any city, town, or village, or the rules laid down by any law, shall be deemed a cheat, and on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

If any person shall sell by false weights or measures, he or she shall be deemed a common cheat, and on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

Form of the Warrant.

STATE OF GEORGIA, Personally appeared before me, James Mack, Houston County. one of the justices of the peace in and for said county, John Doe, of said county, who, being duly sworn, deposeth
and saith, that on the tenth day of April, last past, one Charles Smith, of Macon county, in said State, in the county aforesaid, by a false and privy token, (or counterfeit letter, or other deceitful practice, as the case may be,) falsely and deceitfully, obtained and got into his hands and possession, a certain Black Horse, of the price of fifty dollars, the property of him, the said John Doe, from him, the said John Doe.

Sworn to and subscribed,}
before me, this May 1, 1850.

James Mack, J. P.  

JOHN DOE.

STATE OF GEORGIA,  
To John Jacobs, constable, and to all lawful officers, within the said county.

Whereas, complaint hath been made before me, James Mack, one of the justices of the peace in and for said county, on the oath of John Doe, that on the tenth day of April, last past, one Charles Smith, of Macon county, in said State, in the county aforesaid, by a false and privy token (or counterfeit letter, or other deceitful practice, as the case may be,) falsely and deceitfully, obtained and got into his hands and possession, a certain Black Horse, of the price of fifty dollars, the property of him, the said John Doe, from him, the said John Doe: These are, therefore, to command you, forthwith, to bring the said Charles Smith before me, or some other justice of the peace for said county, to answer the said complaint, and further to be dealt with according to law.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Form of the Commitment.

STATE OF GEORGIA,  
James Mack, one of the justices of the peace for said county, to the keeper of the common jail of the county aforesaid.

Whereas, Charles Smith, late of the county of Macon, has been arrested, on a suspicion of a cheat, committed by him, the said Charles Smith, in the county of Houston, on the tenth day of April, last past, by a false and privy token (or counterfeit letter, or other deceitful practice, as the case may be,) falsely and deceitfully, obtained, and got into his hands and possession, a certain Black Horse, of the price of fifty dollars, the property of John Doe, of the county aforesaid: whereupon, the said Charles Smith hath been duly examined by me, concerning the same; and the examination before me taken doth induce a strong presumption that said Charles Smith is guilty thereof. And upon such examination before me, he, the said Charles Smith hath been, by me, required to give security, in the sum of three hundred dollars, and two securities, each in the sum of one hundred dollars, for his personal appearance, before the next Superior Court of law, to be held for the county of Houston, at the court-house, at Perry, on the fourth Monday in October next, to answer the said charge; and the said Charles Smith having failed to give such security as aforesaid, these are, therefore, to command you to receive the said Charles Smith into your custody, in the said jail, there to remain till he be delivered from your custody by due course of law.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]
Recognizance of Witness for the State.

STATE OF GEORGIA, \( \text{in the year of our Lord eighteen hundred and fifty,} \)

Be it remembered, that on the first day of May, 1850, John Doe, of Perry, in the said county, came before me, James Mack, one of the justices of the peace of and in the said county, and did acknowledge himself to owe to his excellency, George W. Towns, governor of this State, for the time being, and his successors in office, the sum of five hundred dollars, current money of this State, under condition, that if he shall personally appear before the judge of the Superior Court, at the next Superior Court, to be holden in and for the county of Houston, at the court-house, at Perry, on the fourth Monday in October next, in the year of Our Lord eighteen hundred and fifty, then and there to give evidence in behalf of the State against Richard Roe, late of Macon county, who, being arrested and suspected of forgery, is now committed to the common jail of and for said county, then this recognizance to be void; otherwise, of force.

Taken before me, the day and year aforesaid.

James Mack, J. P.

John Doe. [L. S.]

Recognizance to Prosecute and give Evidence.

STATE OF GEORGIA, \( \text{in the year of our Lord eighteen hundred and fifty,} \)

Be it remembered, that on the first day of May, 1850, John Doe, of Perry, in the said county, personally came before me, James Mack, one of the justices of the peace of and in the said county, and acknowledged himself to owe to his excellency, George W. Towns, governor of said State, for the time being, and his successors in office, the sum of five hundred dollars, current money of said State, to be levied of his goods and chattels, lands and tenements, to the use of the said State, if he, the said John Doe, shall fail in the condition underwritten.

James Mack, J. P. [L. S.]

The condition of the above-written recognizance is such, whereas, one Richard Roe, late of Macon county, was, this present day, brought before the justice within mentioned, at the instance of the above-bound John Doe, and was by him charged with the offence of Assault and Battery, in said county of Houston, and thereupon was committed by the said justice, (for want of bail, or who has been bailed, as the case may be,) to the common jail for the county of Houston. If, therefore, the said John Doe shall and do, at the next Superior Court, to be held for the said county, on the fourth Monday in October, in the year of our Lord eighteen hundred and fifty, prefer, or cause to be preferred, a bill of indictment, of the said charge, against the said Richard Roe, and shall then also give evidence there concerning the same, as well to the jurors that shall then inquire of the said charge, as also to them that shall pass upon the trial of the said Richard Roe, that then this recognizance to be void; or else, to stand in full force for the State.

Warrant for a Witness.

STATE OF GEORGIA, \( \text{in the year of our Lord eighteen hundred and fifty,} \)

Personally appeared before me, James Mack, one of the justices of the peace in and for said county, John Doe, who being duly sworn, deposeth and saith, that on
JUSTICES OF THE PEACE.

the tenth day of April, in the year of our Lord eighteen hundred and fifty, he, the said John Doe, at Perry, in said county, was robbed of a gold watch, of the price of fifty dollars, and that he hath good cause to believe that Richard Roe, of said county, is a material witness, to prove by whom the said robbery was committed.

Sworn to and subscribed, before me, this May 1, 1850.

James Mack, J. P.

J O H N D O E.

STATE OF GEORGIA, To John Jacobs, one of the constables of and in Houston County.

Whereas, oath has been made before me, James Mack, one of the justices of the peace of and in the said county, by John Doe, that he, the said John Doe, was lately robbed of a gold watch of the price of fifty dollars, and that he hath good cause to believe that Richard Roe, of said county, is a material witness to prove by whom the said robbery was committed: These are, therefore, to require you to cause the said Richard Roe forthwith to come before me, to give such information and evidence as he knoweth, concerning the said offence; and that such further proceedings may be had thereon, as to the law doth appertain.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Warrant for Escape.

STATE OF GEORGIA, Before me, James Mack, one of the justices of Houston County, personally came John Doe, of said county, who being duly sworn, deposeth and saith, that on the tenth day of April, in the year of our Lord eighteen hundred and fifty, Richard Roe was in custody, in the common jail of this county, charged in execution, at the suit of John Stiles, for the sum of one hundred dollars, which execution issued from the superior court for said county; and that, on the said day and year aforesaid, the said Richard Roe escaped from said jail, and went at large, the said execution being unpaid.

Sworn to and subscribed, before me, this May 1, 1850.

James Mack, J. P.

J O H N D O E.

STATE OF GEORGIA, James Mack, Esq., one of the justices of the peace for the said county, to all sheriffs, bailiffs and constables, within this State.

Whereas, John Doe hath made oath before me, that on the tenth day of April, last past, Richard Roe was in custody, in the common jail of this county, charged in execution, at the suit of John Stiles, for the sum of one hundred dollars, which execution issued from the superior court for said county; and that, on the day and year aforesaid, the said Richard Roe escaped from said jail, and went at large, the said execution being unpaid: You are, therefore, hereby commanded, that every of you, in your respective counties, make diligent search for the said Richard Roe, and him having found, that you seize and arrest, and forthwith convey to the common jail of your county, and him deliver to the sheriff thereof, to be by him therein detained, in safe and secure custody, until he shall thence be discharged by due course of law. And in case the said Richard Roe be arrested, then do you, the said sheriff, who shall
receive him into your custody, make known to the superior court, of this county of Houston, at the court thereof, to be held next after the said arrest, how this warrant shall have been executed. Herein fail not.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Note.—If the person was in jail, on charge of any criminal offence, and escape, state whatever offence it be.

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**Warrant for Felony.**

STATE OF GEORGIA,} Personally appeared before me, James Mack, one of the justices of the peace for said county,

Houston County. | John Doe, who being duly sworn, deposeth and saith, that this present day, divers goods of him, the said John Doe, to wit, one piece of linen, &c., of the price of five dollars, have feloniously been stolen, taken, and carried away, from the house of him, the said John Doe, at Perry, in said county, and that he hath just cause to suspect, and doth suspect, that Richard Roe, late of said county, feloniously did steal, take, and carry away, the same.

Sworn to and subscribed, before me, this May 1, 1850. | JOHN DOE.

James Mack, J. P.

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STATE OF GEORGIA,} To John Jacobs, Constable, or to any lawful officer of said county.

Houston County. | Whereas, John Doe, of Perry, in said county, hath this day made complaint upon oath, before me, James Mack, one of the justices of the peace for the county aforesaid, that this present day, divers goods, of him, the said John Doe, to wit, one piece of linen, &c., of the price of five dollars, have feloniously been stolen, taken, and carried away from the house of him, the said John Doe, at Perry, in said county, and that he hath just cause to suspect, and doth suspect, that Richard Roe, late of said county, feloniously did steal, take, and carry away the same: These are, therefore, to command you to take the body of the said Richard Roe, and bring him before me, or some other justice of the peace for said county, to answer the complaint in the premises, as the law directs. Herein fail not.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

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Simple theft or larceny is the wrongful and fraudulent taking and carrying away by any person the personal goods of another, with intent to steal the same.

Theft or larceny from the person, as distinguished from robbery, before described, is the wrongful and fraudulent taking of money, goods, chattels, or effects, or any article of value, from the person of another, privately, without his knowledge, in any place whatever, with intent to steal the same.

Larceny from the house, is the breaking or entering any house with an intent to steal, or, after breaking or entering said house, stealing therefrom any money, goods, chattels, wares, merchandise, or any thing or things of value whatever.

Any officer, servant, or other person employed in any public department, station, or office of government of this State, or any county, town, or city of this State, or in any bank or other corporate body in this State, or any president, director, or stockholder of any bank, or other corporate body in this State, who shall embezzle, steal, secrete, or fraudulently take and carry away any money, gold or silver bullion, note or notes, bank bill or bills, bill or bills of ex-
JUSTICES OF THE PEACE.

change, warrant or warrants, bond or bonds, deed or deeds, draft or drafts, check or checks, security or securities for the payment of money, or delivery of goods, or other things, lease, will, letter of attorney, or other sealed instrument, or any certificate or other public security of the State for the payment of money, or any receipt, acquittance, release or discharge of any debt, suit, or other demand, or any transfer or assurance of money, stock, goods, chattels, or other property, or any day-book or other book of accounts, or any agreement or contract whatever, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than seven years.

If any factor, commission-merchant, warehouse-keeper, wharfinger, wagoner, stage-driver, or other common carrier on land or water, or any other bailee with whom any money, bank bill or bills, note or notes, bill or bills of exchange, draft or drafts, check or checks, bond or bonds, or other security or order for the payment of money, or other valuable thing, or any cotton, corn, or other produce, goods, wares, or merchandise, or any other thing or things of value, are or may be intrusted or deposited by any person, shall fraudulently convert the same, or any part thereof, or the proceeds of any part thereof, to his or her own use, or otherwise dispose of the same, or any part thereof, without the consent of the owner or bailor, and to his or her injury, and without paying to such owner or bailor, on demand, the full value or market price thereof; or if, after a sale of any of the said articles, with the consent of the owner or bailor, such person shall fraudulently, and without the consent of the said owner or bailor, convert the proceeds thereof, or any part of the proceeds, to his or her own use, and fail or refuse to pay the same over to such owner or bailor, on demand, every such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than seven years.

If any person employed as a clerk, agent or servant, or in any other character or capacity, in any store, warehouse, counting-room, exchange-office, shop, or other place of trade, traffic or exchange, where, from the nature of the business or employment, it is necessary or usual to intrust to such person any goods, wares or merchandise, cotton, corn, or other produce, money, notes, bills of exchange, bank notes, checks, drafts, orders for payment of money, or other valuable thing, or any other thing or article of value, shall fraudulently take and carry away, or convert to his own use, or otherwise dispose of any of the said goods, wares or merchandise, cotton, corn, or other produce, money, notes, bills of exchange, bank notes, checks, drafts, orders, or other thing or things of value thus intrusted to him, or committed to his charge, to the injury, and without the consent of the owner thereof, or person thus intrusting him, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years.

If any person who has been intrusted by another with any money, note or notes, bill or bills of exchange, bond or bonds, check or checks, draft or drafts, bank note or notes, order or orders for the payment of money, or other valuable article or thing, or any cotton, corn, or other produce, goods, wares or merchandise, horse or horses, mule or mules, cattle, sheep, goats, hogs, or other article or articles of value, for the purpose of applying the same for the use or benefit of the person to whom they belong, or the person delivering them, or any of them, or for the purpose of collecting the money or other thing due on any such note or notes, bill or bills of exchange, bond or bonds, check or checks, draft or drafts, bank note or notes, order or orders, and paying the proceeds thereof over to the owner or other person so intrusting or delivering the same; or for the purpose of selling such cotton, corn, or other produce, goods, wares or merchandise, horse or horses, mule or mules, cattle, sheep, goats, hogs, or other valuable article, and paying over the proceeds of such
sale to the owner, or other person so intrusting or delivering the said article or articles, shall fraudulently convert the said article or articles, or any of them, or the money or other thing arising from the sale or collection of any of them to his or her own use, or shall otherwise dispose of them, or any of them, to the injury, and without the consent of the owner, or other person so intrusting or delivering them, and without paying to such owner, or person intrusting or delivering the same, the full value or market price thereof, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years.

Rape.

Rape is the carnal knowledge of a female, forcibly and against her will.

Rape shall be punished by an imprisonment at labor in the penitentiary, for a term not less than two years, nor longer than twenty years.

An assault with intent to commit a rape shall be punished by an imprisonment at labor in the penitentiary, for a term not less than one year, nor longer than five years.

Form of the Warrant.

STATE OF GEORGIA,

Personally appeared before me, James Mack, one of the justices of the peace in and for said county, Betsey Claybank, spinster, of the said county, who being duly sworn, saith that John Doe, late of said county, on the tenth day of April, in the year of our Lord eighteen hundred and fifty, at Perry, in the county aforesaid, on and upon the said Betsey Claybank, violently and feloniously did make an assault, and her, the said Betsey Claybank, against the will of her, the said Betsey Claybank, then and there, feloniously ravished and carnally knew.

Sworn to and subscribed, before me, this May 1, 1850.

James Mack, J. P.

STATE OF GEORGIA, To John Jacobs, Constable, or to some other lawful officer, to execute and return.

Forasmuch as Betsey Claybank, spinster, of said county, hath complained on oath before me, James Mack, one of the justices of the peace of the said county, that John Doe, late of the said county, on the tenth day of April, in the year of our Lord eighteen hundred and fifty, at Perry, in the county aforesaid, on and upon the said Betsey Claybank, violently and feloniously did make an assault, and her, the said Betsey Claybank, against the will of her, the said Betsey Claybank, then and there, feloniously ravished and carnally knew. These are, therefore, to command you to make diligent search for the said John Doe, and he being found, that you bring him before me, or some other justice of the peace for the said county, to be examined touching the premises, and to be otherwise dealt with according to law.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Recognizance with Sureties.

STATE OF GEORGIA, Be it remembered, that on the first day of May, in the year of our Lord eighteen hundred and fifty, John Doe, principal, of said county, Richard Roe, of said county, and Charles Smith, securities, of said county, personally
came before me, James Mack, one of the justices of the peace for the county aforesaid, and acknowledged themselves to owe to his excellency, George W. Towns, governor of said State for the time being, and his successors in office, that is to say, the said John Doe, the sum of one hundred dollars, and the said Richard Roe and Charles Smith, each the sum of fifty dollars, separately, of good and lawful money of said State, to be made and levied of their goods and chattels, lands and tenements, respectively, to the use of the said State, if the said John Doe shall make default in the condition hereon endorsed, (or hereunder written.) [Insert whatever condition the nature of the charge may require.]

Acknowledged before me,

James Mack, J. P. [L. S.]

Recognizance without Sureties.

STATE OF GEORGIA, in the year of our Lord eighteen hundred and fifty, Houston County. John Doe, of said county, personally came before me, James Mack, one of the justices of the peace for said county, and acknowledged himself to owe to his excellency, George W. Towns, governor of said State for the time being, and his successors in office, the sum of one hundred dollars, of good and lawful money of said State, to be made and levied of his goods and chattels, lands and tenements, to the use of the said State, if he, the said John Doe, shall fail in the condition underwritten (or endorsed.) [Insert the condition required for the charge.]

Acknowledged before me,

James Mack, J. P. [L. S.]

Search-Warrant.

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

Upon search-warrants regularly granted, and specially directed, it seems to be settled, that after the proper precautions, the house to be searched may be broken open, and whether the property is found there or not, the officer will be excused. A distinction seems to have been made, though never distinctly recognized, as far as respects criminal proceedings, that the officer would be justified, or not, according to the event of his search, but as all persons who act bona fide under a warrant are now protected from any liabilities resulting from its having been improperly framed, this idea could not now be supported. It appears, however, that the party maliciously procuring a search-warrant is answerable to the person aggrieved in an action on the case. As warrants to search “all suspected places” are illegal, unless when they are issued under the provision of the particular statutes hereafter considered, it seems that a constable breaking open doors under the color of their authority cannot be justified. The general doctrine, therefore, to be adduced from all the books relative to search-warrants is, that if they are altogether illegal, the officer cannot be justified, but that if they are legal in form, though improperly granted, he may safely break open the doors to execute them, whether his search succeeded, or the charge be malicious or mistaken.—1 Chit. Crim. Law, 57.
A justice cannot upon a bare surmise make a warrant to break a man’s house to search for a felon or for stolen goods, for it would be very inconvenient that it should be in the power of any justice of the peace, or any other whosoever, upon a bare suggestion to break the house of any person he pleased, either by night or by day, upon such surmise. But if complaint be made on oath of goods stolen, and that the deponent suspects the goods are in such a house, and will show good cause of his suspicion, the justice may grant a warrant to search in such suspected places as are particularly mentioned in his warrant, and to attach the goods and the party in whose custody they are found, and bring them before him or some other justice to be examined, and to abide such order thereupon as shall be agreeable to law.

And it is most proper that even such a warrant should be executed in the day-time, though not absolutely necessary that it should.

If the door be shut, and if the stolen goods be in the house, the officer may break open the door if, after demand, it be refused to be opened.

If the goods be not in the house, yet the officer is justifiable, but he that made the suggestion is punishable, for as to him the breaking open the door is lawful or unlawful, according to the event, to wit, lawful if the goods are there, unlawful if not there.

As to the goods brought before the justice, if it appear they were not stolen, they are to be restored to the possessors. If it appear they were stolen, they shall be deposited in the hands of the sheriff or constable, to the end the party robbed may proceed, by indicting and convicting the offender, to have restitution.

As to the party having the goods, if not stolen, he is to be discharged. If stolen not by him, but by another that sold or delivered them to him, if it appears he was ignorant they were stolen, he may be bound over as a witness against him that sold them. If it appears he knew they were stolen, he must be committed or bound over, to answer the felony to the proper court. — Clay. Jus. 302.

So also he may issue search-warrants upon proper cause shown upon oath, to search for stolen goods, but the particular place must be specially set forth, for a general warrant to search all places is illegal. — 4 Blac. Com. 291, 2 H. H. 113, 150. And the goods must be particularly described in the warrant. Such warrant will authorize the constable to bring the goods, if he find them; and also the person on whose premises, or in whose possession they are found, before the justice, to be dealt with as the law directs. See 4 Bur. Jus. 131, 132; see 4 Art. Amen. Con. U. S.—Prin. Dig. 900.—Schley D. 121 n.

Form of the Warrant.

STATE OF GEORGIA, } Before me, James Mack, one of the justices of
Houston County. } the peace in and for said county, in person came
John Doe, who being duly sworn, deposeth and saith, that the following goods, to wit, one piece Holland, &c., of the price of five dollars, have within two days, last past, by some person or persons unknown, been feloniously stolen, taken, and carried away, out of the house of the said John Doe, at Perry, in the county aforesaid; and that the said John Doe hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of Richard Roe, in the said county.

Sworn to and subscribed,
before me, this May 1, 1850.

James Mack, J. P.

JOHN DOE.
JUSTICES OF THE PEACE.

STATE OF GEORGIA, 

To John Jacobs, constable, or any other lawful officer of said county.

Whereas it appears to me, James Mack, one of the justices of the peace of and for the said county, by the information on oath of John Doe, of Perry, in the said county, that the following goods, to wit, one piece Holland, &c., of the price of five dollars, have, within two days, last past, by some person or persons unknown, been feloniously stolen, taken, and carried away, out of the house of the said John Doe, at Perry, in the county aforesaid, and that said John Doe hath probable cause to suspect, and doth suspect, that the said goods, or part thereof, are concealed in the dwelling-house of Richard Roe, at Perry, in the said county: these are, therefore, in the name of the State, to authorize and require you, with proper and necessary assistants, to enter in the day-time into the said dwelling-house of the said Richard Roe, at Perry, in the county aforesaid, and there diligently to search for the said goods; and if the same, or any part thereof, shall be found upon such search, that you bring the goods, so found, and also the body of the said Richard Roe, before me, or some other justice of the peace of the said county, to be disposed of and dealt with according to law.

Given at Perry, in the said county, under my hand and seal, this May first, eighteen hundred and fifty.

JAMES MACK, J. P. [L. S.]

Vagrancy.

Idleness in any person whatsoever is also a high offence against the public economy. In China it is a maxim, that if there be a man who does not work, or a woman that is idle, in the empire, somebody must suffer cold or hunger; the produce of the lands not being more than sufficient, with culture, to maintain the inhabitants; and therefore, though the idle person may shift off the want from himself, yet it must in the end fall somewhere. The court also of Areopagus, at Athens, punished idleness, and exerted a right of examining every citizen in what manner he spent his time; the intention of which was, that the Athenians knowing they were to give an account of their occupations, should follow only such as were laudable, and that there might be no room left for such as lived by unlawful arts. The civil law expelled all sturdy vagrants from the city: and, in our own law, all idle persons or vagabonds, whom our ancient statutes describe to be "such as wake on the night and sleep on the day, and haunt customable taverns, and ale-houses, and routs about; and no man wot from whence they came, ne wither they go:" or such as are more particularly described by statute 17 Geo. II. c. 5, and divided into three classes, idle and disorderly persons, rogues and vagabonds, and incorrigible rogues;—all these are offenders against the good order, and blemishes in the government of any kingdom. They are, therefore, all punished by the statute last mentioned; that is to say, idle and disorderly persons with one month's imprisonment in the house of correction; rogues and vagabonds with whipping and imprisonment not exceeding six months; and incorrigible rogues with the like discipline and confinement, not exceeding two years; the breach and escape from which confinement, in one of an inferior class, ranks him among incorrigible rogues; and in a rogue (before incorrigible) makes him a felon, and liable to be transported for seven years.—4 Blac. Com. 169.

If any person shall be apprehended, having upon him or her, any pick-lock, key, crow, bit, or other instrument, with intent to break and enter into any dwelling-house, ware-house, store, shop, coach-house, stable, or out-house, in
order to steal or commit any other crime; or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to commit a crime on any person, which, if committed, would be punished by death, or confinement in the penitentiary; or shall be found in or upon any dwelling-house, ware-house, store, shop, coach-house, stable, or out-house, with intent to steal any goods or chattels, every such person shall be deemed a rogue and vagabond, and on conviction, shall be punished by confinement and labor in the penitentiary, for any time not less than one year, nor longer than five years, or by imprisonment in the common jail of the county, at the discretion of the court.

3. That any person now within the limits of this State, or that may hereafter come within the same, who may have been found guilty of any felonious crime prior to his coming within this State, so far as to have been committed to jail for the same, or to have been bound in a recognizance to appear before any court of record for further trial, and has since broke jail, or from the custody of the officer, or have forfeited their recognizance, and fled from the laws of the State where the crime was committed and done, in any such case the said person or persons shall be deemed and adjudged vagrants, and subject to all the pains and penalties expressed in this law, and shall be confined in jail until applied for by the executive authority of the State where the crime was committed, or until the executive of this State shall find it convenient to send such offender or offenders under a safe guard to the State where the crime was committed and done.—Act of 1788.

Form of the Warrant.

STATE OF GEORGIA, before me, James Mack, one of the justices of Houston County, in and for said county, in person appeared John Doe, who being sworn, saith that Richard Roe is a person who has no apparent means of subsistence, and neglects applying himself to any honest calling, but is now seen wandering about, within the limits of this county, though able to work and support himself in a reputable way, endeavoring to maintain himself by gaming and other undue means, leading an idle, immoral, profligate course of life.

Sworn to and subscribed, before me, this May 1, 1850.
James Mack, J. P.

STATE OF GEORGIA, To John Jacobs, Constable, or any other lawful officer, to execute.

Forasmuch as John Doe, of this county, hath made oath before me, James Mack, one of the justices of the peace of and for the said county, that Richard Roe is a person who has no apparent means of subsistence, and neglects applying himself to any honest calling, but is now seen wandering about within the limits of this county, though able to work and support himself in a reputable way, endeavoring to maintain himself by gaming and other undue means, leading an idle, immoral, profligate course of life: These are, therefore, to command you to bring the said Richard Roe before me, or some other justice of the peace for the said county, to be examined touching the premises, and to be otherwise dealt with as the law directs.

Given under my hand and seal, this first day of May, eighteen hundred and fifty.

JAMES MACK, J. P. [L. S.]
Mittimus for Want of Security for Good Behavior.

STATE OF GEORGIA, 

By James Mack, one of the Justices of the Houston County. 

To the keeper of the common jail of the said county—greeting:

Whereas, Richard Roe hath been complained against, by John Doe, as a vagrant, and as a person who hath no apparent means of subsistence, and who neglects applying himself to any honest calling, but wanders about, though able to work and support himself in a reputable way, and endeavors to maintain himself by gaming, or other undue means; leading an idle, immoral, and profligate course of life; and thereupon, the said Richard Roe hath been brought before me and hath been examined, and proofs heard, by and before me, concerning the premises; and upon such proofs, I, the said justice, have been convinced of the truth of the said charge, and have required the said Richard Roe to provide and produce sureties for his good behavior and future industry, in the sum of five hundred dollars, and he, the said Richard Roe, hath refused and neglected to produce the same. These are, therefore, to command you to receive into your jail the said Richard Roe, for the crime aforesaid, there to remain until he gives security for his good behavior and future industry, and upon failure so to do, until the next superior court for said county, then and there to answer the aforesaid charge, according to law.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

Commitment of Persons charged with (or having committed) Crimes, from one County to the Jail of another County, in this State.

It is unquestionably proper, that "if the offence be not bailable, or the party cannot find bail, he is to be committed to the county jail, by the mittimus of the justice, or warrant under his hand and seal, containing the cause of his commitment; there to abide till delivered by due course of law."—4 Black. Com. 300. It is the right of the accused person thus to be committed. A criminal cannot be committed to a jail without the county in which the crime has been committed, without sufficient cause for such commitment, which cause must appear in the proceedings of such commitment.

The act of 1796 provides, "that the justices of the inferior courts of every county within this State, in their respective counties, shall cause to be erected and kept in good repair, (or where the same shall be already built,) shall maintain and keep in good repair, at the charge of such county, one good and convenient court-house, of stone, brick, or timber, and one sufficient jail, with the necessary apartments for the safe-keeping of criminals and debtors, well secured with iron bars, bolts, and locks."—Cobb's Anal. 489.

More than one statute may be found which directly authorizes the imprisonment of debtors in the jails of counties other than those of their residence, and some have supposed, therefore, that the law was insufficient to authorize the commitment of criminals to such jails. But the compiler cannot see any difficulty arising from the statutes alluded to, or the necessity of any further statutory provision in order to render such imprisonment lawful. "The jail itself is the State's—Clay, Jus. 208;" and all crimes committed are committed against the State, and are prosecuted in the name of the State, the confinement of a criminal, therefore, in any jail of the State, will be a legal confine-
ment, if there be no sufficient jail in the county where the crime was committed, for the safe-keeping of criminals.

It is necessary that where such commitment occurs, for the committing magistrate to pass an order, thus:

John Doe, having been brought before me, by virtue of a warrant issued against him upon the oath of Richard Roe, charging said John Doe with the crime of assault and battery, committed in the county aforesaid. And the witnesses having been examined before me, touching said crime, so charged against said John Doe; and having ascertained that said John Doe is probably guilty of said crime, and there being no sufficient jail in said county of Houston for the safe-keeping of said supposed criminal: it is, therefore, ordered that said John Doe be committed to the jail of the county of Bibb.

This order must accompany the papers of the whole proceeding, and when the prisoner is delivered over by the sheriff of Houston county to the jailer of Bibb county, be also delivered to said jailer. It may be remarked here, that the fact of the insufficiency of the jail in Houston county is to be ascertained only from the proceedings of the examination before the committing magistrate, who is the judge of that fact. And, it may be further remarked, that the prisoner, during the time of his confinement in the jail of the county of Bibb, is subject to the authorities of the county of Houston—he is a prisoner of the county of Houston.—Compiler.

Form of the Commitment.

STATE OF GEORGIA,

Houston County.

By James Mack, one of the justices assigned to keep the peace, in and for the county aforesaid.

To the sheriff of the county of Houston, and to the jailer of the county of Bibb.

These are to command you, in the name of the State, forthwith to convey and deliver into the custody of the keeper of said jail, the body of John Doe, charged before me, on the oath of Richard Roe, with having, on the first day of June, in the year of our Lord eighteen hundred and fifty, at Perry, in the county aforesaid, committed the crime of assault and battery. And you, the said keeper, are hereby required to receive the said John Doe (there being no sufficient jail in said county of Houston for the safe-keeping of said John Doe,) into your custody, in said jail, and him safely keep, until he be thence delivered by due course of law.

Given under my hand and seal, this June 1, 1850.

James Mack, J. P. [L. S.]

Bench Warrant.

STATE OF GEORGIA,

Houston County.

To all and singular the sheriffs, constables, and coroners of this State—greeting:

Whereas, at the April term, eighteen hundred and fifty, of the Superior Court of said county, the grand jurors did find a bill of indictment against John Doe, of said county, for the offence of Assault and Battery: these are, therefore, to command you, and each of you,
in the name of the State, to apprehend the said John Doe, and bring him before me, or some other justice of the peace, to be dealt with as the law directs: herein fail not.

Given under my hand and seal, this May 1, 1850.

Hugh Burns, J. S. C. [L. S.]


Note—When the accused person is arrested, with the above kind of warrant, the Justice of the Peace before whom he is brought (if the offence be bailable,) must bind him for his appearance at the following term of the Superior Court. (See recognizance, with security.) If the offence be not bailable, or the accused fails to give security when required, for his appearance, the Justice must commit him to jail. (See Commitment.)

Recognizance for the Appearance of a Witness in an Indictment, during the Term.

STATE OF GEORGIA, in person, appeared in open court, John Doe, Houston County, and Richard Roe, security, who, jointly and severally, acknowledge themselves held and bound unto his excellency, George W. Towns, governor of said State, for the time being, and his successors in office, in the sum of one thousand dollars, good and lawful money of this State, to be levied of their goods and chattels, lands and tenements; for the payment of which sum they bind themselves, their heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed and dated this May 1, 1850.

The condition of the above obligation is such, that whereas there is an indictment pending in the Superior Court of said county, now in session, against one John Bellows, for the offence of Assault and Battery, in which indictment said John Doe is a material witness on the part of the State; now, should said John Doe, well and truly, personally, be and appear in said court, from day to day, during the term of said court, and from term to term, and testify on the trial of said indictment, and not depart from said court but by leave of said court, then this recognizance to be void; otherwise, to remain in full force and virtue.

John Doe. [L. S.]

Tested and approved, by Richard Roe, Sec’ty. [L. S.]

James Holdfast, C. S. C.

Recognizance for the Appearance of an Indicted Person during the Term.

STATE OF GEORGIA, in person, appeared in open court, John Doe, Houston County, and Richard Roe, security, who, jointly and severally, acknowledge themselves held and bound unto his excellency, George W. Towns, governor of said State, for the time being, and his successors in office, in the sum of one thousand dollars, good and lawful money of this State, to be levied of their goods and chattels, lands and tenements; for the payment of which sum they bind themselves, their heirs, executors and administrators, jointly and severally, firmly by these presents: sealed and dated, this May 1, 1850.

The condition of the above obligation is such, that whereas there is an indictment pending in the Superior Court of said county, now in session, against said John Doe, for the offence of Assault and Battery;
now, should said John Doe, well and truly, personally, be and appear, and abide his trial, for said offence of Assault and Battery, from day to day, during the term of said court, and from term to term, and not depart from said court, but by leave of said court, then this recognizance to be void; else, to remain in full force for the State.

Tested and approved, by

John Doe. [L. S.]

Richard Roe, Sec'y. [L. S.]

Examination of a Person accused of any Criminal Matter, to which he must not be sworn.

STATE OF GEORGIA, | The examination of John Doe, of Perry, in the county of Houston, taken before me, (or us, as the case may be,) James Mack, one of the justices of the peace of and in the said county, the first day of May, in the year of our Lord eighteen hundred and fifty, the said John Doe, being charged before me, (or us,) by Richard Roe, of Macon, with (here insert the charge against him,) upon his examination, now taken, before me, (or us,) confesseth that, &c., or denieth that, &c.

John Doe.

Taken before me, (or us,) the day and year above written.

James Mack, J. P.

Information of a Witness.

STATE OF GEORGIA, | The evidence of Richard Roe, of Perry, in the county of Houston, taken upon oath, before me, (or us,) James Mack, one of the justices of the peace of and in the said county, the first day of May, in the year of our Lord eighteen hundred and fifty.

The said Richard Roe, of Macon, being sworn by me, (or us,) on the Holy Evangelists, to speak the truth, the whole truth, and nothing but the truth, of and concerning the accusation made before me, (or us,) against John Doe, who stands charged by said Richard Roe, of Macon, with (here insert the charge,) saith that, &c.

Richard Roe.

Taken before me, (or us,) the day and year above written.

James Mack, J. P.

Backing, Warrants, &c.

Note.—A gentleman of the profession, who examined this title, kindly furnished the Compiler with the following note: "You remarked that you wished me to put in writing a suggestion of mine, that Justices of the Peace are frequently at a loss what to do when applied to for a warrant against an offender who is within their jurisdiction, for an offence committed in some other county."

"At common law, if A committed a felony in the county of B, and then went into the county of C, upon information given to a Justice of the Peace of the county of C, he might issue his warrant to apprehend him, and take his examination, and commit him to jail, in the county of C, from whence he might be removed, by Habeas Corpus, to the county of B, for trial. A Justice of the Peace could also, at common law, grant his warrant to arrest a person, being within his jurisdiction, who had committed an offence on the high seas, or in a foreign country, &c.—1 Chit. Crim. Law, 35, side page.

"The practice of backing warrants obtained before the passing of the statutes 23d Geo. II., and 24th Geo. II.; but, it is said, in strictness, there ought to have been a fresh Warrant in every county.—1 Chit. Crim. Law, 45. The statute of 24th Geo. II., under which we derive the law of backing Warrants, does not take away the right of issuing fresh Warrants, as at common law; it sanctions the new, but does not take away the old mode; hence, I think, there is no doubt but a Justice may issue his Warrant to arrest a felon, being within his jurisdiction, although the offence was committed in another county."
REQUISITES OF BILL OF INDICTMENT.

**Form of Backing a Warrant.**

STATE OF GEORGIA, } To any lawful officer, of said county, to exe-
Macon County. } cute and return,

Given under my hand and seal, this May 1, 1850.

ROBERT ROUSE, J. P. [L. S.]

**Certificate of the Justice.**

STATE OF GEORGIA, } To the honorable Superior Court, of said county.

Houston County. 

The undersigned, one of the justices of the peace in and for said county, hereby certifies, that the foregoing are the proceedings in the case of the State against John Doe, who was charged before me (or us,) with the crime of (here insert the charge.)

Given under my (or our) hand and official signature, this May 1, 1850.

JAMES MACK, J. P.

NOTE. For the information of the justices of the peace, it is here mentioned, once for all, that at the Examination of the accused, the Information of the witnesses, and the Certificate of the justice, must appear in each particular case. If these requirements, or either of them, be omitted, the prisoner will be discharged upon habeas corpus.

**Return of Proceedings.**

The justices of the peace shall return all examinations and recognizances by them taken, or other papers that may be necessary to be acted upon by the superior courts of their respective counties, on or before the first day of the term of each court, except in the counties of Richmond and Chatham, where they shall make said return ten days before said courts, if taken that length of time before the sitting of the court.—48th com. law rule.

NOTE.—If the party be committed, the constable should deliver all the papers in the case to the jailer, at the time he delivers the prisoner to him, that they may be produced, if required, upon habeas corpus.

**Justice of the Peace’s Fees in Criminal Cases.**

For affidavit to obtain a warrant, 31½ cents; for making out a warrant, 31½ cents; for making out a commitment, 31½ cents; for making out recognizance and returning the same to court, 31½ cents; for each subpoena for witnesses, 15 cents.—Act of 1811.

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CHAPTER II.

REQUISITES OF BILL OF INDICTMENT AND RULES OF PLEADING.

**Definition.**—An Indictment is a written accusation, of one or more persons, of a crime or misdemeanor, preferred to, and presented upon oath, by a grand jury.—4 Black. Com. 302.—1 Chit. Crim. Law, 162.

**Parts.**—An Indictment consists of three parts: the commencement; the statement, and the conclusion.—Arch. Crim. Plead. 18.
REQUISITES OF BILL OF INDICTMENT.

Commencement.—The Commencement of every Indictment, is thus:—[State of Georgia, Houston County; The Grand Jurors, &c., see the precedents:] so proceeding to state the offence for which the defendant is to be prosecuted. —Arch. Crim. Plead. 19.

Venue.—The Venue in the margin is the only part of the Commencement of an Indictment that requires attention. The general rule upon this subject is, that the venue in the margin should be the county in which the offence was committed,—the venue in the margin should be coextensive with the jurisdiction of the court; that is, it should be descriptive of the limit to which the jurisdiction of the court is confined, and the offence must have been committed within the limit so described.—Arch. Crim. Plead. 19. The Venue was always regarded as matter of substance.—1 Chit. Crim. Law, 177.

The Statement.—In this part of the Indictment, all the ingredients of the offence with which the defendant is charged, the facts, circumstances, and intent constituting it, must be set forth with certainty and precision, without any repugnance or inconsistency, and the defendant must be charged directly and positively, with having committed it.—Arch. Crim. Plead. 28.

Time.—It is in general requisite to state, that the defendant committed the offence for which he is indicted on a specific year and day.—1 Chit. Crim. Law, 217.

The precise time, however, is not material, even in criminal cases.—1 Chit. Plead. 258.

The time should be the day of the month and year upon which the act is supposed to have been committed.—Arch. Crim. Plead. 38.

[All Indictments must be in words at length, and therefore no abbreviations can be admitted. Nor can any figures be allowed in Indictments, but all numbers must be expressed in words, at length; but to this rule there is an exception, in case of forgery, and threatening letters, when a fac simile of the instrument forged must be given in the Indictment.—1 Chit. Crim. Law, 176.]

Time as well as place must, in general, not merely be mentioned at the beginning of the Indictment, but be repeated to every issuable and triable fact, for wherever a venue is necessary, time should be united with it: but after the time has been once named with certainty, it is afterwards sufficient to refer to it by the words, "then and there," which have the same effect as if the day and year were actually repeated, but the mere conjunction and, without adding "then and there," will in many cases be insufficient.—1 Chit. Crim. Law, 220.

Time and place are usually alleged [thus: on the first day of May, in the year of our Lord, one thousand, eight hundred and fifty, in the county aforesaid.]—Arch. Crim. Plead. 39.

It seems, however, that the nicety which requires these words to be cautiously inserted to every material allegation, is not so strictly observed in indictments for inferior offences, as in cases where the life of the prisoner is in danger.—1 Chit. Crim. Law, 221.

Though the allegation of a specific time is thus important, it is in no case necessary to prove the precise day, or even year, laid in the indictment, except where the time enters into the nature of the offence.—1 Chit. Crim. Law, 224.

Note.—It may be stated as a general rule, that the time when an offence is alleged to have been committed, will not be considered as material, so it be previous to the finding of the indictment: but when a time is limited for preferring an indictment, the time should appear to be within the time so limited.—McLane vs. The State of Georgia, 4 Georgia Rep. 241.

Name.—The name of the party indicted ought regularly to be truly insert-
REQUISITES OF BILL OF INDICTMENT.

ed in every indictment; but whatever mistake may be made in these respects, if the defendant appears and pleads not guilty, he cannot afterwards take advantage of the error.—1 Chit. Crim. Law, 202.

There are, indeed, some cases in which the name of third persons cannot be ascertained, in which it is sufficient to state, “a certain person or persons to the Jurors aforesaid unknown.”—1 Chit. Crim. Law, 212.

Description of the Offence.—It is a general rule in indictments, that the special manner of the whole fact ought to be set forth with such certainty, that it may judicially appear to the court, that the indictors have gone upon sufficient premises: on the other hand, as observed by Mr. Justice Buller, it is the duty of a good pleader not to clog the record with unnecessary matter, and thereby throw a greater burden of proof on his client than the law requires; and it is still more his duty not to state things which, on the face of the indictment, are repugnant, inconsistent, or absurd.—1 Chit. Crim. Law, 228.

And it is a general rule, that where the act is not in itself necessarily unlawful, but becomes so by its peculiar circumstances and relations, all the matters must be set forth in which its illegality consists.—1 Chit. Crim. Law, 229.

It is also a general rule, that all indictments ought to charge a man with a particular specified offence, and not with being an offender in general.—1 Chit. Crim. Law, 229.

The facts of the charge must, except in the two instances above mentioned, [common barrator and scold], be set forth on the record, that the defendant may clearly understand the charge he is called upon to answer, that the court may know what judgment is to be pronounced upon conviction, and that posterity may know what law is to be derived from the record; but it is not necessary to state all the matter of mere aggravation which the prosecutor proposes to adduce, unless it alters the offence; for if so, it would make his indictment as long as his evidence.—1 Chit. Crim. Law, 231.

Unnecessary Averments.—If any unnecessary averments, not intimately connected with the circumstances which constitute the crime, be introduced, they need not be proved on the trial, but will be rejected as surplusage. The distinction between material and immaterial averments is settled to be, that if the averment be connected with the charge, it must be proved; but if it be wholly immaterial, as if the averment be totally unconnected, it need not be proved.—1 Chit. Crim. Law, 232.

Intention.—Where an evil intent accompanying an act is necessary to constitute such act a crime, the intent must be alleged in the indictment and proved; but where the act is in itself unlawful, an evil intent will be presumed, and if averred, is a mere formal allegation, which need not be proved by extrinsic evidence.—1 Chit. Crim. Law, 233.

Certainty.—It is also frequently necessary, in the description of an offence, to state the quantity, number and value of goods, which are essential to the constitution of the offence, or necessary to the right understanding of the indictment. But certainly, to a common intent, as it is technically termed, is generally sufficient, which seems to mean, such certainty as will enable the jury to decide, in case of theft, whether the chattel proved to have been stolen, is the very same with that upon which the indictment is founded, and show judicially to the court, that it could have been the subject-matter of the offence, charged, and thus secure the defendant from any subsequent proceedings, for the same cause, after a conviction or acquittal.—1 Chit. Crim. Law, 236.

Deodand.—It is also usual, though not absolutely necessary, in an indictment for murder, to set forth the value of the instrument, by which the death was effected, because it is regularly forfeited as a deodand.—1 Chit. Crim. Law, 236.
DISJUNCTIVE.—Another general rule, relative to the mode of stating the
defense, is, that it must not be stated in the disjunctive, so as to leave it uncer-
tain what is really intended to be relied upon as the accusation.—1 Chit. Crim.
Law, 236.

Charge, how expressed.—It is also a general rule, that the charge should be
expressed positively, and not with a "that whereas," or by way of recital.—1
Chit. Crim. Law, 236.

Different Meanings.—And it is laid down, that where a matter is capable of
different meanings, that will be taken by the court which will support the
proceedings, and not that which would defeat them; but it must be clearly
capable of two significations, for the court cannot, to support the indictment,
arbitrarily give it a meaning with which the use, habits, or understanding of
mankind would plainly disagree; where, however, it is evidently ambiguous,
it does not seem to clash with any rule of construction, applied even to criminal
proceedings, to construe it in that sense, in which the party framing the charge
must be understood to have used it, if he intended his accusation to be consist-
et.—1 Chit. Crim. Law, 238.

Surplusage.—Mere surplusage will not, in general, vitiate.—1 Chit. Crim.
Law, 238.

Errors.—It seems, also, that mere clerical and grammatical errors will not
vitiate, unless they change the word, or render the meaning obscure.—1 Chit.
Crim. Law, 239.

Certainty, to what extent required.—At the present day, certainty to a com-
mon intent, is all that is requisite, but this is so rigidly demanded, that the
ends of justice have been too often frustrated by nice and technical objections.
—1 Chit. Crim. Law, 239.

Technically stating the offence.—There are some terms, which are so appro-
priated by the law, to express the precise idea which it entertains of the of-
fence, that no other terms, however synonymous they may seem, are capable
of doing it; while there are other expressions which, though usual, are not
necessary to be inserted.—1 Chit. Crim. Law, 239.

And where the common law, or a statute, forbids the doing of a thing, the
doing it willfully is indictable, though without any corrupt motive, and conse-
quently, it need not, in such case, be averred.—1 Chit. Crim. Law, 240.

The words, "by force and arms," anciently "vi et armis," were, by the common
law, necessary in indictments for offences which amount to an actual disturbance
of the peace, or consist, in any way, of acts of violence; but it seems to be the
better opinion, that they were never necessary, where the offence consisted of
a cheat, or non-feasance, or a mere consequential injury.—1 Chit. Crim. Law,
240.

Many indictments for trespasses and other wrongs have been deemed insuffi-
cient, for want of the words, "with force and arms;" but on the other hand,
the court has frequently refused to quash the proceedings, where they have
been omitted; and the last seems to be the better opinion, for otherwise the
terms of the statute appear to be destitute of meaning. It seems to be gen-
erally agreed, that where there are any other words implying force, as in an
indictment for a rescue, the word rescued, the omission of vi et armis, is suffi-
ciently supplied. But it is at all times safe and proper to insert them, when-
ever the offence is attended with an actual or constructive force, or affects the

The term "unlawfully," which is frequently used in the description of the
offence, is unnecessary, wherever the crime existed at common law, and is man-
ifestly illegal. So it has been adjudged, that it need not be used in an indict-
REQUISITES OF BILL OF INDICTMENT.

ment for a riot, because the illegality is sufficiently apparent, without being expressly averred. But if a statute, in describing an offence which it creates, uses the word, the indictment, founded on the act, will be bad if it be omitted. —1 Chit. Crim. Law, 241.

The word "knowingly," or "well knowing," will supply the place of a positive averment, that the defendant knew the facts, subsequently stated. It is absolutely necessary to constitute guilt, as in indictments for uttering forged tokens, or other attempts to defraud, or for receiving stolen goods, and offences of a similar description; but if notice or knowledge be unnecessarily stated, the allegation may be rejected as surplusage.—1 Chit. Crim. Law, 242.

There are certain terms which are usually inserted in the part of the indictment we are now examining, which mark out the color of the offence with precision, and which are absolutely necessary to determine the judgment. Thus, every indictment for treason must contain the word "traitorously;" every indictment for burglary, "burglariously;" and "feloniously" must be introduced in every indictment for felony. And these words are so essential, that if the word feloniously be omitted in an indictment for stealing a horse, it will be only a trespass. In the case of treason against the king's person, the offence must also be laid against the duty of the defendant's allegiance; and the word "natural" is generally added, if he is born within the realm, and omitted if he is an alien, and only resident in England; but it does not seem, in any case, necessary to state more than the term allegiance, in general. The word "traitorously," having been well laid to the statement of the treason itself, it is not necessary to state every overt act to have been traitorously committed. In indictments for inferior treasons, as those which relate to the coin, it is usual to lay the offence to have been feloniously, as well as traitorously, committed; but there is no authority which renders this essential. It is, however, always proper to lay petit treason in this way, as well as to state in conclusion, that the defendant did traitorously and feloniously kill and murder, because then, though he be acquitted of the petit treason, he may be convicted as for a common murder.—1 Chit. Crim. Law, 242.

The crime of murder, which is next in point of degree, has, as well as treason, terms peculiarly appropriated to its own description. Like other felonies, the word feloniously must be inserted. As a conclusion from the facts averred, it must be stated, that so the defendant "feloniously, of his malice aforethought, did kill and murder" the deceased; for without the terms "malice aforethought," and the artificial phrase "murder," the indictment will be taken to charge manslaughter only. Where the death arises from any wounding, beating, or bruising, it is said that the word "struck" is essential, and the wound or bruise must be alleged to have been "mortal;" nor is the latter word supplied by the allegation, which is at all times necessary, that the deceased died in consequence of the violence inflicted upon him.—1 Chit. Crim. Law, 243.

NOTE.—The Supreme Court have held, that the first section of the fourteenth division of the penal code, which declares that "every indictment, or accusation of the grand jury, shall be deemed sufficiently technical and correct, which states the offence in the terms and language of this code, or so plainly that the nature of the offence charged may be easily understood by the jury," has rendered the use of the term "murdered," in an indictment for murder, unnecessary. They also intimate that a liberal construction will be given to the above section of the penal code.—Studstill vs. The State of Georgia, 7 Ga. Rep., 2.

So, in indictments for rapes, the words "feloniously ravished and carnally knew," are necessary; nor is the want of the former supplied by the insertion of the latter. And though some have inclined to think that the words "carnally knew" are not absolutely necessary, it would certainly be very unsafe to omit them. And in an indictment for an unnatural crime, the words of the statutes taking away clergy, must be followed. So also in all indictments for
REQUISITES OF BILL OF INDICTMENT. 

mayhem, the words “feloniously did maim” must, of necessity, be inserted.—
1 Chit. Crim. Law, 244.

The essential words in an indictment for burglary are, “feloniously and bur-
glariously broke and entered the dwelling-house in the night-time,” about a named
hour. And besides these requisites, the felony committed or intended must be
set forth in technical language; so in an indictment for simple larceny, the
words “feloniously took and carried away” the goods, or “took and led away” the
cattle, are necessary; and, in case of robbery from the person, the words
“feloniously, and against the will,” must be introduced; and it is usual to aver
a putting in fear, though this does not seem to be requisite. And the word
“violently” was formerly regarded as essential, but has been held not to be
necessary. And “feloniously and piratically” are both necessary in an indict-
ment for piracy.—1 Chit. Crim. Law, 244.

There are some misdemeanors which require to be described with particular
language: thus, “common barrators,” and “scolds,” must be indicted as such.
The word “riot,” must be inserted in all indictments for rioting; and “main-
tained,” in all indictments for maintenance; and “with strong hand,” in all in-
dictments for a forcible entry.—1 Chit. Crim. Law, 244.

The words “wickedly; maliciously; of his own wicked and corrupt mind; being a
person of evil disposition,” &c., are, in general, mere matter of aggravation, and not
material. But where an act must be done with a particular intent, in order to
render it criminal, an evil intention must be averred upon record; and in such
case the intent must be proved as laid, or the variance will be fatal: thus, in
burglary, if the entry be alleged to have been made with intent to commit a
specific felony, the indictment will not be supported by evidence of an entry
with intent to commit another kind of felony. It is usual, therefore, in these
cases, in different counts, to lay the same fact with different intents; as one
count for a burglarious entry, with intent to steal the goods of P D, and
another count for the same entry, with intent to kill and murder him.—1 Chit.
Crim. Law, 245.

Conclusion of the Indictment.—In the conclusion of the indictment, or each
count, there are several sentences in common use, which do not seem to be at
all material: of this description are, “to the great damage of the party,” par-
ticularly injured by the offence; “to the evil example of all others in like case
offending,” and “to the great displeasure of Almighty God,” and though it is
usual to conclude an indictment for treason “contrary to defendant’s allegiance,”
yet it will suffice if that allegation be in the body of the indictment. But the
words, “to the common nuisance of all the liege subjects of our Lord the King,”
seem, according to the better opinions, to be necessary in all indictments for
common nuisances; and against scolds and barrators. The words, “in contempt
of our said Lord the King and his laws,” are frequently used in indictments
in superior courts, in informations of obstruction, and in actions upon statutes,
but they have been frequently omitted, and the proceedings held valid.—1 Chit.
Crim. Law, 246.

Of Several Counts.

It is frequently advisable, when the crime is of a complicated nature, or it is
uncertain whether the evidence will support the higher and more criminal part
of the charge, or the charge precisely as laid, to insert two or more counts in
the indictment. This practice, indeed, is the more necessary, because, though
the petit jury may find the prisoner guilty of a part, and acquit him of the res-
idue, the grand jury cannot separate the parts of a count, but must either find
a true bill, or throw out the whole; while they may find some whole count,
and reject others from the indictment.—1 Chit. Crim. Law, 249.
It is, however, proper to observe, that without the addition of several counts, the jury may frequently find the prisoner guilty only of a minor offence included in the charge, or a part of the offences there stated.—1 Chit. Crim. Law, 251.

The principal reason, therefore, in these cases, for the introduction of second counts, applicable to the inferior charge, is, as before observed, that the grand jury cannot, like the petit jury, select parts of a count as true, but must either find or reject the whole of every distinct count in the indictment.—1 Chit. Crim. Law, 251.

Joinder of Several Offences.

In cases of felony, no more than one distinct offence, or criminal transaction, at one time, should regularly be charged upon the prisoner, in one indictment, because, if that should be shown to the court before plea, they will quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in his challenge to the jury; for he might object to a juryman’s trying one of the charges, though he might have no reasons so to do in the other; and if they do not discover it until afterwards, they may compel the prosecutor to elect on which charge he will proceed; but this is only matter of prudence and discretion, which it rests with the judges to exercise; for, in point of law, there is no objection to the insertion of several distinct felonies of the same degree, though committed at different times, in the same indictment, against the same offender; and it is no ground either of demurrer or arrest of judgment.—1 Chit. Crim. Law, 253.

In the case of misdemeanors, the joinder of several offences will not, in general, vitiate, in any stage of the prosecution; for, in offences inferior to felony, the practice of quashing the indictment, or calling upon the prosecutor to elect on which charge he will proceed, does not exist; but on the contrary, it is the constant practice to receive evidence of several libels and assaults, upon the same indictment. It was, indeed, formerly held, that assaults on more than one individual could not be joined in the same proceeding, but this is now exploded; for though two persons cannot join in a civil action, the reason is, that the damages are several, which cannot apply to criminal proceedings when no compensation is given to the prosecutor, and public security is the object to be obtained.—1 Chit. Crim. Law, 254.

For the same reason, an indictment for a libel on a body of trustees will be good, though it profess to be for a libel on three of them only. And it has been held that it is no objection on demurrer, that several defendants are charged in different counts of the same indictment with several offences of the same nature, though it may be a ground for applying to the court, in its discretion, to quash the indictment. But care must be taken that the offences are not to be charged in such a manner as will confound the evidence; and that no counts be joined, upon which the judgments must necessarily be different, as a charge of felony with another of mere misdemeanor; for it may operate like a misjoinder in civil actions, and if so, the indictment will be bad on demurrer, or on motion in arrest of judgment. Still, however, it is no objection to an indictment, that the punishment for one of the offences is positive, and for the other discretionary; and after a general verdict, the objection of misjoinder may be avoided, by entering up judgment upon a particular count: and, therefore, when a defendant was indicted on 9 Ann. c. 14, for an assault, on account of money won at gaming, the punishment of which is prescribed by the statute; and for an assault at common law; after a general verdict, a motion in arrest of judgment was abandoned by the counsel for the prisoner. And if two distinct offences are charged, and one of them is not indictable, or laid with sufficient
REQUISITES OF BILL OF INDICTMENT.

precision, judgment will be given for the crown if the other be sufficient upon general demurrer; for we have already seen, that part of an indictment may be good, though the other part be defective.—1 Chit. Crim. Law, 255.

Joinder of several Principals.

When the act is such as several may join in, all the offenders may be included in the same indictment.—1 Chit. Crim. Law, 268.

But where the criminality arises in consequence of some personal disqualification to do an act, in itself lawful, as for exercising a trade under the statute of Elizabeth, not having served an apprenticeship, each individual must be prosecuted alone.—1 Chit. Crim. Law, 268.

And the same persons being concerned as principals in the same offence, may all be joined in the same indictment, though the degrees of guilt may differ.—1 Chit. Crim. Law, 269.

And there seems to be no reason why, on the trial, if two be indicted for murder, the jury may not find it murder as to one, and manslaughter as to the other. But if this distinction appear to the grand inquest, upon the evidence to support the bill, a new bill for the inferior offence should be presented, against the less guilty individual.—1 Chit. Crim. Law, 270.

Several offenders may also, for different offences of the same kind, be in some cases included in the same indictment, the word "severally" being inserted, which makes it severally, as to each of them, though the court will, in its discretion, quash the indictment if any material inconvenience appear to arise from the mode in which it is preferred.—1 Chit. Crim. Law, 270.

But it seems that to warrant such joinder, the offences must be of the same nature, and such as will admit of the same plea and sentence, or it may operate like a misjoinder in civil proceedings, and be bad upon demurrer, or after a general verdict, in arrest of judgment. In all these cases, however, the charge is severally against each individual, and the jury may acquit some, while others are found guilty. But there are some exceptions to this rule, as in cases of conspiracy and riot, where one cannot be indicted for an offence committed by himself alone; and the acquittal of so many as shall render it impossible for the rest to have committed the offence, must of course extend to him. And if several be concerned in executing a treasonable or seditious design, it is best to include them in one proceeding, that the evidence for the crown may not be disjointed. On the other hand, an indictment may be defective for including too many; as for indicting a woman for the murder of her illegitimate child, and another person being present, aiding and abetting; if the only evidence of guilt be the concealment, both the prisoners might be acquitted. As each individual is, in all cases, responsible only for his own criminal actions or omissions, the result, whether the defendant be indicted alone, or with others, will be similar; and no inconvenience can arise to the defendants from being jointly indicted; for if, on the trial, the evidence affects them differently, the judge, in his discretion, will select such parts of it as are applicable to each, and leave their cases separately to the jury, in order that each individual may have an impartial trial, unprejudiced by the case of his associates.—1 Chit. Crim. Law, 271.

Joinder of Accessories.

As, at common law, the accessory cannot be convicted before the principal, without his own consent, and as the crime of the former depends upon the guilt of the latter, it is both usual and proper to include them in the same indictment: in this case, if the principal plead the general issue, the accessory will be required to plead also; and if he plead the same plea, both may be tried by the same inquest, but the principal must be first convicted; and the jury will
be charged, if they find the former not guilty, that the latter must also be acquitted. Where the parties are thus joined in the same proceeding, the proper course is first to state the guilt of the principal, as if he alone had been concerned, and then, in case of accessories before the fact, to aver that C D, late of, &c., (the procurer) before the committing of the said felony and murder, (or burglary, as the case is,) in form aforesaid, to wit, on, &c., with force and arms, &c., did maliciously and feloniously incite, move, procure, aid and abet, (or “counsel, hire and command,”) the said A B (the principal felon,) to do and commit the said felony, and in manner aforesaid, against the peace, &c. And where a man is indicted as accessory after the fact, together with his principal, the original felony is to be stated in the same way, and the conclusion must aver that the accessory “did receive, harbor and maintain,” &c., the principal felon, “well knowing” that he had committed the felony. The averment of knowledge is indispensably requisite, because without it the guilt does not manifestly appear: but it is in no case necessary to use the word “accessory” in the indictment, or to set forth the means by which the accessory before the fact incited the principal to commit the felony, or the accessory after received, concealed, or comforted him; for it is perfectly immaterial in what way the purpose of the one was effected, or the harboring of the other secured; and as the means are frequently of a complicated nature, it would lead to great inconvenience and perplexity, if they were always to be described upon the record.—1 Chit. Grim. Law, 273.

In an indictment against the accessory alone, after the conviction of the principal, it is not necessary to aver that the latter committed the felony; or, on the trial, to enter into a detail of the evidence adduced against him; but it is sufficient to recite, with certainty, the record of the conviction, because the court will presume everything on the former occasion to have been rightly and properly transacted: but this presumption must give way to positive evidence of the innocence of the principal, which it is fully competent to the supposed accessory to produce; and, therefore, if it appear on the trial that the principal was erroneously convicted, the defendant indicted as accessory is entitled to an acquittal.—1 Chit. Grim. Law, 273.

It is in no case necessary, in a separate indictment against the accessory, to aver the judgment pronounced on the principal. Formerly, indeed, it was thought that the latter must be attainted before the former could be prosecuted; and, therefore, when the principal stood mute, obtained his pardon, or was allowed the benefit of clergy, the accessory escaped unpunished.—1 Chit. Grim. Law, 274.

So, even though the principal felon be unknown, a receiver of stolen goods may be indicted for the misdemeanor. But if the original offender be known, an averment that he is unknown will be fatal. It is not necessary to allege in such indictment, that the principal cannot be taken, or has not been convicted. —1 Chit. Grim. Law, 275.

**Unnecessary Length of Indictments, &c.**

Having thus considered the forms of indictments, and the principal rules by which they are governed, we have now only to take notice of some circumstances which may arise after their presentment, from their length, or the deficiency of any of their requisites:

Where the indictment is of a vexatious length, the court will refer it to the master to see what part of the record was unnecessary, and make an order that the clerk of the peace shall pay the expense of the unnecessary matter; as where an indictment, removed by certiorari from the quarter sessions for Middlesex, appeared to be of an improper length, stating all the continuances in the
REQUISITES OF BILL OF INDICTMENT.

When a Variance will be Fatal.

It will be proper here also to inquire what variance will be fatal. We have already seen with what seeming accuracy time, place, sums, magnitude, quantity and value, must be described; but a variance in the evidence from these points will never be material, unless the essence, or degree of the offence, consists in their correctness. But where time is laid as part of the substance of the charge, as in case of burglary, we have seen, that such a mistake, as will vary the nature of the crime, will be fatal. And it is a general rule, that whenever an allegation may be wholly struck out of an indictment, without injury to the charge, it may be rejected as surplusage.—1 Chit. Crim. Law, 294.

We have already seen the degree of accuracy with which a statute must be recited. With respect to pleading other documents, much must depend upon the mode in which the indictment professes to describe the instrument, and the importance of the instrument, to the essence of the crime: thus, where it is mere matter of inducement, a substantial description will suffice, and a technical and formal variance will not be fatal, as in an indictment for perjury, committed upon the trial of an indictment for an assault, if the latter proceeding is set forth, and the word depaired used for despaired, the mistake will not be material. But then no phrase must be used, which by legal intendment, professes an exact recital, as “to the tenor and effect,” or “aforesaid,” or “in the words and figures following,” but “in manner and form following, that is to say,” which do not compel a literal precision. And even under the word “tenor,” in an assignment of perjury, the term understood instead of understood, is not a fatal mistake, because it does not alter the sense, by changing one word for another. For the same reason, “received” instead of “received,” in setting forth a forged bill of exchange; and Seagrave for Seagrave, on a plea of nulli tali record, have been held immaterial. So, in the introduction of the word if into the statement of a writ to the sheriff, in case of bribery at an election, will not prejudice, but may be rejected as surplusage. And in an indictment for perjury, in a bill in chancery, the misstatement of the title of the party to whom it was directed, will not vitiate.—1 Chit. Crim. Law, 295.

But wherever it is necessary to set forth an instrument with precision, as that on which the charge is founded, any variance between the recital and the instrument produced in evidence, which varies the sense, will be fatal: thus, where a judgment is the ground of proceeding, and it is stated to have taken place in the wrong term; where, in an indictment for perjury, in setting forth the Nisi Prius roll, the name of the associate is mistaken; where a word is supplied in an assignment of perjury, committed in an information before a justice, though in order to complete the sense; and where, in an action for malicious prosecution, the acquittal is alleged to have taken place “on Wednesday next after 15 days, &c., in the court of our lord the King, before the King himself, at Westminster, before the Lord Chief Justice,” when it appears from the record, that the trial was at Nisi Prius, the proceedings have been regarded as altogether erroneous. And thus, not to multiply instances, in all prosecutions for forgery, perjury, blasphemy, seditious words, libels, &c., where the indictment is founded upon the very terms and expressions employed by the defendant, and which must be set out on the record, any error by which the sense is affected, will be material. And the scrupulous nicety, in these respects, has been carried to so
REQUISITES OF BILL OF INDICTMENT.

great a length, that if the pronoun "I" be inserted in the description of a will, forged by the defendant, he will be entitled to an acquittal. So, though an indictment be not founded on any written document, yet if the evidence vary materially from the facts charged, the indictment cannot be supported; and therefore, where an indictment for obtaining money by false pretences, stated that the defendant pretended "that he had paid a sum of money into the Bank of England," and the evidence was, that the defendant said generally, "that the money had been paid into the Bank of England," this was held a fatal variance.—1 Chit. Crim. Law, 296.

If an indictment charge the defendant with two separate and distinct acts, as composing and publishing a libel, it is not necessary to prove both facts; but he may be found guilty of that only which is shown in evidence against him. But this does not extend to indictments for perjury, where the whole matter of the defendant's false testimony must be set forth, and where, if the least part of one entire assignment be unproved, he cannot be convicted. An indictment for perjury at the assizes may, however, allege the oath to have been taken before judges in the commission, though the names of both are inserted in the caption.—1 Chit. Crim. Law, 297.

If the prosecutor state the crime to have been committed in the dwelling-house of a third person, and mistake the name, the error will be material. So if, in an indictment for house-breaking, the name of the owner be wrongly stated, the error will vitiate. We have already seen in what cases unnecessary allegations will be fatal, unless duly proved, and when they may be rejected as surplusage. And the operation of defects in particular parts of the indictment have also been examined, in considering the particular rules by which each clause and allegation is affected.—1 Chit. Crim. Law, 297.

Of Amendments of Indictments.

It seems to be settled, both by the express exceptions of the statutes of amendments, and the current of authorities, that indictments are not within their operation; and they therefore stand upon the same principles, with respect to amendment, as those to which all pleadings were subject at common law. And as the indictment is the finding of a jury upon oath, it cannot be amended by the court, without the concurrence of the grand inquest, by whom it is presented. And it is the common practice for the grand jury to consent, at the time they are sworn, that the court shall amend matters of form, altering no matter of substance; and mere informalities may, therefore, be amended by the court, before the commencement of the trial; though it was formerly the practice to award process to the grand jury to come into court and amend them.—1 Chit. Crim. Law, 298.

When Indictment may be Quashed.

When the indictment, or the caption, is defective, the court have a discretionary power to quash it immediately, or to oblige the defendant to plead or demur, which rests entirely with themselves. But though this is a matter for their discretion, they are guided by certain rules, in its exercise, which we shall proceed to examine. The application may be made to the court, either by the prosecutor, or the defendant, or any one, as amicus curiae, may suggest the error to the court, in order that they may exercise their discretion.—1 Chit. Crim. Law, 299.

When the application is made by the prosecutor, the court will not quash the indictment, as a matter of course, unless it appear to be clearly insufficient; nor even then, after the defendant has pleaded, unless another good indictment has been found against him; nor where he has been put to extra expense, unless
the costs are first paid him. But where the indictment is insufficient, and the defendant is not put to inconvenience, the court will quash it upon the motion of the prosecutor, without the consent of the defendant, though it is for a crime; in which they never show the same indulgence upon the application of the prisoner.—1 Chit. Crim. Law, 299.

When the motion is made on the part of the defendant, the rules by which the court are guided are more strict, and their objections are more numerous; because, if the indictment be quashed, the recognizances will become ineffectual; and the courts usually refuse to quash on the application of the defendant when the indictment is for a serious offence, unless upon the clearest and plainest ground, but will drive the party to a demurrer, or motion in arrest of judgment, or writ of error. It is, therefore, a general rule, that no indictments which charge the higher offences, as treason, or felony, or those crimes which immediately affect the public at large, as perjury, forgery, extortion, conspiracies, subordination, keeping disorderly houses, or offences affecting the highways, or executing legal process, will be thus summarily set aside. 1 Chit. Grim. Law, 300.

But the court will not quash an indictment on a statute, merely because it does not conclude “against the form,” &c.; but leave the defendant to demur. And the defect, in general, must be very gross and apparent, to induce the court to dismiss the indictment in this summary way, instead of leaving the party to the more usual remedies, of demurring, or moving in arrest of judgment; where, however, a defect is shown, which induces the court thus to interfere, they must quash the whole indictment, for they cannot strike out some counts, and leave others to be determined on the trial. If the defendant did not duly appear, or has forfeited his recognizance, his application to quash the indictment will be ineffectual; and although the court may, in their discretion, quash the indictment, at any time, before the jury are charged to try the prisoner, they commonly, in order to avoid collusion, refuse to do so after he has pleaded, at least unless another good indictment has been found: if, therefore, the prosecutor desire to quash, he must apply in an early stage of the proceedings.—1 Chit. Crim. Law, 302 and 303.

After the indictment against the defendant has been quashed, a new and more regular one may be preferred against him: he can gain, therefore, in general, very little advantage, except delay, by such an application; and, therefore, usually reserves his objections till after the verdict, when, if the indictment be found to be insufficient, the court are bound, ex debito justitiae, to arrest the judgment.—1 Chit. Crim. Law, 304.

**RULES OF PLEADING.**

We come now to consider the various modes by which a defendant may plead on the record, his objection, or answer, to the charge alleged against him. The following is a general outline of these matters, in the order in which they naturally arise.

*Pleas to the jurisdiction.*

Demurrer.

Dilatory pleas.

In abatement.

*Pleas in bar of the indictment.*

Auterfois acquit.

Auterfois convict.

Matter of record, pardons, &c.

*Pleas to the matter of the indictment.*

Not guilty.

Special pleas.
Before we proceed to consider each of these descriptions of answers, or objections, to the indictment, with the proceedings subsequent to them, it will be proper to notice some of those general qualities which apply to criminal pleading; such as the number of pleas admitted; the time of putting them in; the amendments allowed; of the withdrawing one plea, in order to put in another, and of the entries to be made on the record.

Of the number of pleas, &c.—At common law, there was but one rule, which applied alike to civil and criminal proceedings: that the defendant must rely upon one ground of defence, and that pleading double was never to be admitted.—1 Chit. Crim. Law, 354.

Criminal proceedings, therefore, remain under the same restriction which existed as to all matters at common law, and no more than one plea can be put in, to answer any indictment or criminal information. In case of felony, however, if the prisoner plead in bar or abatement, and it be adjudged against him, he will have liberty at the same time, or even afterwards, to plead over to the matter of the indictment, as if he had never relied upon any other ground of defence; for though a man may lose his property by mispleading, he cannot forfeit his life by any technical nicety or legal error.—1 Chit. Crim. Law, 354.

But it does not include misdemeanors of any description, as matter of right; and therefore, in these cases, if the defendant plead in abatement or bar, and an issue in fact thereon be determined against him, he will have totally lost the benefit of a trial on the offence itself, and sentence may be pronounced, as though he had been regularly convicted. It seems, however, to be in the discretion of the court to allow him still to plead not guilty, and this they will probably exercise, when the penalty incurred on conviction is very severe.—1 Chit. Crim. Law, 354.

When the defendant has any special matter to plead in abatement or in bar, as misnomer, a former acquittal or conviction, a pardon, &c., he should plead it at the time of arraignment, before the plea of not guilty.—1 Chit. Crim. Law, 355.

Amending plea.—Though indictments and appeals are excepted from the statutes of amendments, yet it seems that pleas to them are amendable at common law, before they are filed upon the record. The reason of this distinction is, that the pleading is not perfected while it is only on paper, and during the time in which the proceedings are only in agitation, the court have a power over them; but when once they are entered on the roll, they can only be altered by virtue of some legislative provision.—1 Chit. Crim. Law, 355.

When once the defendant has pleaded, he is bound to abide by the defence which he has chosen, and cannot, as matter of right, withdraw it in order to rely on another. But a plea of not guilty may be withdrawn, in order to confess the indictment, and as we have seen already, the entry will be relictâ verificatione indictamentum cognovit. And the court may allow the defendant, as a matter of favor, with the consent of the attorney-general, to withdraw a plea of the general issue, and object to the jurisdiction before which the trial is to proceed. In this case, if the jury be sworn, a juror will be withdrawn before evidence given, the inquest discharged, and an entry made upon the record of the permission to alter the plea, and the formal proceedings by which it was effected. So leave will, in some cases, be granted to the defendant to withdraw a plea, and enter a demurrer in its room; and by leave, a demurrer may be withdrawn.—1 Chit. Crim. Law, 355.

Of pleas to the jurisdiction, &c.—In considering the nature of the several pleas on which the defendant is able to rely, we come first to examine those which he may offer to the jurisdiction of the court before which the indictment
RULES OF PLEADING.

is preferred, because these are preliminary to any objection to the proceedings themselves, and aim at invalidating the whole, and at showing that there is no necessity for any defence on the part of the persons indicted. They may be successfully relied on, when the court has no cognizance of the crime alleged on the record, as where a party was accused of a rape at the sheriff's tourn, or of treason at the quarter sessions. In general, any objection to the jurisdiction must be pleaded, and cannot be taken advantage of under the general issue. But where a statute directs that particular matter shall be determined only within a certain boundary, or by certain magistrates, this may be shown under the plea of not guilty. So, also, where the objection proves that no court in England can try the indictment, it may be given in evidence without being specially pleaded. And it has been held, that objections to the jurisdiction, apparent on the face of the indictment, by the caption, when returned on a certiorari or otherwise, may be well taken on demurrer; but if a party be indicted before justices at sessions, it should seem that he may plead specially, that the offence did not arise within their jurisdiction, though the matter might be given in evidence under the general issue. From the nature of this plea, it must evidently be pleaded before the general issue, because, by pleading not guilty, the defendant admits the power of the court to try him, and refers his cause to their decision. But we have seen that, by permission, the latter may be withdrawn, and the former substituted in its place.—1 Chit. Crim. Law, 356.

Form of the plea.—This plea must not only object that the court before which the proceedings are taken has no jurisdiction over them, but must show what court has authority to proceed to try them; for, if there be no other mode of trial, that circumstance will, of itself, give the King's Court jurisdiction. It is not necessary that it should conclude by answering over to the felony, or put in issue the facts of guilt or innocence, though it may do so. As this is a dilatory plea, it seems necessary to add an affidavit of its truth, according to the principle we have already stated.—1 Chit. Crim. Law, 357.

To this plea the crown may demur or reply instanter; and if the court determine against the plea, the defendant will have judgment to answer over to the felony. But in case of misdemeanors, no judgment of respondeas ouster is of right demandable, where an issue in fact is found against the defendant, for the decision operates as a conviction, though, as a matter of favor, the defendant may still be admitted to plead not guilty.—1 Chit. Crim. Law, 357.

Form of the Plea.

And the said John Doe, in his own proper person, having heard the said indictment read, saith, that the superior court of the county of Houston here, ought not to take cognizance of the assault and battery in said indictment above specified, because protesting that he is not guilty of the same, and that if he was guilty of said crime, the superior court of the county of Bibb, in said State, is the only court having jurisdiction thereof. And this he, the said John Doe, is ready to verify; wherefore, he prays judgment, if the said superior court of the county of Houston here, will or ought to take cognizance of the indictment aforesaid; and that by the court here, he may be dismissed and discharged, &c.

In person appeared before me, John Doe, the defendant in this prosecution, who being duly sworn, saith, that the above plea is true in substance and matter of fact.
Demurrer.

The next mode by which the defendant may object to the indictment, is by demurrer, a term derived from demorare or demeurer, and signifies that the party will go no further, because the indictment or proceeding is defective in substance, or in formal statement: thus, if a man be indicted for feloniously stealing a greyhound, which is an animal in respect whereof no theft can be committed, the defendant may demur; for while he admits the taking, he may deny the felony. But it seems to be unsettled, whether he can demur on account of the omission or bad statement of the defendant's name or addition, or must plead it in abatement. The demurrer puts the legality of the whole proceedings in issue, and compels the court to examine the validity of the whole record; and therefore, in an indictment removed from an inferior court, if it appear from the caption that the court before which it was taken had no jurisdiction over it, it will be adjudged to be invalid. When once a demurrer is filed, the defendant cannot withdraw it without the consent of the parties on whose prosecution he is indicted, or at least without the permission of the court. But it is certain that he may demur at any time before trial, in cases of misdemeanors, even after pleading, on his solicitor's obtaining a common side-bar rule, from the clerk of the rules, for leave to enter a retraxit. On the trial of a capital offence, as treason, though in strictness, the defendant has on his arraignment pleaded not guilty, he ought not to object to the indictment till after his trial, yet it is not unusual to hear his exceptions before the witnesses are called, and where the parts of an indictment are severable, as the overt acts of treason, if one or more be imperfectly stated, evidence under the statement may be resisted.

As to the form of the demurrer, it seems that, in capital cases, it may be ore tenus, on whichever side the objection arises. It seems that the defendant, when indicted for felony, may either deny, and at the same time plead over to the felony, or that he may take the latter course after the demurrer is found against him.

Form of the Demurrer.

And the said John Doe, in his own proper person, cometh into court here, and having heard the said indictment read, saith that the said indictment, and the matters therein contained, in manner and form as the same are above stated and set forth, are not sufficient in law, and that the said John Doe is not bound by the law of the land to answer the same; and this he is ready to verify: wherefore, for want of a sufficient indictment in this behalf, the said John Doe prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment specified.

Of Dilatory Pleas.

All the pleas which were formerly used as declinatory of trial, have either been altogether abolished, or have fallen into disuse.

Of Pleas in Abatement.

Pleas in abatement are founded either on some defect apparent on the face of the indictment, without reference to any extrinsic fact, or are founded upon some matter of fact, extrinsic of the record, which renders the indictment insufficient.
defendant, will abate the indictment. So, if the defendant be misnamed, he may plead this also in abatement; but for objections apparent on the face of the indictment itself, without reference to any extrinsic fact, it is more usual to move to quash it or to demur.—1 Chit. Crim. Law, 362.

Formerly, there was a distinction taken between the Christian and the surname, that the former might, but the latter could not, be pleaded in abatement; but this is now settled to be groundless, and an error in the latter is equally fatal, with a mistake in the former.—1 Chit. Crim. Law, 363.

We have already considered the various instances which have arisen under these general rules, when we examined the accuracy with which the name should be stated, that it will be unnecessary here to repeat them.—1 Chit. Crim. Law, 363.

It has been holden to be no good plea in abatement of an indictment, that another prosecution for the same offence is depending, though it will be a ground for the court to quash one of them, on motion, if it should appear to be defective. But all mistakes in the name must be thus pleaded, if any advantage is to be taken of them, for they will not form any ground of error, or in arrest of judgment.—1 Chit. Crim. Law, 364.

Manner and time of pleading.—This plea, like the other proceedings in misdemeanor, may, in the King's Bench, be put in by attorney, as well as if the party indicted had appeared in person; for if he be not the person intended, the attorney-general may reject it and sign judgment against the real defendant, on default of an answer. But if he accepts the plea, he thereby admits the party by whom it is made to be the person intended, and cannot afterwards object that it is made by a stranger. It is always necessary to plead it before any plea in bar, as the defendant will be estopped by an issue. And the proper time to take advantage of it, is upon the arraignment, when the prisoner is called upon to answer. In prosecutions for treason, the plea is in writing, signed by counsel, and if demurred to, the defendant must immediately join in demur.—1 Chit. Crim. Law, 364.

Form and requisites of plea in abatement.—In case of felony or treason, a plea in abatement may be admitted ore tenus, and the issue may be joined without delay. But the regular practice is to engross it upon parchment, procure it to be signed by counsel, and for the defendant to deliver it in open court, upon being charged with the indictment. It is always necessary to disclose the real name, and by that statement the defendant is concluded.—1 Chit. Crim. Law, 364.

In all cases of felony, the defendant should answer over to the matter of the charge, and if this be omitted, the court will order it to be done, and insert it at the bottom of the parchment; but if this be omitted, the plea will not be demurrable on that account, because he might plead over to the felony, after the plea has been determined against him. But in prosecution for misdemeanor, the defendant, as we have seen, cannot plead over to the offence, together with a plea in abatement. The plea ought to have a proper conclusion, "praying judgment of (or "on") the indictment, and that it may be quashed," for the court will not give such judgment as appears proper on the whole record, as they will on a plea in bar, unless it be regularly demanded.—1 Chit. Crim. Law, 364.

Form of the Plea.

And John Doe, who is indicted by the name of James Doe, in his
own proper person, cometh into court here, and having heard the said indictment read, saith, that he was baptized (or was always known) by the name of John, to wit, in the county aforesaid; and by the Christian name of John, hath always (since his baptism) hitherto been called, or known; without this, that he, the said John Doe, now is, or at any time hitherto, hath been called or known by the Christian name of James, as by the said indictment is supposed; and this he, the said John Doe, is ready to verify; wherefore, he prayeth judgment of the said indictment, and that the same may be quashed, &c.

In person appeared before me John Doe, the defendant in this prosecution, who being duly sworn, saith, that the above plea is true in substance and matter of fact.

If a plea of misnomer be put in, it is the best course to allow it, as the defendant is concluded by the name he discloses in his plea, and he may be immediately re-indicted. The prosecutor may, however, if he thinks fit, deny the plea, or reply that the defendant is known as well by one Christian name or surname as another, and if he succeeds, judgment will be given for the crown; or the prosecutor may demur to the plea, and in cases of felony, the demurrer and joinder may be ore tenus.—1 Chit. Orim. Law, 365.

Judgment on plea in abatement and consequences.—When a plea in abatement is found in favor of the defendant, the judgment, in case of misdemeanor, is, that he be not compelled to answer the indictment, but depart the court without delay. But, on an accusation for a capital crime, after the indictment has been abated for misnomer, the court will not dismiss the prisoner, but cause him to be indicted de novo, by the name disclosed in his plea; to which, we have seen, he can make no second objection. And if the grand jury be not discharged, another bill may be immediately preferred, whatever may be the description of the offence. If it be pleaded by one of several defendants and allowed, it will only quash the indictment as to him, without affecting it as to those who are correctly indicted. 1 Chit. Grim. Law, 367.

If a plea in abatement be found against a defendant, in case of felony, he shall have judgment of respondeas ouster. If, however, judgment be given against the defendant, either on demurrer to his plea in abatement, or on demurrer to the prosecutor's replication to such plea, the judgment is respondeas ouster, and not final.—1 Chit. Crim. Law, 367.

**Pleas in Bar of the Indictment.**

We come now to the consideration of special pleas in bar, which, without entering into the facts of the offence, show that the defendant ought not at all to be called upon to answer the indictment. The principal of these are, a previous acquittal, conviction and pardon, which we shall now proceed to examine. —1 Chit. Crim. Law, 368.

**Auterfois acquit.**—The plea of auterfois acquit is founded upon the principle that no man shall be placed in peril of legal penalties more than once, upon the same accusation. It has, therefore, been generally agreed that where a man has once been pronounced “not guilty,” on a valid indictment or appeal, he cannot afterwards be indicted again upon a charge of having committed the same supposed offence.—1 Chit. Crim. Law, 368.

When this plea may be pleaded.—In order, however, to entitle the defendant to this plea, it is necessary that the crime charged be precisely the same, and that the former indictment, as well as the acquittal, was sufficient. As to the first of these requisites, the identity of the offence, if the crimes charged in the former and present prosecution are so distinct, that evidence of the one will not
support the other, it is inconsistent with reason, as it is repugnant to the rules
of law, to say, that the offences are so far the same, that an acquittal of the one
will be a bar to the prosecution of the other. But, on the other hand, it is
clear, that if the charge be in truth the same, though the indictments differ in
immaterial circumstances, the defendant may plead his previous acquittal, with
proper averments; for it would be absurd to suppose that by varying the day,
parish, or any other allegation, the precise accuracy of which is not material,
the prosecutor could change the rights of the defendant, and subject him to a
second trial: thus, as to the point of time, if he be indicted for a murder, as
committed on a certain day, and acquitted, and afterwards be charged with
killing the same person, on a different day, he may plead the former acquittal in
bar, notwithstanding this difference, for the day is not material; and this is a
fact which could not be twice committed. And the same rule applies to accu-
sations of other felonies, for though it is possible for several acts of the same
kind to be committed at different times by the same person, it lies in averment,
and the party indicted may show that the same charge is intended. And if he
be indicted for the murder or assault of a certain person unknown, and after-
wards charged on an indictment for the same offence, he may rely upon the
previous acquittal. So, if the person killed be differently, though sufficiently
described, in two distinct indictments, the defendant may show that the same
individual is intended.

But then, it is necessary to aver, that the party slain was known by both
names, so as to maintain the sufficiency of the first proceedings, for if they
were merely nugatory, they will form no ground of defence to any subsequent
prosecution. And hence we may observe, that the great general rule upon
this part of the subject is, that the previous indictment must have been one
upon which the defendant could legally have been convicted—upon which his
life or liberty was not merely in imaginary, but in actual danger, and conse-
quently, in which there was no material error. So that all variations not in-
consistent with the validity of both proceedings, such as differences in the day,
the vill, or the quantity, may be shown to be merely technical. But if the
variances are in those things which are material, \textit{auterfois acquit} must not be
pleaded ; for either the first indictment was ineffectual, and, therefore, the ac-
quittal is of no avail, or the second will prove not applicable to the evidence,
and, therefore, the objection is needless: thus, if a person be indicted of a
crime laid to be done at a certain parish, in a particular county, and found not
guilty, and afterwards accused of the same fact, at another place, within the
same county, he may plead his former acquittal, for the vill is altogether imma-
terial, and either indictment might be supported; but if the difference be in the
county, he cannot do this, because one indictment must he bad, since the of-
fence will be proved to be beyond the jurisdiction of the grand jury. And
where the reason fails, the rule fails with it, for an indictment removed from
the proper county, though tried in another, is thus pleasurable, because the same
offence may still be intended. Upon the same principle, where the defendant
was acquitted merely on some error of the indictment, or variance in the reci-
tals, he may be indicted again upon the same charge, for the first proceedings
were merely nugatory: thus, if an indictment for larceny lay the property in
the goods in the wrong person, the party may be acquitted, and afterwards
tried on another, stating it to be the property of the legal owner. But where,
in the first indictment, the prosecutor misstated a mere superfluous averment, he
cannot afterwards rectify that error in a second, to place the life and liberty of
the defendant again in jeopardy. And in such cases, the point in discussion
always is, whether, in fact, the defendant could have taken a fatal exception to
the former indictment: for, if he could, no acquittal will avail him, but if he could
not, it is always competent for him to show the offences to be really the same,
though they are variously stated in the proceedings.—1 Chit. Crim. Law, 368.
It is not, in all cases, necessary that the two charges should be precisely the same, in point of degree, for it is sufficient if an acquittal of the one will show that the defendant could not have been guilty of the other. Thus, a general acquittal of murder, is a discharge, upon an indictment of manslaughter, upon the same person, because the latter charge was included in the former; and, if it had so appeared on the trial, the defendant might have been convicted of the inferior offence; and, on the other hand, an acquittal of manslaughter will preclude a future prosecution for murder, for if he were innocent of this modified crime, he could not be guilty of the same fact, with the addition of malice and design. So an acquittal of petit treason will bar an indictment for the murder of the same person, and an acquittal of murder an indictment for petit treason. But if the former charge were such a one as the defendant could not have been convicted of the latter upon it, the acquittal cannot be pleaded. Thus, if the first charge were for a felony or stealing, and the second for a mere misdemeanor, the previous acquittal will be no bar, for a felony or larceny cannot be modified, on the trial, into a trespass or misdemeanor. And it often happens, that after an acquittal of the felony, the defendant is indicted and tried for the misdemeanor, upon the same evidence, and it would be no objection, though the judge might still think that there was evidence of the felony, to have gone to the jury. Thus, also, if a defendant be indicted for a burglarious entry, with intent to steal; for although the burglary be the same, it is evident the prisoner could not have been found guilty on the first, upon proof of a mere intention, and, therefore, may well be indicted for that offence, in the second. It is, indeed, generally laid down, that an acquittal of burglary will not prejudice an indictment for larceny, or vice versa; but this must be understood of those cases in which, like that we have just stated, the former charge did not, necessarily, include the latter. On the same ground, if a robbery be committed in one county, and the goods be carried into another, so as to make it larceny there, an acquittal of the larceny in the last county will not prejudice an indictment for robbery in the first, because the verdict of not guilty can proceed on the ground only, that the goods were not brought within the jurisdiction of the grand jury, and will not affect the original taking, into which they had no authority to inquire. And thus also, it is clear; that if a man be indicted as accessory after the fact, and acquitted, he may afterwards be tried as a principal, for proof of one will not at all support the other. But it was formerly held, that the offences of principal and accessory before the fact, were in substance the same, and, therefore, that after an acquittal, as to the former, no one could be indicted, as to the latter, though it was admitted, that an acquittal as procurer would not hinder him from being indicted as a principal. But as it seems now to be the better opinion, that the charges, however nearly allied in moral guilt, are specifically different, in their legal aspect, and that evidence of procuring will not suffice to show an actual commission, it follows that a previous verdict in his favor; when charged with being principal, cannot be pleaded on a subsequent prosecution, for inciting others to the felony. And, if two offences are supposed to have been committed at the same time, as, if a horse and a saddle are stolen together, an acquittal of one will be no bar to an indictment for another, for the crimes are essentially different.—1 Chit. Crim. Law, 371.

As to the sufficiency of the discharge, which may be thus pleaded, it must be a legal acquittal, by judgment upon trial of a petit jury. And, therefore, if a man be committed for a crime, and no bill be preferred against him, or, if it be thrown out by the grand jury, so that he is discharged by proclamation, he is still liable to be indicted. So, if the facts be found specially by the coroner's inquest or grand jury, and he be thereupon discharged, he cannot plead it in bar to any subsequent prosecution: but if the special
verdict be found by the petit jury, and judgment be given by the court, “that he go thereof without day,” this will amount to a sufficient acquittal.—1 Chit. Crim. Law, 372.

Although it was formerly thought, that no acquittal in any other court could be effectually pleaded in bar to a prosecution in the court of king's bench, it is now settled that a legal acquittal in any court whatsoever, having competent jurisdiction to try the charge, will be sufficient to preclude any subsequent proceedings before every other tribunal. And even an erroneous acquittal is conclusive, until the judgment be reversed, so that if a judge direct a jury to acquit the prisoner on any ground, however fallacious, he is entitled to the benefit of the verdict: but, in this case, the indictment itself must not be materially defective, for if it be so, the former prosecution is no bar, because the life of the defendant was never legally in jeopardy. And it should seem that a substantial defect in the former indictment would prevent an acquittal thereon from being effectually pleaded, although the jury found a special verdict, and the judgment of acquittal was founded on facts not amounting to a crime; and, if a judgment in favor of a prisoner be reversed, he may be arraigned and tried de novo. A mere error in the former process, however, will not render that prosecution nugatory, because the reason which relates to errors in the indictment will not apply, and the defendant might legally have been convicted.—1 Chit. Crim. Law, 373.

Of the form and requisites of the plea.—The plea of auterfois acquit is of a mixed nature, and consists partly of matter of record, and partly of matter of fact. The matter of record is the former indictment and acquittal; the matter of fact is the averment of the identity of the offence, and of the person, as formerly indicted. As to the matter of record, it is now settled to be absolutely requisite to set forth, in the plea, the record of the former acquittal; but it is not necessary to produce the record immediately, because it is pleaded in bar, as he who pleads it hath neither the custody nor property in the record. And the defendant is bound to produce and vouch, or refer to the record, on which he relies; because, although, in civil actions, it is not brought forward until after a replication of nul iel record, it is otherwise in criminal proceedings, where the danger of delay is greater, and the temptation to temporize more powerful. The plea concludes with a verification and prayer, that the defendant may be dismissed the court, without further day.—1 Chit. Crim. Law, 374.

After the record of acquittal is accurately set forth, the matter of fact of the plea must be stated, viz.: that the charges and persons are the same, which were included in the former prosecution. We have already seen that where the variance between the indictments is not material, the identity may be maintained by averments; and the same observation applies to an immaterial difference, in the addition of the party indicted. It is certainly proper, and seems absolutely necessary, to plead over to the felony “not guilty;” though the jury cannot be charged, at the same time, with both issues, but must first determine the plea of previous acquittal.—1 Chit. Crim. Law, 374.

Form of the Plea.

And the said John Doe, in his own proper person, cometh into court here, and having heard the said indictment read, saith, that the State of Georgia ought not further to prosecute the said indictment against the said John Doe; because he saith, that heretofore, to wit: [at the superior court, holden in and for said county, on the fourth Monday in April, in the year of our Lord one thousand eight hundred
and fifty, at Perry, in said county,—so continuing the caption of the former indictment—"it was presented, that the said John Doe, (then and there, and thereby described, as John Doe, of said county, in the county aforesaid,) on the first day of March," &c., (continuing the indictment to the end; reciting it, however, in the past, and not in the present tense. Recite also the remainder of the record, to the end of the judgment, in the past tense, in like manner: then proceed thus,) as by the record thereof more fully and at large appears; which judgment still remains in full force and effect, and not in the least reversed or made void. And the said John Doe in fact saith, that he, the said John Doe, and the said John Doe, so indicted and acquitted, as last aforesaid, are one and the same person, and not other and different persons; and that the felony and larceny of which he, the said John Doe, was so indicted and acquitted, as aforesaid, and the felony and larceny of which he is now indicted, are one and the same, and not other and different felonies and larcenies. And this he, the said John Doe, is ready to verify; wherefore, he prays judgment, and that by the court here, he may be dismissed and discharged from the said premises, in the present indictment specified. And as to the felony and larceny of which the said John Doe now stands indicted, he, the said John Doe, saith, that he is not guilty thereof; and of this, he puts himself upon the country.

Of the Plea of Auterfois Convict.

The plea of auterfois convict depends, like that we have just considered, on the principle that no man shall be more than once in peril for the same offence. In order to plead this plea with effect, the crime must be the same for which the defendant was before convicted, and the conviction must have been lawful, on a sufficient indictment; for a conviction of one felony is no bar to a trial of another. And if he has not received sentence, this plea is said not to be pleadable, if the former indictment were invalid; so, the plea of a former arraignment is of no avail. 1 Chit. Crim. Law, 376.

At what time pleaded.—This plea must always be pleaded after a conviction, and cannot be taken advantage of as a plea in abatement, that there is another indictment for the same cause depending. Its form, requisites, and consequences are very nearly the same as in a plea of former acquittal. Thus, like that plea, it will be of no avail, when the first indictment was invalid, and when, on that account, no judgment could be given, because the life of the defendant was never before in jeopardy. So also, like that plea, it must set forth the former record, and plead over to the felony. As in that, the identity must be shown by averments, both of the offence and the person, so the same forms are here requisite. The judgment, if in favor of the prisoner, is, "that he go thereof without day;" and if the issue be found against the defendant, the consequence is, as in the former pleas, that he answers over. 1 Chit. Crim. Law, 377.

Form of the Plea.

And the said John Doe, in his own proper person, cometh into court here, and having heard the said indictment read, saith, that the State of Georgia ought not further to prosecute the said indictment against him, the said John Doe, in respect of the offence in said indict-
RULES OF PLEADING. 65

merit mentioned, because he saith, that heretofore, to wit: in the Superior Court, on the first day of March, in the year of our Lord one thousand eight hundred and fifty, at Perry, in the county of Houston, he, the said John Doe, was, upon the complaint of Charles Smith, convicted for said offence, &c., [here set forth the record of the former trial and conviction] and being so thereof convicted; said court, then and there, adjudged that said John Doe be punished by [here set forth the punishment ordered by the court] as by the record of said conviction more fully and at large appears; which said judgment and conviction still remain in full force and effect, and not in the least reversed, or made void. And the said John Doe further saith, that the [here set forth the offence charged in the former indictment,] of which he, the said John Doe, was so convicted, as aforesaid, and the [here set forth the offence charged in the present indictment,] are one and the same offence, and not other and different offences. And the said John Doe further saith, that he has been punished, as adjudged by the court, as aforesaid, in the said indictment. And this the said John Doe is ready to verify; wherefore, he prays judgment if the said State of Georgia ought further to prosecute the said indictment against him, the said John Doe, in respect of the said offence, in the said indictment mentioned; and that the said John Doe may be dismissed and discharged from the same. And as to the felony aforesaid, in the said indictment mentioned, the said John Doe saith, that he is not guilty thereof, and therefore, he puts himself upon the country, &c.

Of Pleas of Pardon.

A pardon may always be pleaded when the offender is evidently included within its intention; as where all felonies and lower offences, committed before a certain day, are remitted, a murderer is pardoned who has given the fatal stroke, before the time specified, though the death, which completes the crime, does not happen till a subsequent period. But if murders be expressly excepted, or the act extends only to misdemeanors, he will not be entitled to the benefit of the act, because though, at the time passed, his crime was only a misdemeanor, it subsequently became a higher crime than those included in the pardon,—1 Chit. Crim. Law, 379.

At what time it should be pleaded.—It must be pleaded before the general issue, if at all previous to verdict, unless its date be subsequent to the pleadings, because the former estops the latter.—1 Chit. Crim. Law, 380.

How it ought to be pleaded.—A pardon, whether general or particular, must be specially pleaded, and cannot be given in evidence under the general issue, unless where the statute pardoning enables (as is now usual) the party to plead the general issue. In pleading a general act of pardon, if the act contain exceptions of particular persons by name, or of a general description of individuals, it is, in general, necessary for the defendant to show specially, that he is not one of the parties named in the statute, as without its benefit, in the first case, or included in the proscribed description, in the second. But where the pardon is in its body general as to all, and some are afterwards excepted, in a distinct proviso, it seems that such averments are not absolutely requisite, and that if the defendant be thus excepted, it must be shown by the
crown, in its reply. And where a particular offence only is excepted, he will not be compelled to negative its commission, for the court will judicially take notice of the color of the charge against him, and compare it with that excepted in the pardon. So where a single individual is excluded from the operation of the royal clemency, it has been holden not to be necessary to aver that the defendant is not the person referred to, for that is a circumstance of which the judges are bound to take cognizance. — 1 Chit. Crim. Law, 380.

Form of Plea of Pardon.

The plea of pardon recites the proceedings and pardon, and concludes thus: “By reason of which said pardon, the said John Doe prays that by the court here, he may be dismissed and discharged from the said premises, in the said indictment specified.”

General Issue.

Pleas to the matter of the indictment, are either the general issue, or special pleas to the merits of the transaction. The first of these is the only plea on which the defendant can receive sentence of death, for we have seen that he may resort to it on all capital charges, when other modes of defence have failed him. Upon all capital accusations, the plea of not guilty puts in issue the whole of the charge, not merely whether the defendant actually did the fact stated on the record, but the criminal intention with which it is alleged he was actuated, and the legal quality of the guilt to be deduced from the whole. In this respect there is a very important distinction between civil and criminal proceedings: in the former, if the facts are admitted, and the defence is, that they were rendered legal by circumstances, a special justification must be pleaded; but in the latter, no justification can be admitted to limit the defendant’s means of defence; nor is it at all necessary, for if it appear that the facts, though true, were legal, the defendant will, of course, be acquitted. Thus, on an indictment for murder, a man cannot plead that he killed the deceased in the fury of passion, and therefore, it is only manslaughter; nor that he slew him in self-defence, and so is altogether guiltless; but he must plead generally “not guilty,” and give the special matter in evidence. So also, in indictments for felony and treason, if the facts stated amount to neither of them, the prisoners will be discharged under the general issue; for the “feloniously” and “traitorously,” by which those crimes are designated, are the gist of the charge; and unless they are shown to be properly applied, the indictment cannot be supported. On pleading this plea, the prisoner, if in irons, is entitled to have them removed, in order that he may suffer no unnecessary pain or restraint, on his trial.—1 Chit. Crim. Law, 383.

Special Pleas.

In cases of indictments or informations for misdemeanors, the rule we have just considered does not apply with the same degree of strictness, for there are some cases where a special plea is not only allowable, but even requisite: thus, if the defendant fall within any exception or proviso, which is not contained in the purview of the statute creating the offence, he may, by pleading, show that he is entitled to the benefit of that exception or proviso, and there are many pleas of this description in the ancient entries. Son assault demesne cannot, it is said, be pleaded to an indictment for an assault, but must be given in evidence under the general issue; to which a special plea would amount.—1 Chit. Crim. Law, 384.

Formerly, it was the practice to plead particular exemptions specially, to any
indictment for misdemeanors, as for not going to church, or exercising a trade; but now it is the usual practice to plead only the general issue, and give the special matter of exemption in evidence under it. The principal, and, indeed, almost the only cases, in which special pleas to the merits are necessary, are in the case of indictments for neglecting to repair highways and bridges. With respect to these, it is a general rule, that where the defendants are charged with the repair of the road or bridge, in question of common right, and are *prima facie* liable to amend it, as in an indictment against a parish for not repairing a highway, they must, in order to show that the burden is thrown upon some other quarter, set forth that ground of discharge in a special plea. So the inhabitants of a county, if indicted for the non-repair of a bridge, or of the highway, within three hundred feet of the extremity of the bridge, must, to exonerate themselves, plead specially that some other is bound, by prescription or tenure, to repair the same. But this does not seem to apply where the obligation is altered by a public act of parliament, of which all are supposed to take cognizance. And under a plea of not guilty, the inhabitants of a parish or county may dispute the fact of a highway or bridge being public, and may give in evidence, that private individuals have been accustomed to repair, or any other facts, in order to show that the way or bridge was not public. On the other hand, it is settled, that where defendants are not *prima facie*, or of common right, liable to repair, as a particular division of a parish, or an individual, are charged by prescription, or *ratione tenurae*, they may exonerate themselves, and throw the burden upon others, either the parish at large, or an individual, under the general issue. In general, all parishes come under the first of these rules, and must plead specially that others are bound to repair the roads and bridges, within their boundaries. But when an act of parliament has authorized a public company to make alterations, and they cut or widen trenches across the roads, and then build bridges over them, or otherwise first create the necessity, and then remedy it by building bridges, they will be always liable to keep them in repair, when necessary. And, as where a particular body or individual is bound, by some charter, or other means, to repair, that fact may be specially pleaded by a parish or county; so if the parties on whom the duty lies have been convicted for the same offence, the defendants may plead the conviction, setting out the record, and averring the identity of the place in question.——*Chit. Crim. Law*, 385.

It is a good general rule, that whatever the prosecutor is bound to prove, upon the general issue, the defendant may contradict under the same plea, without specially setting forth the ground of his defence upon the record. And this is the reason why a man is not bound to plead that he is not by tenure or prescription compelled to repair, for the affirmative of those points must be shown by the prosecutor, or they can make out no ground of conviction. And therefore, a parish may, under the plea of not guilty, show that the place in question is in sufficient repair, or that it is not a public way, or that it does not lie within the district, for all these must be alleged in the indictment and given in evidence on the trial.——*Chit. Crim. Law*, 386.
CHAPTER III.

FIRE HUNTING.

An Act to prevent the pernicious practice of hunting deer in the night-time, by fire-light.

1. Sec. I. From and immediately after the passing of this Act, any person or persons who shall hunt with a gun by fire-light, or kill any deer so hunting by fire-light, in the night-time, without his or their own enclosures, any such person or persons being convicted, upon the oath of one or more credible witnesses, before any justice of the peace for the county where such offence shall be committed, shall, for every such offence, forfeit and pay not exceeding the sum of five pounds; one-half thereof shall be paid to the informer or informers, and the other half into the clerk's office of the inferior court, and to be applied to the use of the poor of the county where such offence shall be committed.—No. 1.

2. Sec. II. The forfeitures incurred by this Act, as aforesaid, shall be levied by distress and sale of the offenders' goods and chattels, lands and tenements, by warrant under the hand and seal of the justice before whom the person or persons so incurring shall be convicted, returning the overplus, if any, to the owner or owners thereof, after deducting the said penalty or forfeiture and lawful charges; [the authority of the justices to inflict corporal punishment, superseded by the Constitution,] and in case the person or persons so offending and convicted shall not have goods and chattels, lands or tenements, sufficient to answer such forfeiture and charges, it shall and may be lawful for such justice to order such offender or offenders, so convicted, severally to receive not exceeding thirty-nine lashes, well laid on his or their bare back.—Act of 1790.

TRANSPORTATION OF GUNPOWDER.

An Act to regulate the transportation of Gunpowder, and to authorize the forfeiture of such as shall be transported in violation of the provisions of this Act.

3. Sec. I. From and after the passage of this Act, it shall be the duty of all owners, agents and others, who may or shall have any Gunpowder, exceeding in quantity five pounds, transported upon the waters or within the limits of this State, to have the word GUNPOWDER marked in large letters upon each and every package which may or shall be so transported.
4. Sec. II. All Gunpowder exceeding five pounds in quantity, which shall hereafter be transported or engaged for transportation, upon any of the waters, or within the limits of this State, without being marked as directed in the first section of this Act, shall be liable to seizure and forfeiture—one-half to the informer, the other for the use of the volunteer companies most convenient or contiguous to the place of seizure or forfeiture.

Sec. III. All laws or parts of laws militating against this law, are hereby repealed.—Act of 1831.

An Act to Define the Offences of Abducting and Harboring Seamen, and to Punish the same, and for other Purposes therein mentioned.

5. Sec. I. That from and after the passing of this Act, if any person or persons shall board any ship or vessel, in any port or harbor, or on any of the waters of this State, with intent to inveigle, entice, convey away, abduct, with or without violence, or secretly carry off any articulated seaman or mariner, or apprentice, from such ship or vessel, or shall afford any conveyance or facility to such seaman, or mariner, or apprentice, to desert or leave such ship or vessel, then, and in each of such cases, such person or persons so offending shall be liable, on conviction, to fine or imprisonment, at the discretion of the court.—No. 2.

6. Sec. II. That if any person or persons shall aid or assist in any way or manner, any articulated seaman, or mariner, or apprentice, to desert from his ship or vessel, while within the waters of this State, or shall inveigle, entice, convey away, abduct, or carry, with or without violence, or secretly carry off any articulated seaman, or mariner, or apprentice from any such ship or vessel, such person or persons so offending, shall, on conviction, be liable to fine or imprisonment, at the discretion of the court.—No. 3.

7. Sec. III. That if any person or persons shall harbor, secrete, entertain, lodge, or keep, or shall directly or indirectly suffer to be harbored, secreted, entertained, lodged, or kept, in or about his house or premises, any articulated seaman, or mariner, or apprentice, knowing the said seaman, or mariner, or apprentice to have deserted from his ship or vessel, such person or persons shall, on conviction, be fined in a sum of not more than five hundred dollars, or imprisoned, at the discretion of the court.—No. 4.

8. Sec. IV. That the fourth section of an Act to punish seamen or mariners, neglecting or deserting their duty on board their respective ships or vessels, and for preventing seamen or mariners from being harbored or running in debt, approved March the sixth, in the year of our Lord one thousand seven hundred and sixty-six, be and the same is hereby repealed.—Act of 1843.

An Act to Regulate the Licensing of Physicians to Practice in this State.

9. Sec. I. That from and after the passing of this act, no person or persons shall be allowed to practice physic and surgery, or any of the branches thereof, or in any case to prescribe for the cure of diseases, for fee or reward, unless he or they shall have been first licensed to do so in the manner hereinafter prescribed.

10. Sec. II. That if any person or persons shall hereafter presume, without such license, to practice physic, surgery, or in any manner prescribe for the cure of diseases, for fee or reward, he or they shall be liable to be indicted, and on conviction shall be fined, not exceeding the sum of five hundred dollars, for the first
70 PENAL STATUTES OF GEORGIA.

offence, and for the second, be imprisoned not exceeding the term of two months; one half of the fine to enure to him who shall inform, and the other half to the use of the State.

11. Sec. III. That on the trial of all indictments for any of the offences enumerated in this act, it shall be incumbent on the defendant to show that he has been licensed to practice physic and surgery, and to prescribe for the cure of diseases, in the manner hereinafter mentioned, to exempt himself from the penalties enumerated in this act.

12. Sec. IV. That all bonds, notes, promises and assumptions, made to any person or persons, not licensed in manner hereinafter mentioned, the consideration of which shall be services rendered as a physician or surgeon, in prescribing for the cure of diseases, shall, and they are hereby declared, utterly void, and of no effect.

13. Sec. V. That in order to the proper regulation of the practice of physic and surgery, there shall be established a board of physicians, to be assembled annually at the seat of government, who shall, at their annual meeting, examine all applicants, and if, on such examination, they are found competent, shall grant to such applicants a license to practice physic and surgery: Provided, that seven members of said board shall constitute a quorum to make such examination, and grant such license: And provided also, that if any applicant shall have studied and received a diploma from any medical college, the said board, or a quorum thereof, shall license the said applicant to practice, without examination.—Sec. 25.

14. Sec. VI. [As to who shall constitute the board—superseded by the act of 1850.—Sec. 24.]

15. Sec. VII. That the annual meeting of the board of physicians of Georgia, shall be held at the seat of government, on the first Monday in December, in each and every year, and that the said board shall be entitled to receive and demand of every applicant, when licensed, the sum of five dollars, for each and every examination, and the sum of five for every license.

16. Sec. VIII. That no part or clause of this act shall have any operation or effect upon any person now practicing medicine or surgery within this State, and who has heretofore been a practicing physician within the same.

17. Sec. IX. That no apothecary within this State, unless he be a licensed physician, shall be hereafter permitted to vend or expose to sale any drugs or medicines, without previously obtaining a license to do so from the board of physicians created by this act; and every apothecary so vending or selling drugs or medicines contrary to the provisions of this act, shall be liable to all the penalties imposed by this act on physicians and surgeons practicing without a license: Provided, that nothing herein contained be construed to prevent merchants or shop-keepers from vending or exposing to sale medicines already prepared: Provided, also, that nothing herein contained shall be so construed as to operate against or upon any person or persons, who now are, and heretofore have been, engaged in the sale of drugs and medicines as apothecaries, or who may be, and heretofore have been, engaged in the vending of drugs and medicines, as an exclusive branch of merchandise.

18. Sec. X. That the board of physicians created by this act shall have the power to examine any apothecary who may apply to it for a license, touching their knowledge of drugs and pharmacy, and on finding such persons qualified, shall grant such license, and shall receive therefor the same fees as provided in this act for license to practice medicine and surgery.

19. Sec. XI. That to prevent delay and inconvenience, a single member of the board of physicians may grant temporary license to applicants therefor, and make report thereof to the board at their next meeting for confirmation,
PENAL STATUTES OF GEORGIA. 71

or further evidence of qualification to be given by the applicant: Provided, that a temporary license shall not continue in force longer than the next meeting of the board, and that a temporary license shall in no case be granted by one of the board after the applicant has been refused a license by the board of physicians.

20. Sec. XII. That the board of physicians be, and they are hereby authorized and empowered to elect all such officers, and frame all such by-laws as may be necessary to carry this act into effect, and in case of the death, removal, or refusal to act, of any member of said board, the said board, or a quorum of them, be, and they are hereby empowered to fill up any such vacancies.

21. Sec. XIII. That said board shall enter in a book, to be kept by them for that purpose, the names of each and every person they shall license to practice physic and surgery, and the time of granting the same, together with the names of the members of the board present, and shall publish the same in some newspaper printed at the seat of government, within thirty days after granting the same.

22. Sec. XIV. That said board of physicians shall be considered a body corporate, so far as to hold property, both real and personal; keep a common seal; sue and be sued; and that the book so kept by the board as aforesaid shall be considered a book of record, and a transcript from the same, certified by the proper officer, under the common seal, shall be taken and received as evidence in any court of law in this State.—Act of 1825.

AN ACT to revive and keep in force an act entitled, "An Act to regulate the licensing of physicians to practice in this State, assented to the twenty-fourth day of December, eighteen hundred and twenty-five."

23. Sec. I. That from and after the passage of this act, the above and before recited act be, and the same is hereby revived, and declared to be in full force and operation.


Sec. III. That all laws, and parts of laws, militating against the said recited act be, and the same are hereby repealed.—Act of 1847.

AN ACT to alter and amend an act entitled "An Act to regulate the licensing physicians in this State; to prevent apothecaries vending and exposing to sale within this State, drugs and medicines, without a license from the board of physicians; and to prevent merchants, shop-keepers, and all other persons, from compounding and preparing drugs and medicines, or either;" approved Dec. 24, 1825.

25. Sec. I. That from and after the passage of this act, the board of physicians established and provided for in the above recited act, for the purpose of examining all applicants for license to practice medicine, and for other purposes, shall hold their annual meetings in the City of Macon, in this State.

Sec. II. That all laws, and parts of laws, militating against this act be, and the same are hereby repealed.—Act of 1850.
No. 1.—Fire-Hunting.

STATE OF GEORGIA, \( \) The Grand Jurors, sworn, chosen, and selected for the county of Houston, \( \) to wit: Samuel Felder, Robert W. Baskin, Silas Rawls, Calvin W. Felder, Hugh Lawson, Hugh L. Dennard, Joseph M. Cooper, William H. Talton, John J. Forsyth, Warren B. Sanders, John Harrington, James H. Dunham, Calvin Leary, Thomas Williams, John S. Jobson, Francis W. Jobson, John Killen, Robert B. Engram, John M. Chastain, Benjamin Rutherford, Creed T. Woodson, Matthew H. Means, and William H. Miller, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Hunting with a gun by fire-light, in the night-time, without his own enclosure: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did hunt with a gun by fire-light, in the night-time, without his own enclosure, contrary to the laws of said State, the good order, peace, and dignity thereof.

Witness, \( \) October term, 1850. JAMES WILLIAMS, Sol. Gen. CHARLES SMITH, Prosecutor.

No. 2.—Inveigling Seaman, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of boarding a ship, with intent to inveigle away from said ship an articulated seaman: for that the said John Doe, in said county, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did board the ship Thomas, then lying in the port of Savannah, in the waters of this State, with intent to inveigle away, without violence, from said ship Thomas, an articulated seaman, named Richard Roe; contrary, &c.

No. 3.—Aiding Seaman, &c., to Desert, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of aiding an articulated seaman to desert from his ship: for that the said John Doe, in said county, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did, without violence, aid one Richard Roe, an articulated seaman, to desert from the ship Thomas, while said ship was lying within the waters of this State; contrary, &c.

No. 4.—Harboring, &c., Seaman, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of harboring an articulated seaman: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand, eight hundred and fifty, did knowingly harbor, in his house, Richard Roe, an articulated seaman, knowing the said Richard Roe to have deserted from the ship Thomas, then lying and being in the port of Savannah; contrary, &c.
CHAPTER IV.

PENAL CODE OF GEORGIA.

An Act to Reform, Amend, and Consolidate the Penal Laws of the State of Georgia.

SEC. 1. The existing Code of the Penal Laws of this State shall continue and remain in full force until the first day of June next (1834); at which time, the following Code of Penal Laws shall be in full force and operation in this State.—Act of 1833.

FIRST DIVISION.

Persons Capable of Committing Crimes.

1. SEC. I. A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be an union, or joint operation of act and intention; or criminal negligence.

Intention.

2. SEC. II. Intention will be manifested by the circumstances connected with the perpetration of the offence, and the sound mind and discretion of the person accused.

Sound Mind.

3. SEC. III. A person shall be considered of sound mind, who is neither an idiot, a lunatic, or afflicted by insanity; or who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.

Infant.

4. SEC. IV. An infant under the age of ten years, whose tender age renders it improbable that he or she should be impressed with a proper sense of moral obligation, or be possessed of sufficient capacity deliberately to have committed the offence, shall not be considered or found guilty of any crime or misdemeanor.

Lunatic.

5. SEC. V. A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor, with which he or she may be charged: Provided, the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic hath lucid intervals of understanding, he shall answer for what he does in those intervals, as if he had no deficiency.
6. SEC. VI. An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.

Encouraging Infant, Lunatic, or Idiot, to Commit Crime.

7. SEC. VII. Any person counselling, advising, or encouraging an infant under the age of ten years, a lunatic, or an idiot, to commit an offence, shall be prosecuted for such offence when committed, as principal, and if found guilty, shall suffer the same punishment as would have been inflicted on said infant, lunatic, or idiot, if he or she had possessed discretion and been found guilty.

Married Woman Committing Crime.

8. SEC. VIII. A feme covert, or married woman, acting under the threats, command, or coercion of her husband, shall not be found guilty of any crime or misdemeanor, not punishable by death or perpetual imprisonment; and with this exception, the husband shall be prosecuted as principal, and if convicted, shall receive the punishment which otherwise would have been inflicted on the wife, if she had been found guilty: Provided, it appears from all the facts and circumstances of the case, that violent threats, command and coercion, were used.

Drunkenness.

9. SEC. IX. Drunkenness shall not be an excuse for any crime or misdemeanor, unless such drunkenness was occasioned by the fraud, artifice, or contrivance of other person or persons, for the purpose of having a crime perpetrated, and then the person or persons, so causing said drunkenness, for such malignant purpose, shall be considered a principal, and suffer the same punishment as would have been inflicted on the person or persons committing the offence, if he, she, or they, had been possessed of sound reason and discretion.

Misfortune or Accident.

10. SEC. X. A person shall not be found guilty of any crime or misdemeanor, committed by misfortune or accident, and where it satisfactorily appears there was no evil design or intention, or culpable neglect.

Coercing Slave to Commit Crime.

11. SEC. XI. A slave committing a crime or misdemeanor, which, if committed by a free white person, would not be punishable by this Act with death, by the threats, command, or coercion of his or her owner, or any person exercising or assuming authority over such slave, shall not be found guilty; and it appearing from all the facts and circumstances of the case, that the offence was committed by the threats, command, and coercion of the owner, or the person exercising or assuming authority over such slave, the said owner or other person, exercising or assuming authority over such slave, shall be prosecuted for the said crime or misdemeanor; and if found guilty, shall suffer the same punishment as he or she would have incurred,
if he or she had actually committed the offence with which the slave is charged.

Under Threats or Menaces.

12. Sec. XII. A person committing a crime or misdemeanor, under threats or menaces, which sufficiently show that his or her life, or member, was in danger, or that he or she had reasonable cause to believe, and did actually believe, that his or her life, or member, was in danger, shall not be found guilty; and such threats and menaces being proved and established, the person or persons compelling, by said threats and menaces, the commission of the offence, shall be considered a principal or principals, and suffer the same punishment, as if he, she, or they, had perpetrated the offence.

Definition of Felony.

13. Sec. XIII. The term “felony,” when used in this Act, shall be construed to mean an offence, for which the offender, on conviction, shall be liable by law to be punished by death or imprisonment in the penitentiary, and not otherwise.

CHAPTER V.

SECOND DIVISION.

Principals and Accessories in Crime.

Principal.

14. Sec. I. A person may be principal in an offence, in two degrees—a principal in the first degree, is he or she that is the actor, or absolute perpetrator of the crime—a principal in the second degree, is he or she who is present, aiding and abetting the fact to be done; which presence need not always be an actual immediate standing by, within sight or hearing of the fact; but there may be also a constructive presence, as when one commits a robbery, murder, or other crime, and another keeps watch or guard, at some convenient distance.

Accessory.

15. Sec. II. An Accessory is one who is not the chief actor in the offence, nor present at its performance, but is some way concerned therein, either before or after the fact committed.

16. Sec. III. An Accessory before the fact is one who, being absent at the time of the crime committed, doth yet procure, counsel, or command, another to commit a crime.—No. 1.
17. Sec. IV. An Accessory after the fact is a person who, after full knowledge that a crime has been committed, conceals it from the magistrate, and harbors, assists, or protects the person charged with or convicted of the crime. — No. 2.

18. Sec. V. A principal in the second degree, and an accessory before the fact, except where it is otherwise provided for in this Code, shall receive the same punishment as is directed to be inflicted on the principal in the first degree, or perpetrator of the crime.

19. Sec. VI. Accessories after the fact, except where it is otherwise ordered in this Code, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

No. 1.—Against Principals in the First and in the Second Degree, and an Accessory before the Fact to a Murder by Shooting.

[Charge the assault as made jointly by the principal in the first and in the second degree.]

And that the said John Doe, a certain gun called a carbine, of the value of ten dollars, then and there, charged with gunpowder and a leaden bullet, which said gun he, the said John Doe, in both his hands then and there, had and held, at and against the said Charles Smith, then and there, feloniously, willfully, and of his malice aforethought, did shoot off and discharge, and that the said John Doe, with the leaden bullet aforesaid, by means of shooting off and discharging the said gun, so loaded, to, at, and against the said Charles Smith, as aforesaid, did then and there, unlawfully, feloniously, willfully, and of his malice aforethought, strike, penetrate, and wound, the said Charles Smith, in and upon the right side of the head of him, the said Charles Smith, near his right temple, with the leaden bullet aforesaid, by means of shooting off and discharging the said gun, so loaded, to, at, and against the said Charles Smith, and by striking, penetrating, and wounding the said Charles Smith, as aforesaid, one mortal wound, in and through the head, of the said Charles Smith; of which said mortal wound the said Charles Smith did then and there instantly die. And that the said Richard Roe, then and there feloniously, willfully, and of his malice aforethought, was present, aiding and abetting the said John Doe, in the felony and murder aforesaid, in manner and form aforesaid, to do and commit; and so, the said John Doe and Richard Roe, the aforesaid Charles Smith, in manner and form aforesaid, unlawfully, feloniously, willfully, and of malice aforethought, killed, and murdered. And that James Jones, of the County and State aforesaid, before the felony and murder aforesaid, by the said John Doe and Richard Roe, in manner and form aforesaid, done and committed, that is to say, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in the county aforesaid, [the said James Jones being absent at the time of committing the murder aforesaid,] the aforesaid James Jones, to do and commit the felony and murder aforesaid, in manner and form aforesaid, maliciously, feloniously, voluntarily,
Another Form against Accessory before the Fact.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the County and State aforesaid, with the offence of accessory before the fact, [here insert the offence] : for that heretofore, to wit, at the Superior Court, held in and for the county of Houston, on the fourth Monday in April, in the year of our Lord one thousand eight hundred and fifty, [so continuing the caption of the indictment against the principal,] it was presented upon the oath of [here set out the names of the grand jurors who returned the bill against the principal,] that one Richard Roe, late of said county, [continuing the indictment to the end, reciting it, however, in the past, and not in the present tense ;] upon which said indictment, the said Richard Roe, at the term of the said superior court aforesaid, was duly convicted of the [here set out the crime charged against the principal,] aforesaid, as by the record thereof now in court produced and shown, more fully and at large appears. And the jurors aforesaid, upon their oath aforesaid, do say, that said John Doe, in the county aforesaid, before the said [felony or misdemeanor, or other offence, as the case may be,] was committed, in form aforesaid, (and not being present at the time of committing said [offence] by said Richard Roe,) to wit, on the first day of October, in the year of our Lord one thousand eight hundred and forty-nine, in the county aforesaid, with force and arms, did feloniously and maliciously procure and counsel, [or command,] the said Richard Roe, the said [offence] in manner and form aforesaid, to do and commit; contrary, &c.

Note.—If there be doubt whether the proof will be that the accessory counselled, procured, or commanded, &c., insert separate counts, charging each. And generally, when there are several means or modes of committing an offence, separate counts should be inserted applicable to each; if there be doubt as to the proof, as to the particular mode.

No. 2.—Accessory after the Fact.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the County and State aforesaid, with the offence of Accessory after the fact, [here state the offence]: for that said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, well knowing the said Richard Roe to have done and committed the [offence] aforesaid, after the same was committed as aforesaid, to wit: on the day and year aforesaid, in the county aforesaid, he, the said John Doe, did conceal said [offence] from the magistrate, and harbor [assist or protect] said Richard Roe; contrary, &c.

Note.—The formal parts of the bill of indictment, in the present case, are the same as those in an indictment against an accessory before the fact.
CHAPTER VI.

THIRD DIVISION.

Crimes against the State and People.

20. Sec. I. Crimes against the State and the People shall consist in Treason, in the first degree and second degree; exciting, or attempting to excite, an Insurrection or Revolt of slaves.

Treason.

21. Sec. II. Treason in the first degree shall consist in levying war against the State, in the same; or being adherent to the enemies of the State, within the same; giving to them aid and comfort, in this State or elsewhere, and thereof being legally convicted of open deed, by two or more witnesses, or other competent and credible testimony, or voluntary confession; these cases shall be adjudged Treason against the State and People; and when the overt act of Treason shall be committed without the limits of this State, the person charged therewith may be arrested and tried, in any county of this State, within the limits of which he may be found, and being thereof convicted, shall be punished in like manner as if the said Treason had been committed and done within the limits of said county—Treason in the first degree shall be punished with death.—No. 1.

22. Sec. III. Treason in the second degree shall consist in the knowledge and concealment of Treason, without otherwise assenting to, or participating in, the same. The punishment of Treason in the second degree, shall be confinement and hard labor in the penitentiary for the term of four years.

Exciting Insurrection of Slaves.

23. Sec. IV. Exciting an insurrection or revolt of slaves, or any attempt by writing, speaking, or otherwise, to excite an insurrection or revolt of slaves, shall be punished with death.

24. Sec. V. If any person shall bring, introduce, or circulate, or cause to be brought, introduced, or circulated; or aid or assist, or be in any manner, instrumental in bringing, introducing, or circulating, within this State, any printed or written paper, pamphlet, or circular, for the purpose of exciting insurrection, revolt, conspiracy, or resistance, on the part of the slaves, negroes, or free persons of color, in this State, against the citizens of this State, or any part of them, such
person so offending shall be guilty of a high misdemeanor, and on conviction shall be punished with death.—No. 2.

No. 1.—*Treason in the First Degree.*

STATE OF GEORGIA. | The Grand Jurors, sworn, chosen, and select-
Houston County. | ed for the county of Houston, to wit: Donald
B. Jones, James Rozier, Peter V. Gavy, Samuel Felder, Robert W.
Baskin, Silas Rawls, Thomas B. Allen, Hugh Lawson, Hugh L. Den-
nard, Joseph M. Cooper, William H. Talton, John J. Forsyth, Samp-
son B. King, Francis W. Jobson, Warren B. Sanders, James H. Dun-
ham, John M. Chastain, Calvin W. Felder, Thomas Williams, John
S. Jobson, William P. Mount, John Killen and Robert B. Engram, in
the name and behalf of the citizens of Georgia, charge and accuse
John Doe, of the county and State aforesaid, with the offence of
Treason, in the *first* degree: for that the said John Doe, being a citizen
of the said State of Georgia, on the *first* day of May, in the year of our
Lord one thousand eight hundred and fifty, not regarding the duty of
his allegiance and fidelity to said State, nor having the fear of God in
his heart, but being moved and seduced by the instigation of the devil,
as a false traitor against said State and the people thereof; and wholly
withdrawing the allegiance, fidelity, and obedience which every true
and faithful citizen of said State should and of right ought to bear
towards said State and the people thereof, on the day and year afore-
said, and on divers other days, as well before as after, with force and
arms, in the State aforesaid, in the county aforesaid, maliciously,
traitorously, and feloniously, together with divers other false traitors,
to the jurors aforesaid unknown, armed and arrayed in a warlike
manner, that is to say, with guns, muskets, blunderbusses, pistols,
 swords, bayonets, pikes and other weapons, being then and there,
unlawfully, maliciously, traitorously, and feloniously assembled and
gathered together, against said State and people; most wickedly,
maliciously and traitorously, did levy and make war against said State
and people, within the same, and did then and there, maliciously,
traitorously and feloniously attempt and endeavor, by force and arms,
to subvert and destroy the constitution and government of said State,
as by the citizens thereof established; contrary to the duty of the al-
legiance of him, the said John Doe, and contrary to the laws of said
State, the good order, peace and dignity thereof.

*October* term, 1850.

**WITNESSES**

JAMES WILLIAMS, Sol. Gen.

RICHARD ROE, Prosecutor.

**NOTE.** As to what constitutes *levying war* against the United States, the following points
have been decided:

1. To constitute a *levying of war*, there must be an assemblage of persons for the pur-
pose of effecting by force a treasonable purpose. Enlistment of men to serve against gov-
ernment is not sufficient.—*4 Cranch Rep.* 75.

2. Any assemblage of men, for the purpose of revolutionizing, by force, the government
established by the United States, in any of its territories, although as a step to some greater
projects, amounts to *levying war*.—*Ibid.*

3. The marching of individuals to a place of rendezvous is not sufficient, but the meeting
of particular bodies of men, and their marching from places of partial, to a place of general rendezvous, is such an assemblage as constitutes levying war.

4. To levy war, is to raise, create, make, or carry on war.—The U. S. vs. Burr, App. to 4 Cranch, 471.

5. The term "levying war," is used in the Constitution of the United States, in the same sense in which it was understood in England and this country, to have been used in the statute 25 Edward III., from which it is borrowed.—Ibid.

6. All those who perform the various and essential military parts of prosecuting the war, which must be assigned to different persons, may be said to levy war.—Ibid.

7. Those who perform a part in the prosecution of the war, may correctly be said to levy war.—Ibid.

8. If the war be actually levied, if the accused has performed a part, but is not leagued in the conspiracy, and has not appeared in arms against his country, he is not a traitor.—Ibid.

9. The assemblage of men, which will amount to the levying of war, must be a warlike assemblage, carrying the appearance of such, and in a situation to practice hostility.—Ibid. 480.

10. An assemblage of men, with a treasonable design, but not in force, nor in a condition to attempt the design, nor attended with warlike appearances, does not constitute the fact of levying war.—Ibid.

11. The travelling of several individuals to the place of rendezvous, either separately or together, but not in military form, would not constitute levying war. The act must be unequivocal, and have a warlike appearance.—Ibid. 485.

12. War can only be levied by the employment of actual force. Troops must be embodied, men must be openly assembled.—Ibid. 487.

13. Arms are not an indispensable requisite to levying war, nor the actual application of force to the object.—Ibid. 488.

14. Levying war is an act compounded of law and fact, of which the jury, aided by the court, must judge.—Ibid. 506.

15. Appearing at the head of an army, would be an overt act of levying war. So also detaching a military corps from it for military purposes.—Ibid. 506.

Note.—United States.—Constructive treason, is when the direct and avowed object is not the destruction of the sovereign power.—U. S. vs. Burr, App. 4 Cranch Rep., 476, 477, 478, 479.—2 Chit. Crim. Law, 38.

No. 2.—Exciting Insurrection.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of High Misdemeanor: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in said county, did introduce within said State, a printed newspaper, called the Liberator, (which newspaper is printed without the State) for the purpose of exciting insurrection, on the part of the slaves, in said State, against the citizens of said State; contrary, &c.
CHAPTER VII.

FOURTH DIVISION.

Crimes and Offences against the Persons of Citizens or Individuals.

Homicide.

25. Sec. I. Homicide is the killing of a human being of any age or sex, and is of three kinds: Murder, Manslaughter, and Justifiable Homicide.

Murder.

26. Sec. II. Murder is the unlawful killing of a human being, in the peace of the State, by a person of sound memory and discretion, with malice aforethought, either express or implied.—No. 1.

Express Malice.

27. Sec. III. Express Malice is that deliberate intention, unlawfully to take away the life of a fellow-creature, which is manifested by external circumstances capable of proof.

Implied Malice.

28. Sec. IV. Malice shall be implied, where no considerable provocation appears, and where all the circumstances of the killing show an abandoned and malignant heart.

29. Sec. V. The punishment of Murder shall be death.

Manslaughter.

30. Sec. VI. Manslaughter is the unlawful killing of a human creature, without malice, either express or implied, and without any mixture of deliberation whatever; which may be voluntary, upon a sudden heat of passion, or involuntary, in the commission of an unlawful act, or a lawful act, without due caution and circumspection.—No. 2.

Voluntary Manslaughter.

31. Sec. VII. In all cases of Voluntary Manslaughter, there must be some actual assault upon the person killing, or an attempt by the person killed, to commit a serious personal injury, on the person killing. Provocation by words, threats, menaces, or contemptuous gestures, shall in no case be sufficient to free the person killing from the guilt and crime of Murder. The killing must be the result of that
sudden, violent impulse of passion, supposed to be irresistible: for if there should appear to have been an interval between the assault or provocation given, and the homicide, sufficient for the voice of reason and humanity to be heard, the killing shall be attributed to deliberate revenge, and be punished as murder.

32. Sec. VIII. Voluntary manslaughter shall be punished by confinement and labor in the penitentiary, for a term not less than two years, nor longer than four years.

**Involuntary Manslaughter.**

33. Sec. IX. Involuntary manslaughter shall consist in the killing of a human being, without any intention to do so; but in the commission of an unlawful act, or a lawful act, which probably might produce such a consequence, in an unlawful manner: Provided, always, that where such involuntary killing shall happen in the commission of an unlawful act, which in its consequences naturally tends to destroy the life of a human being, or is committed in the prosecution of a riotous intent, or of a crime punishable by death or confinement in the penitentiary, the offence shall be deemed and adjudged to be murder.

34. Sec. X. Involuntary manslaughter, in the commission of an unlawful act, shall be punished by confinement and labor in the penitentiary, for a term not less than one year, nor longer than three years.

35. Sec. XI. Involuntary manslaughter, in the commission or performance of a lawful act, where there has not been observed necessary discretion and caution, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

**Justifiable Homicide.**

36. Sec. XII. There being no rational distinction between excusable and justifiable homicide, it shall no longer exist. Justifiable homicide is the killing of a human being, by commandment of the law, in execution of public justice; by permission of the law, in advancement of public justice; in self-defence; or in defence of habitation, property, or person, against one who manifestly intends or endeavors, by violence or surprise, to commit a felony on either; or against any persons who manifestly intend and endeavor, in a riotous and tumultuous manner, to enter the habitation of another, for the purpose of assaulting or offering personal violence to any person dwelling or being therein.

37. Sec. XIII. A bare fear of any of those offences, to prevent which the homicide is alleged to have been committed, shall not be sufficient to justify the killing; it must appear that the circumstances were sufficient to excite the fears of a reasonable man, and that the party killing really acted under the influence of those fears, and not in the spirit of revenge.

38. Sec. XIV. If, after persuasion, remonstrance, or other gentle measures used, a forcible attack and invasion, on the property or
habitation of another, cannot be prevented, it shall be justifiable homicide to kill the person so forcibly attacking and invading on the property or habitation of another; but it must appear that such killing was absolutely necessary to prevent such attack and invasion, and that a serious injury was intended, or might accrue to the person, property, or family, of the person killing.

39. Sec. XV. If a person kill another in his defence, it must appear that the danger was so urgent and pressing, at the time of the killing, that in order to save his own life, the killing of the other was absolutely necessary; and it must appear also, that the person killed was the assailant, or that the slayer had really and in good faith endeavored to decline any farther struggle, before the mortal blow was given.

40. Sec. XVI. All other instances which stand upon the same footing of reason and justice, as those enumerated, shall be Justifiable Homicide.

41. Sec. XVII. The homicide appearing to be justifiable, the person indicted shall, upon the trial, be fully acquitted and discharged.

**Killing Slave or Free Person of Color.**

42. Sec. XVIII. Killing a slave in the act of revolt, or when the said slave forcibly resists a legal arrest, shall be Justifiable Homicide.

43. Sec. XIX. In all cases, the killing or maiming of a slave, or person of color, or Indian, in amity with the United States, shall be put upon the same footing of criminality as the killing or maiming of a white person.

**Infanticide.**

44. Sec. XX. If any person shall counsel, advise, or direct, a woman to kill the child she is pregnant, or goes with; and after she is delivered of such child, she kill it, every such person, so advising or directing, shall be deemed an accessory before the fact to such murder, and shall have the same punishment as the principal.

45. Sec. XXI. The constrained presumption arising from the concealment of the death of any child, that the child, whose death is concealed, was therefore murdered by the mother, shall not be sufficient or conclusive evidence to convict the person indicted of the murder of her child, unless probable proof be given that the child was born alive; nor unless the circumstances attending it shall be such as shall satisfy the minds of the jury that the mother did willfully and maliciously destroy and take away the life of such child.

46. Sec. XXII. If any woman shall conceal or attempt to conceal the death of any issue of her body, male or female, which, if it were born alive, would by law be a bastard, so that it may not come to light, whether it was murdered or not, every such mother being convicted thereof, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 3.

**Mayhem.**

47. Sec. XXIII. Mayhem shall consist in unlawfully depriving a
person, free or slave, of a member, or disfiguring, or rendering it use-
less.—No. 4.

48. Sec. XXIV. If any person shall unlawfully cut out or disa-
ble the tongue; put out an eye; slit or bite the nose, ear, or lip,
or cut or bite off the nose, ear, or lip; or castrate; or cut, or bite off,
or disable any other limb or member of another, with an intention, in
so doing, to maim or disfigure such person; or shall voluntarily, mal-
ciously, and of purpose, while fighting or otherwise, do any of these
acts, every such person shall be guilty of Mayhem.

49. Sec. XXV. A person convicted of cutting out the tongue, with
the intention, or voluntarily or maliciously, as expressed in the pre-
ceding section, shall be punished by confinement and labor in the
penitentiary for life. A person convicted of disabling the tongue,
with the intention, or voluntarily or maliciously, as expressed in the
preceding section, shall be punished by confinement and labor in the
penitentiary, for a term not less than five years, nor more than fifteen
years.

50. Sec. XXVI. A person convicted of putting out an eye, with the
intention, or voluntarily or maliciously, as before expressed, in fight
or otherwise, shall be punished by confinement and labor in the peni-
tentiary, for a term not less than two years, nor longer than five years.

51. Sec. XXVII. A person convicted of putting out the eyes of
another, or the eye of another having but one eye, with a similar
intention, or voluntarily or maliciously, while fighting or otherwise,
shall be punished by confinement and labor in the penitentiary, for
and during the term of his or her natural life.

52. Sec. XXVIII. A person convicted of slitting or biting the nose,
ear, or lip, of another, with the intention, or voluntarily or malicious-
ly, as before expressed, while fighting or otherwise, shall be punished
by confinement and labor in the penitentiary, for the term of not less
than one year, nor more than three years, or by fine and imprison-
ment in the common jail of the county, at the discretion of the court.

53. Sec. XXIX. A person convicted of cutting or biting off the nose,
ear, or lip of another, with the intention, or voluntarily or maliciously,
as before expressed, while fighting or otherwise, shall be punished by
confinement and labor in the penitentiary, for a term not less than
two years, nor more than five years.

54. Sec. XXX. A person convicted of the crime of castrating anoth-
er, with the intention, or voluntarily, or maliciously, as before expressed,
while fighting or otherwise, shall be punished with death.

55. Sec. XXXI. A person convicted of willfully and maliciously in-
juring, wounding, or disfiguring the private parts of another, with
the intention aforesaid, whilst fighting or otherwise, which injuring,
wounding, or disfiguring, do not amount to castration, shall be pun-
ished by confinement and labor in the penitentiary, for a term not less
than five years, nor longer than fifteen years.

56. Sec. XXXII. A person convicted of cutting or biting off, or
disabling any limb or member of another, not hereinbefore designated,
with the intention, or voluntarily or maliciously, as before expressed,
while fighting or otherwise, shall be punished by confinement and labor in the penitentiary, for a term not less than one year, nor longer than five years; or in slight and trivial cases, by fine and imprisonment in the common jail of the county, at the discretion of the court.

Rape.

57. Sec. XXXIII. Rape is the carnal knowledge of a female, forcibly and against her will.—No. 5.

58. Sec. XXXIV. Rape shall be punished by an imprisonment at labor in the penitentiary, for a term not less than two years, nor longer than twenty years.

59. Sec. XXXV. An Assault, with intent to commit a Rape, shall be punished by an imprisonment at labor in the penitentiary, for a term not less than one year, nor longer than five years.

Sodomy.

60. Sec. XXXVI. Sodomy is the carnal knowledge and connection, against the order of nature, by man with man, or in the same unnatural manner, with woman.—No. 6.

61. Sec. XXXVII. The punishment of Sodomy shall be imprisonment at labor in the penitentiary, for and during the natural life of the person convicted of this detestable crime.

Bestiality.

62. Sec. XXXVIII. Bestiality is the carnal knowledge and connection, against the order of nature, by man or woman, in any manner, with a beast.

63. Sec. XXXIX. The punishment of Bestiality shall be imprisonment at labor in the penitentiary, for and during the natural life of the person convicted of this detestable crime.—No. 7.

Attempt to commit Sodomy or Bestiality.

64. Sec. XL. An attempt to commit Sodomy or Bestiality shall be punished by imprisonment and labor in the penitentiary, for a term not less than two years, nor more than four years.

Assault.

65. Sec. XLI. An Assault is an attempt to commit a violent injury on the person of another.

66. Sec. XLII. A bare Assault shall be punished by fine or imprisonment in the common jail of the county, at the discretion of the court.

With Intent to Murder.

67. Sec. XLIII. An Assault with intent to Murder, by using any weapon likely to produce death, shall be punished by imprisonment and labor in the penitentiary, for a term not less than two years, nor longer than ten years.—No. 8.

With Intent to Rob.

68. Sec. XLIV. An Assault with intent to Rob, is where any per-
PENAL CODE OF GEORGIA.

Person or persons shall, with any offensive or dangerous weapon or instrument, unlawfully and maliciously assault another, or shall by menace, or in and by any forcible or violent manner, demand any money, goods, or chattels of or from any other person or persons, with intent to rob or commit robbery upon such person or persons.—No. 9.

69. Sec. XLV. A person convicted of an Assault with intent to Rob, shall be punished by confinement and labor in the penitentiary, for a term not less than two years, nor more than four years.

With Intent to Spoil or Injure Clothes.

70. Sec. XLVI. An Assault with an intent to spoil or injure clothes or garments, is where any person or persons shall at any time willfully and maliciously assault any person or persons, with an intent to tear, spoil, cut, burn, or deface, and shall tear, spoil, cut, burn, or deface, the garments or clothes of such person or persons; and every such offender, being thereof convicted, shall be punished by a fine not exceeding two hundred dollars, and imprisonment in the common jail of the county, for a term not less than three months, nor more than one year.—No. 10.

Battery.

71. Sec. XLVII. Battery is the unlawful beating of another, and shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 11.

False Imprisonment.

72. Sec. XLVIII. False imprisonment is a violation of the personal liberty of a free white person or citizen, and consists in confinement or detention of such person, without sufficient legal authority.—No. 12.

73. Sec. XLIX. Any person who shall arrest, confine, or detain a free white person or citizen, without process, warrant, or legal authority to justify it, shall be punished by fine and imprisonment in the common jail of the county, or either, at the discretion of the court.

74. Sec. L. The arrest, confinement, or detention of a free white person or citizen, by the warrant, mandate, or process of a magistrate, being manifestly illegal, and showing malice and oppression, the said magistrate shall be removed from office, and such magistrate, and all and every person and persons, knowingly and maliciously concerned therein, shall be punished by fine and imprisonment in the common jail of the county, or imprisonment and labor in the penitentiary, for any time not less than one, nor more than two years, at the discretion of the court.

Kidnapping.

75. Sec. LI. Kidnapping is the forcible abduction or stealing away of any free white person, or free person of color, without lawful authority, or warrant from this State, or any county thereof, and sending or conveying such person beyond the limits of said State or county, against his or her will. Each and every person who shall be guilty of this crime, and be thereof lawfully convicted, shall be pun-
PENAL CODE OF GEORGIA.

ished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than seven years.—No. 13.

76. Sec. LII. If any person shall forcibly, maliciously, or fraudulently, lead, take, or carry away; or decoy, or entice away, out of the limits of this State, or any county thereof, any free white child, under the age of twelve years, from its parent or guardian, or against his, her, or their will or wills, and without his, her, or their consent or consents, such person so offending, shall be indicted for kidnapping, and on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four, nor more than seven years.

**Stabbing.**

77. Sec. LIII. Any person who shall be guilty of the act of stabbing another, except in his own defence, with a sword, dirk, knife, or other instrument of like kind, shall, on conviction thereof, be punished by fine not exceeding one thousand dollars, or imprisonment in the common jail of the county where such offence may be committed, not to exceed six months; or fine and imprisonment both, in the discretion of the court; or confinement and labor in the penitentiary, not less than one year, or more than two years: Provided, always, That if such stabbing shall produce death, the offender shall be guilty of murder or manslaughter, according to the facts and circumstances of the case; or if said stabbing shall not produce death, and the facts and circumstances show that it was the intention of the person stabbing to commit the crime of murder, then, and in such case, the offender shall be guilty of the offence of an assault with intent to commit murder.

No. 1.—Murder.

STATE OF GEORGIA, }  The Grand Jurors, sworn, chosen, and se-
Houston County. } lected for the county of Houston, to wit: Hugh
Lawson, Samuel Felder, Hugh L. Dennard, Henry Cunyus, Alexander Smith, Jesse Smith, Creed T. Woodson, Benjamin Bryan, John S. Jobson, Calvin Leary, William H. Miller, Joseph M. Cooper, Francis W. Jobson, Tilman Downs, Thomas Gurr, Joel Loftin, Alfred Nelson, James Crawford, David Clark, James Turrentine, William H. Talton, William P. Mount, and Warren E. Sanders, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Murder, for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, then and there, in and upon one Richard Roe, in the peace of God and said State, then and there being, unlawfully, feloniously, willfully, and of his malice aforethought, did make an assault: and the said John Doe, with a certain knife, of the value of fifty cents, which he, the said John Doe, in his right hand, then and there, had and held; the said Richard Roe, in and upon the left side, immediately under the left arm, of him, the said Richard Roe, then and there, unlawfully, feloniously, willfully, and of his malice aforethought,
did strike and thrust, giving to the said Richard Roe, then and there, with the knife aforesaid, in and upon the left side, immediately under the left arm of him, the said Richard Roe, one mortal wound of the breadth of one inch and of the depth of four inches; of which said mortal wound, the said Richard Roe, on the said first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, died. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, him, the said Richard Roe, in manner and form aforesaid, unlawfully, feloniously, willfully, and of his malice aforethought, did kill and murder, contrary to the laws of said State, the good order, peace, and dignity thereof.

Witneses.

CHAI^S SmI^ES WILLIAMS, Sol. Gen.

JAMES ROPE,

PRQSECUT.

October term, 1850.

No. 2.—Manslaughter.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Manslaughter: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, then and there, in and upon one Richard Roe, in the peace of God and said State, then and there being, unlawfully, feloniously, and willfully, did make an assault; and that the said John Doe, with a certain knife, of the value of fifty cents, which he, the said John Doe, in his right hand, then and there, had and held, the said Richard Roe, in and upon the left side, immediately under the left arm, of him, the said Richard Roe, then and there, unlawfully, feloniously, and willfully, did strike and thrust, giving to the said Richard Roe, then and there, with the knife aforesaid, in and upon the left side, immediately under the left arm, of him, the said Richard Roe, one mortal wound of the breadth of one inch and of the depth of four inches, of which said mortal wound the said Richard Roe, on the said first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, him, the said Richard Roe, in manner and form aforesaid, unlawfully, feloniously, and willfully, did kill; contrary, &c.

No. 3.—Mother Concealing Death of Child.

In the name and behalf of the citizens of Georgia, charge and accuse Betsey Claybank, of the county and State aforesaid, with the offence of concealing the death of her bastard child: for that said Betsey Claybank, in said county, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, being then and there big with a male [or female] child, (which child was a bastard,) was then and there delivered of said child alive, which said child, then and there, instantly died; and that the said Betsey Claybank being so delivered of said child as aforesaid, did then and there, unlawfully attempt to conceal the death of said child, by secretly
burying the dead body of said child, so that it might not come to light whether said child was murdered or not; contrary, &c.

No. 4.—Mayhem.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Mayhem: for that the said John Doe, in said county, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in and upon one Richard Roe, in the peace of God and said State, then and there being, did make an assault, and him, the said Richard Roe, did, then and there, beat, wound, and ill-treat; and the left ear of him, the said Richard Roe, then and there, unlawfully, feloniously, voluntarily, maliciously, and of purpose, did; then and there, bite off, thereby unlawfully depriving said Richard Roe of his said left ear, with intent in so doing, thereby then and there the said Richard Roe to Maim; contrary, &c.

No. 5.—Rape.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Rape: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in and upon one Betsey Claybank, in the peace of God and said State, then and there being, violently and feloniously, did make an assault, and her, the said Betsey Claybank, then and there, forcibly and against her will, feloniously did ravish and carnally know; contrary, &c.

No. 6.—Sodomy.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Sodomy: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in and upon one Richard Roe, then and there being, feloniously did make an assault, and then and there, feloniously, wickedly, and against the order of nature, had a venereal affair, and carnal knowledge and connection, with the said Richard Roe; and then and there, feloniously, wickedly, and against the order of nature, with the said Richard Roe, did commit and perpetrate that detestable and abominable crime of buggery, (not to be named among Christians;) contrary, &c.

No. 7.—Bestiality.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Bestiality: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hun-
dred and *fifty*, with a certain *black cow*, then and there being, feloniously, wickedly, and against the order of nature, had a venereal affair; and then and there, feloniously, wickedly, and against the order of nature, carnally knew the said *black cow*; and then and there, feloniously, wickedly, and against the order of nature, with the said *black cow*, did commit and perpetrate that detestable and abominable crime of buggery, (not to be named among Christians;) contrary, &c.

**No. 8.—Assault with Intent to Murder.**

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, of the county and State aforesaid, with the offence of Assault with intent to Murder: for that the said *John Doe*, in the county aforesaid, on the *first day of May*, in the year of our Lord one thousand eight hundred and *fifty*, with force and arms, and with a certain *pistol*, of the value of *one* dollar, loaded with *gunpowder* and *one* leaden ball; said *pistol* being a weapon likely to produce death, and which he, the said *John Doe*; in his right hand, then and there, had and held, in, at, and upon one *Richard Roe*, in the peace of God and said State, then and there being, did then and there, willfully, feloniously, and of his malice aforethought, make an assault; and the said *pistol*, loaded as aforesaid, did then and there, willfully, feloniously, and of his malice aforethought, direct, aim, discharge and shoot off, at, against, towards and upon, the said *Richard Roe*, then and there being, with the intent him, the said *Richard Roe*, then and there, willfully, feloniously, and of his malice aforethought, to kill and murder, to the damage of him, the said *Richard Roe*; contrary, &c.

**No. 9.—Assault with Intent to Rob.**

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, of the county and State aforesaid, with the offence of Assault with intent to Rob: for that the said *John Doe*, in the county aforesaid, on the *first day of May*, in the year of our Lord one thousand eight hundred and *fifty*, with force and arms, in and upon one *Richard Roe*, in the peace of God and said State, then and there being, with a certain *knife*,(the same being an offensive weapon,) which the said *John Doe*, in his right hand, then and there, had and held, unlawfully and maliciously, did make an assault, and demand from said *Richard Roe*, money, with intent to rob said *Richard Roe*; contrary, &c.

**No. 10.—Assault with Intent to Injure Clothes.**

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, of said county and State, with the offence of Assault with intent to *spoil* clothes: for that the said *John Doe*, in the county aforesaid, on the *first day of May*, in the year of our Lord one thousand eight hundred and *fifty*, with force and arms, in and upon one *Richard Roe*, in the peace of God and said State, then and there being, did willfully and maliciously make an assault, with intent to
tear, spoil, and deface the clothes of him, the said Richard Roe; and did then and there tear, spoil, and deface one waistcoat, one coat, and one pair of pantaloons, the goods and chattels of him, the said Richard Roe; contrary, &c.

No. 11.—Assault and Battery.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Assault and Battery: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in and upon one Richard Roe, in the peace of God and said State, then and there being, did make an assault, and him, the said Richard Roe, did then and there, unlawfully beat, wound and ill-treat, and other wrongs to the said Richard Roe, then and there did; contrary, &c.

NOTE.—The present is an indictment both for an Assault and a Battery, actually committed; and if the prosecutor prove either, the defendant must be convicted: therefore, the Compiler deems it unnecessary to present a separate form for an Assault only.

No. 12.—False Imprisonment.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of False Imprisonment: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in and upon one Richard Roe, a free white person, in the peace of God and said State, then and there being, did make an assault, and him, the said Richard Roe, then and there, did beat, wound and ill-treat; him, the said Richard Roe, then and there, unlawfully and injuriously, and against the will of the said Richard Roe, and also against the laws of said State; and without sufficient legal authority, did imprison and detain in confinement there, for a long space of time, to wit: for the space of ten hours, then next following, and other wrongs to the said Richard Roe, then and there did, to the great damage of the said Richard Roe; contrary, &c.

No. 13.—Kidnapping.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Kidnapping: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in and upon one Richard Roe, a free white man, in the peace of God and said State, then and there being, did make an assault, and him, the said Richard Roe, then and there, did beat, wound and ill-treat; him, the said Richard Roe, did then and there unlawfully abduct and steal away, from said State and county, and violently and forcibly, and against the will of him, the said Richard Roe, did carry him, the said Richard Roe, into the
State of Florida, beyond the limits of the State of Georgia, without lawful warrant [or authority,] from the State of Georgia, or any county thereof; contrary, &c.

No. 14.—Stabbing.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Stabbing: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in and upon one Richard Roe, in the peace of God and said State, then and there being, unlawfully, willfully, maliciously, and feloniously, did make an assault, and with a certain knife, which he, the said John Doe, in his right hand, then and there, had and held, in and upon the left arm, and in and upon the left breast of him, the said Richard Roe, then and there, unlawfully, willfully, maliciously, and feloniously, did stab and cut; said stabbing and cutting, then and there, not having been done in his, the said John Doe's, own defence, to the damage of the said Richard Roe; contrary, &c.

CHAPTER VIII.

FIFTH DIVISION.

Crimes and Offences against the Habitations of Persons.

78. Sec. I. Crimes against the habitations of individuals shall consist of—1st. Arson, and 2d. Burglary.

Arson.

79. Sec. II. Arson is the malicious and willful burning of the house or out-house of another.—No. 1.

80. Sec. III. The willful or malicious burning, or setting fire to, or attempting to burn, a house in a city, town, or village, shall be punished with death.

81. Sec. IV. The willful and malicious burning of the dwelling-house of another, on a farm or plantation, or elsewhere, (not in a city, town, or village,) shall be punished by imprisonment and labor in the penitentiary, for any term not less than five years, nor more than twenty years.—No. 2.

82. Sec. V. Setting fire to the dwelling-house of another, with intent to burn the same, on a farm or plantation, or elsewhere, (not in a city, town, or village,) shall be punished by imprisonment and labor in the penitentiary, for a term not less than three years, nor longer than seven years.
83. SEC. VI. The willful and malicious burning of an out-house of another, such as a barn, stable, or any other house, (except the dwelling-house,) on a farm or plantation, or elsewhere, (not in a city, town, or village,) shall be punished by imprisonment and labor in the penitentiary, for any term not less than two years, nor more than seven years.—No. 3.

84. SEC. VII. Setting fire to an out-house of another, as described in the preceding section, shall be punished by imprisonment and labor in the penitentiary, for any term not less than one year, nor more than three years.

85. SEC. VIII. The crime of burning shall be complete where the house is consumed, or generally injured.

86. SEC. IX. The offence of setting fire to a house shall be complete, when any attempt is made to burn it, though no material injury is the consequence.

87. SEC. X. Arson in the day-time, (except in a city, town, or village,) shall be punished by a shorter period of imprisonment and labor, than Arson committed in the night.

88. SEC. XI. Arson, which produces the death of any person, shall be punished by the death of the person or persons committing the Arson.

Burglary.

89. SEC. XII. Burglary is the breaking and entering into the dwelling or mansion-house of another, with intent to commit a felony. All out-houses contiguous to, and within the curtilage or protection of the mansion-house, shall be considered as parts of the mansion or dwelling-house—a hired room or apartments, in a public tavern, inn, or boarding-house, shall be considered as the dwelling-house of the person or persons occupying and hiring the same. Burglary may be committed in the day or night.—No. 4.

90. SEC. XIII. Burglary in the day-time shall be punished by imprisonment and labor in the penitentiary, for any time not less than three years, nor longer than five years.

91. SEC. XIV. Burglary in the night shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than seven years.

No. 1.—Arson in a Town, City, or Village.

STATE OF GEORGIA.) The Grand Jurors, sworn, chosen, and selected

for the County of Houston, to wit: Daniel Adams, Hugh L. Dennard, Edwin Mounger, Hugh Lawson, William H. Miller, John S. Jobson, Tilman Downs, William H. Talton, Francis W. Jobson, Joseph M. Cooper, John J. Forsyth, Joel Loftin, Calvin Leary, Edward O. Jinkins, Thomas B. Aldridge, Sampson B. King, James Wallis, John J. Floyd, Robert Martin, Martin Jinkins, Silas Rawls, Stephen Meadows, and Alfred Nelson, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Arson: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in the county aforesaid,
maliciously and willfully did burn a certain dwelling-house, [or out-
house,] of Richard Roe, in the town of Perry, in the county aforesaid, 
by setting fire to the same; contrary to the laws of said State, to the 
good order, peace and dignity thereof.

October term, 1850.

Witnesses,


No. 2.—Arson of Dwelling-House, not in a City, &c.

In the name and behalf of the citizens of Georgia, charge and accuse 
John Doe, of the county and State aforesaid, with the offence of Arson: 
for that the said John Doe, on the first day of May, in the year of our 
Lord one thousand eight hundred and fifty, with force and arms, in 
the county aforesaid, maliciously and willfully, in the night-time, did 
burn the dwelling-house of Richard Roe, in said county, on the plantation 
of said Richard Roe, the said dwelling-house not being in a city, town, 
or village, there being no persons in said dwelling-house, at the time 
aforesaid; by then and there, setting fire to said dwelling-house; con-
trary, &c.

No. 3.—Arson of a Barn, Stable, &c.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse John Doe, of the county and State aforesaid, with the offence of Arson: 
for that the said John Doe, on the first day of May, in the year of our 
Lord one thousand eight hundred and fifty, with force and arms, in 
the county aforesaid, willfully and maliciously did burn an out-
house of Richard Roe, the same being a barn on the plantation of said 
Richard Roe, the said barn not being in a city, town, or village, by set-
ting fire to the same; contrary, &c.

No. 4.—Burglary.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse John Doe, of the county and State aforesaid, with the offence of Burglary: 
for that the said John Doe, on the first day of May, in the 
year of our Lord one thousand eight hundred and fifty, about the hour 
of eleven, in the night of the same day, with force and arms, in the 
county aforesaid, the dwelling-house of one Richard Roe, there situate, 
feloniously and burglariously, did break and enter, with intent, the 
goods and chattels of said Richard Roe, in the said dwelling-house, 
then and there being, then and there, feloniously and burglariously to 
steal, take, and carry away; contrary, &c.
CHAPTER IX.

SIXTH DIVISION.

Of Crimes and Offences Relative to Property.

Robbery.

92. Sec. I. Robbery is the wrongful, fraudulent, and violent, taking of money, goods, or chattels, from the person of another, by force or intimidation, without the consent of the owner.—No. 1.

93. Sec. II. Robbery, by open force and violence, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than seven years.

94. Sec. III. Robbery, by intimidation, or without using force and violence, shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than five years.

Larceny.

95. Sec. IV. Larceny, or theft, as contradistinguished from robbery by violence, force, or intimidation, shall consist of—1st. Simple Theft or Larceny—2d. Theft or Larceny from the person—3d. Theft or Larceny from the house—4th. Theft or Larceny after a trust or confidence has been delegated or reposed.

1st.—Simple Larceny.

96. Sec. V. Simple Theft or Larceny is the wrongful and fraudulent taking, and carrying away, by any person, of the personal goods of another, with intent to steal the same.

Horse-stealing.

97. Sec. VI. Horse-stealing shall be denominated simple larceny: and the term "Horse" shall include Mule and Ass, and each animal of both sexes, and without regard to the alterations which may be made by artificial means.

98. Sec. VII. The offence shall, in all cases, be charged as simple larceny, but the indictment shall designate the nature, character, and sex of the animal, and give some other description by which its identity may be ascertained.

99. Sec. VIII. The stealing of a horse, mule, or ass, shall be punished by confinement and labor in the penitentiary, for any time not less than
two years, nor longer than five years—and the stealing of more than
one of these animals, at the same time, shall be punished by confine-
ment and labor in the penitentiary, for any time not less than six years,
nor longer than fourteen years.—No. 2.

Cattle-stealing.

100. Sec. IX. Cattle-stealing shall be denominated simple larceny, and
be so charged in the indictment, and shall include the theft or larceny
of any horned animal or animals, and all animals having the hoof
cloven, except hogs.—No. 3.

101. Sec. X. The indictment shall sufficiently describe the animal or
animals falling under the description of cattle in the preceding section,
so that it, or they, may be ascertained and identified by the owner or
owners thereof.

102. Sec. XI. The stealing of one or more animals, falling under the
above description of cattle, if the value does not exceed the sum of
twenty dollars, shall be punished by fine and imprisonment in the com-
mon jail of the county, for any time not longer than six months, at the dis-
cretion of the court—but, if the value of the animal or animals stolen,
exceeds the sum of twenty dollars, the person convicted shall be
punished by imprisonment and labor in the penitentiary, for any time
not less than one year, nor longer than four years.

Hog-stealing.

103. Sec. XII. The stealing of a hog or hogs is simple larceny, and
shall be so charged in the indictment, and the hog or hogs so
described, that it, or they, may be identified by the owner.

104. Sec. XIII. The punishment of hog-stealing, if the hog or hogs
stolen do not exceed the value of twenty dollars, shall be fine and im-
prisonment, in the common jail of the county, for any time not exceed-
ing six months, at the discretion of the court—but, if the value of the
hog or hogs stolen exceeds the sum of twenty dollars, the person con-
victed shall be punished by imprisonment and labor in the peni-
tentiary, for any time not less than one year, nor longer than three
years.

105. Sec. XIV. All other domestic animals which are fit for food, may
be subjects of simple larceny—and any person or persons, who shall
steal any such animal or animals, shall be punished by fine and im-
prisonment, or fine or imprisonment in the common jail of the county,
at the discretion of the court.

Altering Mark or Brand.

106. Sec. XV. If any person or persons shall mark and brand, or mark
or brand, any animal or animals, before mentioned; or alter, or change
the mark or marks, or brand or brands, of any such animal, being the
property of another, with an intention to claim or appropriate the same
to his or her own use, or to prevent identification by the true owner or
owners thereof, the person or persons so offending shall be guilty of a
misdemeanor, and, on conviction, shall suffer the same punishment
as is inflicted for the theft or larceny of the said animal or animals.
Larceny of Documents.

107. Sec. XVI. If any person shall take and carry away any paper, document, deed, will, or other writing, relating to real or personal estate, with an intention to impair, prevent, or render difficult the establishment of a title to real or personal estate; or mutilate, cancel, burn, or otherwise destroy said paper, document, deed, will, or other writing, with the intention aforesaid, such person shall be guilty of simple larceny, and be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years.

108. Sec. XVII. If any person shall take and carry away any bond, note, bank-bill, or due-bill, or paper or papers, securing the payment of money, or other valuable thing; or any receipt, acquittance, or paper or papers, operating as a discharge for the payment of money, or other thing belonging to another, with intent to steal the same, such person shall be guilty of simple larceny, and be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than four years.

Fixtures.

109. Sec. XVIII. Theft or Larceny may be committed of any thing or things, which, in the language of the law, savors of the realty, or of any fixture or fixtures; and the punishment shall be fine or imprisonment in the common jail of the county, or both, at the discretion of the court.

Plundering from Vessels in Distress.

110. Sec. XIX. Plundering or stealing any article of value from a vessel in distress, or from a wreck, or any other vessel, boat, or watercraft, within the jurisdictional limits of this State, is simple larceny, and shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years.

Stealing Slave.

111. Sec. XX. The stealing of a slave is simple larceny, and shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

Inducing Slave to Run Away.

112. Sec. XXI. Any person who shall, by any enticement, or by giving a pass, or by any other means, induce a slave to run away from his or her owner, with the intention to sell said slave, or otherwise to appropriate the said slave to his (the offender's) own use, or the use of any other person, and thereby to deprive the owner of the use and services of said slave, shall be guilty of simple larceny, and, on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

113. Sec. XXII. All simple larcenies or thefts, of the personal goods of another, not mentioned, or particularly designated in this Code, shall be punished by imprisonment in the common jail of the county, for any time not longer than one year. Provided, the thing or things stolen do not exceed the value of twenty dollars; but if they
do exceed in value the sum of twenty dollars, then the person convicted of such larceny shall be punished by confinement and labor in the penitentiary, for any time not less than one year, nor longer than five years.

2d. — Theft or Larceny from the Person.

114. Sec. XXIII. Theft or larceny from the person, as distinguished from robbery, before described, is the wrongful and fraudulent taking of money, goods, chattels, or effects, or any article of value, from the person of another, privately, without his knowledge, in any place whatever, with intent to steal the same.—No. 5.

115. Sec. XXIV. A person convicted of this class of larceny, shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than five years; and if the offense was committed in a public place, or where many persons are assembled, it shall be considered as greatly adding to the criminality of the act, and the punishment shall be increased in consequence thereof, but in no case to exceed five years.

116. Sec. XXV. Any sort of secret, sudden, or wrongful taking from the person, with the intent described in the twenty-third section of this division, without using intimidation, or open force or violence, shall be within this class of larceny, though some small force be used by the thief to possess himself of the property: Provided, there be no resistance by the owner, or injury to his person, and all the circumstances of the case show that the thing was taken, not so much against, as without the consent of the owner.

3d. — Larceny from the House.

117. Sec. XXVI. Larceny from the House, is the breaking, or entering any house, with an intent to steal; or after breaking, or entering said house, stealing therefrom any money, goods, chattels, wares, merchandise, or any thing or things of value, whatever.—No. 6.

118. Sec. XXVII. Any person who, by day or night, shall, in any dwelling-house, store, shop, or warehouse, or any other house or building, privately steal any goods, money, chattels, wares, or merchandise, or any other article or thing of value, shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than five years.

119. Sec. XXVIII. Any person entering a dwelling-house, store, shop, or warehouse, or any other house or building, with intent to steal, but who is detected and prevented from so doing, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years.

120. Sec. XXIX. Any person breaking any dwelling-house, store, shop, or warehouse, or any other house or building, with intent to steal, but who is detected and prevented from effecting such intention, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years; but if the owner of said building, or any other person, be in the house at the time of such breaking, and be put in fear, then the said offender shall
be punished by imprisonment and labor in the penitentiary, for any
time not less than two years, nor longer than five years.

121. Sec. XXX. Any person breaking and entering any house or
building, (other than a dwelling-house or its appurtenances,) with in-
tent to steal, but who is detected and prevented from carrying such
intention into effect, shall be punished by imprisonment and labor in
the penitentiary, for any time not less than two years, nor longer than
four years. And any person breaking and entering any such house
or building, and stealing therefrom any money, goods, chattels, wares,
or merchandise, or any other thing or article of value, shall be pun-
ished by imprisonment and labor in the penitentiary, for any time not
less than three years, nor longer than five years. But if such break-
ing, entering, and stealing be accompanied by any violence, menace,
or threat, or by alarming and putting in fear any person in said house,
then the imprisonment and labor shall not be less than four years.

122. Sec. XXXI. Any house, building, or edifice, belonging to the
State, or a corporate body, or appropriated to public worship, or any
other public purpose, shall be taken and considered as a house or
building within which this class of larceny may be committed.

123. Sec. XXXII. Any person entering and stealing from any hut,
tent, booth, or temporary building, shall be punished by imprisonment
and labor in the penitentiary, for any time not less than one year, nor
longer than four years.

4th.—Theft or Larceny after a Trust has been Delegated or a
Confidence Reposed.

Public Officers.

124. Sec. XXXIII. Any officer, servant, or other person, employed
in any public department, station, or office of government of this State,
or any county, town, or city of this State; or in any bank or other
corporate body in this State; or any president, director, or stock-
holder, of any bank or other corporate body in this State, who shall
embezzle, steal, secrete, or fraudulently take and carry away any
money, gold or silver bullion; note or notes; bank-bill or bills; bill
or bills of exchange; warrant or warrants; bond or bonds; deed or
deeds; draft or drafts; check or checks; security or securities, for the
payment of money or delivery of goods, or other things; lease,
will, letter of attorney, or other sealed instrument; or any certificate,
or other public security of the State, for the payment of money; or
any receipt, acquittance, release, or discharge of any debt, suit, or
other demand, or any transfer or assurance of money, stock, goods,
chattels, or other property; or any day-book or other book of accounts;
or any agreement or contract whatever; such person, so offending,
shall, on conviction, be punished by imprisonment and labor in the
penitentiary, for any time not less than two years, nor longer than
seven years.—No. 7.

Merchant, Factor, &c.

125. Sec. XXXIV. If any factor, commission merchant, warehouse
keeper, wharfinger, wagoner, stage-driver, or other common carrier,
on land or water; or any other bailee, with whom any money, bank-
bill or bills; note or notes; bill or bills of exchange; draft or drafts;
check or checks; bond or bonds; or other security or order, for the
payment of money, or other valuable thing; or any cotton, corn, or
other produce, goods, wares, or merchandise; or any other thing or
things of value, are or may be intrusted, or deposited, by any person,
shall fraudulently convert the same, or any part thereof, or the pro-
ceeds of any part thereof, to his or her own use; or otherwise dis-
pose of the same, or any part thereof, without the consent of the
owner, or bailor, and to his or her injury, and without paying to such
owner or bailor, on demand, the full value or market price thereof;
or if, after a sale of any of the said articles, with the consent of the
owner or bailor, such person shall fraudulently, and without the con-
sent of the said owner or bailor, convert the proceeds thereof, or any
part of the said proceeds, to his or her own use, and fail or refuse to
pay the same over to such owner or bailor, on demand; every such
person so offending shall, on conviction, be punished by imprisonment
and labor in the penitentiary, for any time not less than two years,
nor longer than seven years.—No. 8.

Clerk, Agent, &c.

126. Sec. XXXV. If any person employed as a clerk, agent, or
servant, or in any other character or capacity, in any store, ware-
house, counting-room, exchange office, shop, or other place of trade,
traffic, or exchange, where, from the nature of the business or employ-
ment, it is necessary or usual to intrust to such person any goods,
wares, or merchandise, cotton, corn, or other produce, money, notes,
bills of exchange, bank notes, checks, drafts, orders for payment of
money, or other valuable thing, or any other thing or article of value,
shall fraudulently take and carry away, or convert to his own use, or
otherwise dispose of any of the said goods, wares, or merchandise,
cotton, corn, or other produce, money, notes, bills of exchange, bank
notes, checks, drafts, orders, or other thing or things of value, thus in-
trusted to him, or committed to his charge, to the injury, and without
the consent of the owner thereof, or person thus intrusting him; such
person so offending shall, on conviction, be punished by imprisonment
and labor in the penitentiary, for any time not less than one year,
nor longer than five years.—No. 9.

Person Intrusted, &c.

127. Sec. XXXVI. If any person who has been intrusted by
another with any money, note or notes, bill or bills of exchange, bond
or bonds, check or checks, draft or drafts, bank note or notes, order or
orders for the payment of money, or other valuable article or thing,
or any cotton, corn, or other produce, goods, wares, or merchandise,
horse or horses, mule or mules, cattle, sheep, goats, hogs, or other
article or articles of value, for the purpose of applying the same for
the use or benefit of the person to whom they belong, or the person
delivering them, or any of them, or for the purpose of collecting the
money, or other thing due on any such note or notes, bill or bills of
exchange, bond or bonds, check or checks, draft or drafts, bank note
or notes, or order or orders, and paying the proceeds thereof over to
the owner or other person, so intrusting or delivering the same, or for
the purpose of selling such cotton, corn, or other produce, goods, wares, or merchandise, horse or horses, mule or mules, cattle, sheep, goats, hogs, or other valuable article, and paying over the proceeds of such sale to the owner, or other person, so intrusting or delivering the said article or articles, shall fraudulently convert the said article or articles, or any of them, or the money, or other thing, arising from the sale or collection of any of them, to his or her own use, or shall otherwise dispose of them, or any of them, to the injury, and without the consent of the owner, or other person so intrusting or delivering them, and without paying to such owner or person intrusting or delivering the same, the full value or market price thereof; such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years.—No. 10.

Bank Officers, &c.

128. Sec. XXXVII. Any president, director, or other officer of any chartered bank in this State, who shall violate, or be concerned in violating any provision of the charter of such bank, shall be guilty of a high misdemeanor, and on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary, for any term not less than one year, nor longer than ten years.—No. 11.

129. Sec. XXXVIII. Every president, director, or other officer of any chartered bank in this State, shall be deemed to possess such a knowledge of the affairs of the corporation, as to enable him to determine whether any act, proceeding, or omission, is a violation of the charter. And every president and director who shall be present at a meeting when such violation shall happen, shall be deemed to have concurred therein, unless he shall, at the time cause, or in writing, require his dissent therefrom, to be entered at large on the minutes of the board. And every president and director not present at any meeting when such a violation shall take place, shall nevertheless be deemed to have concurred therein, if the facts constituting such violation appear on the books of the corporation, and he remain a director for three months thereafter, and do not within that time cause, or in writing, require his dissent from such illegal proceeding, to be entered at large on the minutes of the board.

Bank Insolvency.

130. Sec. XXXIX. Every insolvency of a chartered bank, or refusal, or failure to redeem its bills, on demand, either with specie, or current bank bills, passing at par value, shall be deemed fraudulent, and the president and directors may be severally indicted for a misdemeanor, and on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than ten years: Provided, nevertheless, that the defendant may repel the presumption of fraud, by showing that the affairs of the bank have been fairly and legally administered, and generally with the same care and diligence, that agents receiving a commission for their services, are required and bound by law to observe; and upon such showing, the jury shall acquit the prisoner.—See 135.
Transfer of Stock.

131. Sec. XL. All conveyances, assignments, transfers of stock, effects, or other contracts, made by any bank in contemplation of insolvency, or after insolvency, except for the benefit of all the creditors and stockholders of said bank, shall, unless made to an innocent purchaser for a valuable consideration, and without knowledge or notice of the condition of said bank, be fraudulent and void. And the president, directors, and other officers of said bank, or any of them, making, or consenting to the making, of such conveyance, assignment, transfer or contract, whether the same be made to an innocent purchaser, or any other, shall severally be guilty of a misdemeanor; and on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

Purchasing Bill, Check, &c.

132. Sec. XLI. If any president, director, officer, or agent of any bank, shall, by himself or agent, or in any other manner, either for himself, or for the bank, directly or indirectly, purchase, or be interested in the purchase, of any bill or check, or other evidence of debt, issued by the said bank, for a less sum than shall appear then due on the face thereof, such person so offending shall be guilty of a misdemeanor, and on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

Declaring Fraudulent Dividends.

133. Sec. XLII. No dividends shall be made by any bank, except from the net profits arising from the business of the corporation; and if any president and directors shall declare, or pay over any dividend from the capital stock, or any other funds of the bank, except the net profits thereof, such president and directors shall severally be guilty of a misdemeanor, and on indictment and conviction thereof, shall be punished by confinement and labor in the penitentiary, for any time not less than one year, nor longer than ten years.

Bank Purchasing its Own Shares with Capital Stock.

134. Sec. XLIII. If the president and directors of any bank, or any of them, shall use and apply any part of the capital stock of such bank to the purchase of shares of its own stock, such president and directors shall be guilty of a misdemeanor, and on indictment and conviction thereof, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor more than ten years.

Proviso to the Thirty-ninth Section.

135. Sec. XLIV. The Thirty-ninth Section of the Sixth Division of this Code, in relation to the insolvency of any bank, or the failure or refusal of any bank to pay its bills in specie or current bank notes, shall not operate on any bank which has heretofore become insolvent or unable to pay its bills. And no future failure or refusal to pay its bills, shall be deemed a violation of said section: Provided, nevertheless, that said bank shall not have resumed specie payment between the
time of its becoming insolvent, and of its future failure or refusal to redeem its bills with specie or current bank notes.—See 129.

Unlawful Mining.

136. Sec. XLV. If any person shall dig, or take and carry away, from the land of another, any gold, bullion, silver, or other metallic substance, with intent to appropriate the same to his or her own use, without having previously obtained permission of the owner of such land so to do, he or she shall be guilty of a misdemeanor; and upon conviction, shall be punished with fine or imprisonment in the common jail, or both, at the discretion of the court.—No. 12.

Erecting Mining Machinery.

137. Sec. XLVI. If any person shall erect or use any machinery, for the purpose of procuring gold, silver, or other metals, upon the land of any other, with intent to appropriate the same to his or her own use, or for any other person whatsoever, without the permission of the owner of the land, or his agent, he or she shall be guilty of a high misdemeanor; and upon conviction, shall be punished with fine or imprisonment in the common jail, or both, at the discretion of the court.—No. 13.

Defaulting County Treasurer, &c.

138. Sec. XLVII. Any clerk of the inferior court or county treasurer, of any county in this State, who shall divert, misapply, embezzle, or conceal any money belonging to the county of which he is such clerk or county treasurer as aforesaid, with intent to appropriate the same to his own use, shall be guilty of a misdemeanor; and upon conviction, shall be punished with fine or imprisonment in the common jail of the county, or both, at the discretion of the court—the latter not to exceed six months, and shall moreover be removed from office; and on the trial of such defendant, proof of his having failed or refused to make an exhibit to the grand jury of the county of which he is such clerk or county treasurer, at the Superior Court first held in each year, in said county, unless prevented by providential cause, a full and complete statement of the county funds, as is now required by law, received by him during the preceding year, containing a detailed account of all sums of money paid out by him, the time when paid, and the person to whom paid, shall be deemed prima facie evidence of guilt, and throw the burden of proof on the defendant; and that any bill of indictment which may be preferred under this section, shall be held sufficiently technical, that shall describe the offence in the words thereof; and that the prosecutor, on the trial of said bill of indictment, shall not be required to identify the money, coin, bank bill or bills set forth in said indictment, as the money, coin, bank bill, or bills diverted, misapplied, embezzled, or concealed, by said defendant; but, in all cases, an allegation in the indictment, that any sum of current money has been received by said defendant, belonging to said county, and that the defendant fails or refuses to account for the same, and proof of such allegation on the trial, shall be sufficient to authorize a conviction, unless the defendant shall be able to show a legal expenditure or disposition of said county funds.—No. 14.
STATE OF GEORGIA, \( J \) The grand jurors sworn, chosen, and selected
Houston County. \( J \) for the county of Houston, to wit: Hugh Law-
son, Nathan G. Lewis, Samuel Felder, Joseph M. Cooper, Jesse Smith,
Henry Cunyus, Alexander Smith, Creed T. Woodson, Daniel Adams,
Benjamin Bryan, Jacob Fudge, James A. Pringle, Joel Loftin, Calvin
Leary, Alfred Nelson, William H. Miller, John S. Jobson, Tilman
Downs, Sampson B. King, Thomas B. Allen, Calvin W. Felder, Edwin
Mounger, and Edward O. Jenkins, in the name and behalf of the citi-
zens of Georgia, charge and accuse John Doe, of the county and State
aforesaid, with the offence of Robbery: for that the said John Doe,
in the county aforesaid, on the first day of May, in the year of our Lord
one thousand eight hundred and fifty, with force and arms, in and
upon one Richard Roe, in the peace of God and said State, then and
there being, wrongfully, fraudulently, and violently, did make an as-
sault, and him, the said Richard Roe, in bodily fear and danger of his life,
then and there, feloniously did put; and then and there ten pieces of
the current silver coin of said State, called dollars, of the value of ten
dollars, of the goods and chattels of said Richard Roe, from the person
of the said Richard Roe, by force, wrongfully, fraudulently, and violent-
ly, did, without the consent of said Richard Roe, take and carry away,
with intent then and there to steal the same; contrary to the laws of
said State, the good order, peace, and dignity thereof.
October term, 1850.
Witness, 
JAMES WILLIAMS, Sol. Gen.
Richard Roe. \( J \) Richard Roe, Prosecutor.

No. 2.—Horse Stealing.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse John Doe, of the county and State aforesaid, with the offence
of Simple Larceny: for that the said John Doe, in the county aforesaid,
on the first day of May, in the year of our Lord, one thousand eight
hundred and fifty, with force and arms, one dark sorrel Mare, com-
monly known by the name of Fanny Gordon, of the value of one hun-
dred dollars, of the goods and chattels of one Richard Roe, then and
there being found, then and there, wrongfully and fraudulently, did
take and carry away, with intent then and there to steal said Mare;
contrary, &c.

No. 3.—Cattle Stealing.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse John Doe, of the county and State aforesaid, with the offence
of Simple Larceny: for that the said John Doe, in the county afore-
said, on the first day of May, in the year of our Lord one thousand
eight hundred and fifty, with force and arms, one white Cow, with a
black head and neck, marked with a crop and under bit in the right ear,
and an under bit in the left ear, of the value of ten dollars; of the per-
sonal goods and private property of one Richard Roe, then and there,
being found, then and there did wrongfully, and fraudulently, take
and carry away, with intent to steal the same; contrary, &c.
No. 4.—Hog Stealing.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of said county and State, with the offence of Simple Larceny: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, one Hog, to wit, a barrow, marked with a slit in each ear, of sandy color, of the value of five dollars; of the goods and chattels of one Richard Roe, then and there being found, then and there, did wrongfully and fraudulently take and carry away, with intent to steal the same; contrary, &c.

No. 5.—Larceny from the Person.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Larceny from the Person: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, ten silver pieces, of the value of ten dollars, lawful currency of said State; of the goods and chattels of said Richard Roe, then and there being found, did then and there, take from the person of said Richard Roe, privately and without his knowledge, with intent to steal the same; the said Richard Roe, being then and there, privately in his office, (store, shop, &c., as the case may be; or in a public place, or where many persons are assembled, as the case may be;) contrary, &c.

No. 6.—Larceny from the House.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Larceny from the House: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, two pairs of pantaloons, of the value of five dollars, being the goods and chattels of one Richard Roe, in the dwelling-house of him, the said Richard Roe, in the county aforesaid, being found; him, the said John Doe, then and there, from said dwelling-house, feloniously, wrongfully, fraudulently, privately, and with intent to steal, the said two pairs of pantaloons, then and there, did take and carry away; him, the said John Doe, then and there having entered said dwelling-house, with intent to steal; contrary, &c.

No. 7.—Larceny after Trust, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Larceny after a Trust had been Delegated: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, being then and there employed as President of the "Bank of Perry," did, by virtue of his said office of President, as aforesaid, then and there, and whilst he was so employed as aforesaid, on the day and year aforesaid, with force and
arms, fraudulently embezzle a large amount of money belonging to said “Bank of Perry,” to wit: the sum of one thousand dollars; and so the jurors aforesaid, upon their oath aforesaid, do say, that said John Doe, then and there, in manner and form aforesaid, the said money, the property of the said “Bank of Perry,” from the said “Bank of Perry,” fraudulently, did steal, take, and carry away; contrary, &c.

No. 8.—Factor, Merchant, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Larceny after a Trust had been Delegated: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, was Factor to Richard Roe, having been intrusted with ten bales of cotton, of the value of five hundred dollars, of the goods and chattels of said Richard Roe; afterwards, to wit, on the day and year aforesaid, whilst he was such Factor to the said Richard Roe, in the county aforesaid, with force and arms, said ten bales of cotton, of the value aforesaid, then and there being found, in the possession and power of said John Doe, Factor, as aforesaid, then and there, did fraudulently convert the same to his own use, without the consent of the said Richard Roe, to the injury of the said Richard Roe, and without paying to said Richard Roe, on demand made by said Richard Roe, on said John Doe, on the day and year aforesaid, in the county aforesaid, the full value of said ten bales of cotton; contrary, &c.

No. 9.—Larceny by Clerks, Agents, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Larceny after a Trust had been Delegated: for that the said John Doe, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, in the county aforesaid, was Clerk in the store of Richard Roe, merchant; and that the said John Doe, afterwards, and whilst he was such Clerk to the said Richard Roe, as aforesaid; on the day and year aforesaid; in the county aforesaid; with force and arms, ten pieces, of the current coin of said State, called dollars, of the value of ten dollars, to him intrusted by the said Richard Roe, his employer, then and there being found, then and there, fraudulently, to the injury of said Richard Roe, aforesaid, and without the consent of the said Richard Roe, did take and carry away; contrary, &c.

No. 10.—Larceny by Person Intrusted.

In the name and behalf the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Larceny after a Trust had been Delegated: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, was intrusted by Richard Roe with one hundred silver pieces, of the current coin of said State, called dollars, of the value of one hundred dollars, for the purpose of applying the said one hundred silver pieces for the use and benefit of said Richard Roe; did, on the day and year aforesaid, in the county aforesaid, with
PENAL CODE OF GEORGIA.

force and arms, fraudulently convert the said one hundred silver pieces to his own use, to the injury, and without the consent of the said Richard Roe, and without paying to the said Richard Roe the full value [or market] price thereof; contrary, &c.

No. 11.—Bank Officer Violating Charter.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of High Misdemeanor: for that the said John Doe, on the first day of May, in the year of our Lord eighteen hundred and fifty, in the county aforesaid, being President, (or director, or other officer, as the case may be,) of the “Bank of Perry,” said “Bank of Perry,” being then and there one of the chartered Banks of said State, which charter is in the words and figures following, to wit: [here set out the charter of the Bank,] with force and arms, did then and there, by virtue of his said office of President of said “Bank of Perry,” knowingly and fraudulently violate the provision of the third section of said charter of said “Bank of Perry,” in this, to wit: [here set out the violation of the charter complained of] contrary to the provision of said third section of said charter of said “Bank of Perry,” and contrary, &c.

Note.—A number of other indictments might be formed under the very stringent enactments of this Division, against bank officers, stockholders, &c., but they are deemed unnecessary: the preceding form, with suitable alterations, will answer in each case. The principal inducement the Compiler has for declining to submit other forms of indictments here is, that it is probable they will never be required; at least, at present the probability of such requirement is very remote.

No. 12.—Unauthorized Mining.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, on the first day of May, in the year of our Lord eighteen hundred and fifty, in the county aforesaid, with force and arms, did enter upon a certain lot of land, to wit: number twenty-two, in the fifteenth district of the county of Cherokee, in the State aforesaid, (said lot of land being then and there the property of Richard Roe, said John Doe not having previously obtained permission from said Richard Roe,) and did, then and there, dig, take, and carry away from said lot of land, gold, (silver, or other metallic substance, as the case may be,) with intent to appropriate the same to his own use; contrary, &c.

No. 13.—Erecting Machinery.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of High Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did enter upon lot of land number twenty-two, in the fifteenth district of the county of Cherokee, in the State aforesaid, (said lot of land being then and there the property of Richard Roe,) and erect (or use) machinery upon said lot of land, for the purpose of procuring gold, (silver, or other metals,) with intent, then and there, to appropriate said gold to his own use, without the permission of the said Richard Roe or his agent; contrary, &c.
No. 14.—County Treasurer Embezzling, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, County Treasurer, of the county aforesaid, with the offence of Misdemeanor: for that the said John Doe, County Treasurer, as aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, being then and there County Treasurer of said county of Houston, lawfully appointed, and having then and there, in his power and possession, the moneys belonging to said county, to wit, two hundred dollars, current money of said State, with force and arms, did then and there misapply (or embezzle or conceal, as the case may be,) two hundred dollars of the money of the county aforesaid, with intent then and there to appropriate the same to his own use; he, the said John Doe, County Treasurer, as aforesaid, having then and there failed and refused to account for said money, when lawfully called upon so to do; contrary, &c.

CHAPTER X.

SEVENTH DIVISION.

Forgery and Counterfeiting.

Public Document.

139. Sec. I. If any person or persons shall falsely and fraudulently make, forge, alter, or counterfeit, or cause or procure to be falsely and fraudulently made, forged, altered, or counterfeited, or willingly aid or assist in falsely and fraudulently making, forging, altering, or counterfeiting any audited certificate, or other certificate issued, or purporting to have been issued by the Auditor-General, or other officer authorized to issue the same, or any order or warrant issued, or purporting to have been issued by the Governor, or the President of the Senate, or Speaker of the House of Representatives of the General Assembly of this State; or by any officer of the government, or authorized person, on the treasury of said State, for any money or other thing, or any warrant for land issued, or purporting to have been issued, by the justices of any land court, or by any other tribunal, officer, or person authorized to do so, within this State; or any certificate, draft, warrant, or order, from any of the public officers of this State, issued, or purporting to have been issued under, or by virtue of an act or resolution of the General Assembly of this State; or any certificate, draft, order, or warrant, issued, or purporting to have been issued by any court officer, or person authorized to draw on the treasury of this State, or for public money, wherever the same may be deposited; or any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note, or order for money, or goods, or other things of value; or any acquittance or receipt; or any endorsement or assignment of any bond, writing obligatory, bill of exchange, promissory note, or order for
PENAL CODE OF GEORGIA.

money or goods, or other thing or things of value; with intent to defraud the said State, public officer or officers, courts, or any persons authorized, or any person or persons whatever; or shall utter or publish as true, any false, fraudulent, forged, altered, or counterfeited audited certificate, Governor's, President's, Speaker's, public officer's, court's, or duly authorized person's certificate, draft, warrant or order, so as aforesaid issued, or purporting to have been issued, or any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note, or order for money, or goods, or other thing or things of value, or any acquittance or receipt for money or goods, or other thing or things of value; or any endorsement or assignment of any bond, writing obligatory, bill of exchange, promissory note, or order for money or goods, or other thing or things of value, with intent to defraud the said State, public officers, courts, or persons authorized, as aforesaid, or any other person or persons whatsoever, knowing the same to be so falsely and fraudulently made, forged, altered, or counterfeited; every such person so offending, and being thereof lawfully convicted, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

Counterfeiting, or Uttering Counterfeit Coin.

140. Sec. II. If any person shall falsely and fraudulently make, forge, or counterfeit, or be concerned in the false and fraudulent making, forging, and counterfeiting of any gold, silver, or copper coin, which now is, or shall be passing, or in circulation within this State; or shall falsely and fraudulently make, or be concerned in the false and fraudulent making of any base coin of the likeness or similitude of any gold, silver, or copper coin, which now is, or shall be passing, or in circulation within this State; or shall falsely and fraudulently utter, publish, pay, or tender in payment, any such counterfeit and forged coin of gold, silver, or copper, or any base coin, knowing the same to be forged, or counterfeited, or base; or shall aid or abet, counsel, or command the perpetration of either of the said crimes, such person shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

Counterfeiting Bank Notes.

141. Sec. III. If any person shall falsely and fraudulently make, sign, or print, or be concerned in the false and fraudulent making, signing, or printing any counterfeit note or bill of any bank of this State, or the note or bill of any incorporated bank, whose notes or bills are in circulation in this State, or falsely and fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

142. Sec. IV. If any person shall falsely and fraudulently make, sign, or print, or be concerned in the false and fraudulent making, signing, or printing, of any check or draft upon any bank of this State, or bank as aforesaid; or falsely or fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than three years, nor longer than seven years.
143. Sec. V. If any person shall falsely and fraudulently alter, or be concerned in the false and fraudulent alteration of any genuine note, bill, check, or draft, of or on any bank, as aforesaid; or falsely and fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than three years, nor longer than ten years.

Uttering Forged Bank Note, &c.

144. Sec. VI. If any person shall falsely and fraudulently pass, pay, or tender in payment, utter or publish, any false, forged, counterfeited, or altered note, bill, check, or draft, as aforesaid, knowing the same to have been falsely and fraudulently forged, counterfeited, or altered, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than ten years.

Possessing Forged Notes, &c.

145. Sec. VII. If any person shall have in his or her possession any such false, forged, counterfeited, or altered note or notes, bill or bills, draft or drafts, check or checks, with intention fraudulently to pass the same; such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than ten years.

Possessing Types, Paper, &c.

146. Sec. VIII. If any person shall have in his or her possession any bank paper, types, plates, or machinery, for the purpose of falsely or fraudulently forging and counterfeiting any notes, bills, checks, or drafts, as aforesaid, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

Forging or Uttering Bills, &c.

147. Sec. IX. If any person shall falsely and fraudulently make, forge, counterfeit, or alter any note, bill, draft, or check, of or on any person, body corporate, company, or mercantile house or firm, or purporting so to be; or fraudulently and falsely utter, publish, pass, pay, or tender the same in payment, or demand payment of the same, knowing the said bill, note, draft, or check to be forged and counterfeited, or falsely and fraudulently altered, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two, nor longer than ten years.

Forging any other Writing.

148. Sec. X. If any person shall fraudulently make, sign, forge, counterfeit, or alter, or be concerned in the fraudulent making, signing, forging, counterfeiting, or altering any other writing, not herein provided for, with intent to defraud any person or persons, bank, or other corporate body, or shall fraudulently cause or procure the same to be done, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than five years.
Forging Public Seals.

149. Sec. XI. If any person shall falsely and fraudulently forge or counterfeit, or be concerned in forging and counterfeiting, the great seal of this State, or any seal used for government purposes; the public and common seal of any court, office, county or corporation, or any other seal authorized by law; or shall falsely and fraudulently cause or procure the same to be forged and counterfeited; or shall falsely, fraudulently and knowingly impress, or cause to be impressed, any instrument whatever, whether the same be written or printed; or partly written and partly printed, with such forged and counterfeit seal; or shall falsely, fraudulently and knowingly annex or affix, or cause to be annexed or affixed, to any such instrument, such forged and counterfeit seal; or shall falsely and fraudulently utter or publish any instrument or writing whatever, impressed with such forged and counterfeit seal, knowing the same to be forged and counterfeit, such person so offending shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than ten years.

Using Fictitious Name.

150. Sec. XII. Any person who shall draw or make a bill of exchange, due bill, or promissory note, or endorse or accept the same in a fictitious name, shall be guilty of forgery, and on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than seven years.

Personating Another.

151. Sec. XIII. If any person shall put his own name to any instrument, representing himself to be a different person of that name, such person shall be guilty of forgery, and on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than seven years.

Obtaining Goods, &c., on False Writings.

152. Sec. XIV. If any person shall designedly, by color of any counterfeit letter or writing, made in any other person's name, or fictitious name, obtain from any person, money, goods, chattels, or other valuable thing, with intent to defraud any person, mercantile house, or body corporate, or company, of the same, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than seven years.

1.—Forgery.

the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Forgery: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, falsely and fraudulently, with force and arms, did forge a certain [here name the instrument], which said forged [here name the instrument] is as follows, to wit: that is to say, [here set out the instrument verbatim], with intent to defraud the said State, [or one Richard Roe, as the case may be]; contrary to the laws of said State, the good order, peace and dignity thereof.

2d Count.—And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said John Doe with having committed the offence of Forgery: for that the said John Doe, on the day and year aforesaid, in the county aforesaid, with force and arms, falsely and fraudulently, did forge a certain other [here state the instrument forged, as before directed], with intent to defraud the said Richard Roe; contrary to the laws of said State, the good order, peace and dignity thereof.

3d Count.—And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said John Doe with having committed the offence of Forgery: for that the said John Doe, on the day and year aforesaid, in the county aforesaid, with force and arms, falsely and fraudulently, did utter as true, [here set out the instrument, as before directed], which said last mentioned forged [here name the instrument] is as follows, that is to say: [here set out the instrument verbatim], with intent to defraud the said Richard Roe, he, the said John Doe, at the time he so uttered and published the said last mentioned forged [here name the instrument], then and there, well knowing the same to be falsely and fraudulently forged; contrary to the laws of said State, the good order, peace and dignity thereof.

4th Count.—And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said John Doe with having committed the offence of Forgery: for that the said John Doe, on the day and year aforesaid, in the county aforesaid, with force and arms; falsely and fraudulently did have in his possession a certain forged [here name the instrument], knowing the same to be falsely and fraudulently forged; which [here name the instrument] is as follows, that is to say: [here set out the instrument verbatim], with intention fraudulently to pass the same; contrary to the laws of said State, the good order, peace and dignity thereof.

Witness, } JAMES WILLIAMS, Sol. Gen.
Richard Roe. } CHARLES SMITH, Prosecutor.

October term, 1850.

Note.—This indictment is not intended as a general precedent to serve in all cases of forgery; because the form in each particular case must depend upon the statute on which the indictment is founded: but with the assistance of this form, and upon an attentive consideration of the operative words of the statute creating the offence, the pleader can find no difficulty in framing an indictment in any case required by the statute.
CHAPTER XI.

EIGHTH DIVISION.

Crimes and Offences Against the Public Justice.

Perjury.

153. Sec. I. Perjury shall consist in willfully, knowingly, absolutely and falsely swearing, either with or without laying the hand on the Holy Evangelist of Almighty God, or affirming in a matter material to the issue, or point in question, in some judicial proceeding by a person to whom a lawful oath or affirmation is administered.—No. 1.

154. Sec. II. Any person who shall commit the crime of Perjury, shall be punished by imprisonment and labor in the penitentiary, for any time not less than four years, nor longer than ten years.

False Swearing.

155. Sec. III. False Swearing shall consist in willfully, knowingly, absolutely and falsely swearing, either with or without laying his hand on the Holy Evangelist of Almighty God, or affirming in any matter or thing, (other than a judicial proceeding,) by a person to whom a lawful oath or affirmation is administered.—No. 2.

156. Sec. IV. Any person who shall commit the crime of False Swearing, shall be punished by imprisonment and labor in the penitentiary, for any time not less than three years, nor longer than ten years.

Subornation of Perjury and False Swearing.

157. Sec. V. Subornation of Perjury and False Swearing, shall consist in procuring another person to commit the crime of Perjury, or False Swearing.—No. 3.

158. Sec. VI. Any person who shall commit the crime of Subornation of Perjury, or False Swearing, shall be punished by confinement and labor in the penitentiary, for any time not less than three years, nor longer than ten years.

Disqualified as Witness.

159. Sec. VII. Any person who shall be lawfully convicted of either of the crimes mentioned and defined in the first, third, and fifth sections of this Division, shall, in addition to the punishment prescribed in the second, fourth, and sixth sections of this Division, be forever thereafter disqualified from being a witness in any matter in controversy.
Verdict, &c., obtained by Perjury.

160. Sec. VIII. Any Verdict or Judgment, Rule or Order of Court, which may have been obtained or entered up, shall be set aside, and be of no effect, if it shall appear that the same was obtained or entered up in consequence of willful and corrupt perjury; and it shall be the duty of the court in which such verdict, judgment, rule, or order, may have been obtained or entered up, to cause the same to be set aside upon motion and notice to the adverse party, but it shall not be lawful for the said court to do so, unless the person charged with said perjury shall have been thereof duly convicted, and unless it shall appear to the said court that the said verdict, judgment, rule, or order, could not have been obtained or entered up without the evidence of such perjured person; saving always to third persons, innocent of such perjury, the right which they may have lawfully acquired under such verdict, judgment, rule, or order, before the same shall have been actually vacated and set aside.

False Witness causing Death, &c.

161. Sec. IX. If any person, by willful and corrupt perjury, shall take away the life of another, or by such willful and corrupt perjury convict another of any offence which by this Code is punishable with death or perpetual imprisonment, such person shall be punished with death or perpetual imprisonment.

Bribery.

162. Sec. X. Bribery is the giving or receiving any undue reward to influence the behavior of the person receiving such reward, in the discharge of his duty in any office of government or of justice.—No. 4.

Punishment of Briber.

163. Sec. XI. If any person shall, directly or indirectly, give, or offer to give, any money, goods, or other bribe, present, or reward; or give or make any promise, contract, or agreement, for the payment, delivery, or alienation of any money, goods, lands, or other bribe; or use any promises, threats, persuasions, or other like sinister, unfair, or fraudulent practices, in order to obtain or influence the opinion, judgment, decree, or behavior of any member of the General Assembly, or any officer of this State, judge, justice, referee, or arbitrator, in any discussion, debate, action, suit, complaint, indictment, controversy, matter, or cause depending, or which shall depend before him or them, such person shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years. And the member of the General Assembly, or officer, judge, justice, referee, or arbitrator, who shall accept or receive such bribe, shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than ten years, and shall, moreover, be removed from his office.

Stealing, Altering, &c., Public Documents.

164. Sec. XII. If any judge, justice, mayor, alderman, clerk, sheriff, coroner, or other public officer, or any other person whatsoever, shall
steal, embezzle, alter, corrupt, withdraw, falsify, or avoid any record, process, charter, gift, grant, conveyance, or contract, or shall knowingly and willingly take off, discharge, or conceal any issue, forfeited recognizance, or other forfeiture; or shall forge, deface, or falsify any document or instrument recorded, or any registry, acknowledgment, or certificate, or shall alter, deface, or falsify, any minute, document, book, or any proceeding whatever, of, or belonging to any public office within this State; or if any person shall cause or procure any of the offences aforesaid to be committed, or be in any wise concerned therein, the person so offending shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than ten years.—No. 5.

Cruelty in Jailors.

165. Sec. XIII. If any jailor, by too great a duress of imprisonment, or other cruel treatment, make or induce a prisoner to become an approver, or accuse and give evidence against some other person; or be guilty of willful inhumanity or oppression to any prisoner under his care and custody, such jailor shall be punished by removal from office, and imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years.—No. 6.

Officers Detaining Books, &c., from Successors.

166. Sec. XIV. If any officer, after the expiration of the time for which he may have been elected or appointed, shall willfully and unlawfully withhold or detain from his successor the records, papers, documents, books, or other writings, appertaining and belonging to his office; or mutilate, destroy, take away, or otherwise prevent the complete possession, by his said successor, of said records, documents, papers, books, or other writings, such person so offending shall, on conviction, be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 7.

Personating in Bail, &c.

167. Sec. XV. If any person, except the attorney of record, shall acknowledge, or procure to be acknowledged, in any of the courts of this State, or before any authorized officer, any recognizance, bail, or judgment, in the name of any other person not privy or consenting thereto, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any period of time not less than one year, nor longer than four years.—No. 8.

Obstructing Legal Process.

168. Sec. XVI. If any person shall knowingly and willfully obstruct, resist, or oppose, any sheriff, coroner, or other officer of this State, or other person duly authorized, in serving, or attempting to serve, or execute, any lawful process, or order of any court, judge, justice, or arbitrators, or any other legal process whatever; or shall assault or beat any sheriff, coroner, constable, or other officer, or person duly authorized, in serving or executing any process, or order aforesaid, or for having served or executed the same; every person so
offending shall, on conviction, be punished by fine and imprisonment in the common jail of the county, for any time not exceeding one year.—No. 9.

**Assault, &c., under Color of Office.**

169. Sec. XVII. If any officer of this State, whatever, shall assault or beat any individual, under color of his office or commission, without a lawful necessity so to do, such officer so offending shall, on conviction, be punished by fine and imprisonment in the common jail, for any time not exceeding one year.—No. 10.

**Rescue.**

170. Sec. XVIII. Rescue is the forcibly and knowingly freeing another from arrest or imprisonment.

171. Sec. XIX. If any person shall rescue another, in legal custody on criminal process, such person so offending shall, on conviction, receive the same punishment as the person rescued would, on conviction, be sentenced to receive; but if the person rescued shall have been acquitted of the crime charged against him, then, and in such case, the person rescuing shall be punished by imprisonment in the common jail of the county, for any time not exceeding one year.—No. 11.

172. Sec. XX. If any person shall rescue another in legal custody on civil process, such person so offending shall, on conviction, be punished by a fine equal in amount to the amount of the debt or demand for which such process was issued, and imprisonment in the common jail of the county, not exceeding six months.

173. Sec. XXI. If any person shall attempt to rescue another in legal custody on criminal process, such person so offending shall, on conviction, be punished by imprisonment in the common jail, for any time not exceeding six months; or by confinement and labor in the penitentiary, for any time not less than one year, nor longer than two years, at the discretion of the court.

**Assisting to escape from Jail, &c.**

174. Sec. XXII. If any person shall aid or assist a prisoner, lawfully committed or detained in any jail, for any offence against this State, or under any civil process, to make his or her escape from jail, whether such escape be actually effected or not; or if any person shall convey, or cause to be delivered to such prisoner, any disguise, instrument, or arms, proper to facilitate the escape of such prisoner; such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than one year, nor longer than four years.—No. 12.

175. Sec. XXIII. If any person shall aid or assist any prisoner to escape, or to attempt to escape from the custody of any sheriff, coroner, constable, officer, or other person who shall have the lawful charge of such prisoner, such person so offending shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than one year, nor longer than five years.
Escapes from Penitentiary.

176. Sec. XXIV. If any person confined in the penitentiary shall escape therefrom, and be thereafter re-taken, such person shall be indicted for an escape, and on conviction, shall be punished by imprisonment and labor in the penitentiary, for the term of four years. And any person who shall aid or assist a prisoner confined in the penitentiary to escape, or in an attempt to escape therefrom, shall, on conviction, receive the like punishment.

Voluntary Escape.

177. Sec. XXV. If any sheriff, coroner, constable, keeper of a jail, keeper, other officer or person, employed in the penitentiary, having any offender, guilty, or accused of, or confined for, any crime, in his custody, shall voluntarily permit or suffer such offender to escape and go at large, every such sheriff, coroner, keeper of a jail, keeper, officer, or other person employed in the penitentiary, constable, or other officer, or person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than seven years; and shall, moreover, if a public officer, be dismissed from office.—No. 13.

Refusing to Receive Prisoner in Jail, &c.

178. Sec. XXVI. If any sheriff, coroner, constable, keeper of a jail, or other officer, whose duty it is to receive persons charged with, or guilty of an indictable offence, shall refuse to receive and take charge of such person or persons, every such sheriff, coroner, constable, keeper of a jail, or other officer so offending, shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than seven years; and such officer shall, moreover, be dismissed from office.

Refusing to Receive Prisoner in Penitentiary.

179. Sec. XXVII. If the keeper of the penitentiary, or other officer, or person employed there, whose duty it is to receive convicts, shall fail or refuse to do so, such keeper, officer, or other person so offending, shall, on conviction, be punished by confinement and labor in the penitentiary, for any time not exceeding ten years, and shall, moreover, be dismissed from office.

Receiving Stolen Goods.

180. Sec. XXVIII. If any person shall buy or receive any goods, chattels, money, or other effects, that shall have been stolen or feloniously taken from another, knowing the same to be stolen or feloniously taken, such person shall be taken and deemed to be an Accessory after the fact, and shall receive and suffer the same punishment as would be inflicted on the person convicted of having stolen or feloniously taken the said goods, chattels, money, or effects, so bought or received.

181. Sec. XXIX. If the principal thief or thieves cannot be taken, so as to be prosecuted and convicted, it shall be lawful to prosecute any person buying or receiving any goods, chattels, money, or effects, stolen or feloniously taken, by such principal thief or thieves, know-
ing the same to be stolen or feloniously taken, as for a misdemeanor; and on conviction, such person shall be punished as prescribed in the preceding section; and a conviction under this section shall be a bar to any prosecution under the twenty-eighth section.

**Accessory after the Fact.**

182. Sec. XXX. If any person shall receive, harbor, or conceal any person guilty of a crime, punishable by death, or imprisonment and labor in the penitentiary, knowing such person to be guilty, such person so receiving, harboring, or concealing, shall be taken and deemed to be an Accessory after the fact; and, on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years.

**Compounding Crimes.**

183. Sec. XXXI. If any person shall take or receive any money, goods, chattels, lands, or other reward, on promise to compound, or shall, for any cause, compound any crime or offence punishable with death, or imprisonment and labor in the penitentiary, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years.—No. 14.

**Compounding Penalties.**

184. Sec. XXXII. If any person informing or prosecuting under pretence of any penal law, shall compound with the offender, or direct the suit or information to be discontinued, unless it be by leave of the court where the same is pending, such person so offending shall, on conviction, pay a fine equal to so much of the penalty as he or she would be entitled to, if the defendant or party prosecuted had been found guilty or convicted.

**Conspiracy.**

185. Sec. XXXIII. If any two or more persons shall conspire or agree, falsely and maliciously, to charge and indict any innocent person of a crime, who is accordingly indicted and acquitted, such person so conspiring, and each and every of them, shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than twelve months, nor longer than five years.—No. 15.

**Barratry.**

186. Sec. XXXIV. Common barratry is the offence of frequently exciting and stirring up suits and quarrels between individuals, either at law or otherwise.—No. 16.

187. Sec. XXXV. Any person who shall be found and adjudged a common barrator, vexing others with unjust and vexatious suits, shall, on conviction, be punished by a fine not exceeding five hundred dollars; and if the offender belongs to the profession of the law, he shall also be disqualified from practicing for the future.
Embracery.

188. Sec. XXXVI. Embracery is an attempt to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like. Every embracer who shall procure a juror to take money, gain, or profit; or shall corruptly influence a juror, by persuasions, promises, entreaties, or by any other means, shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than four years. And the juror convicted of taking money, gain, or profit, or of being corruptly influenced as aforesaid, shall be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than five years, and shall, moreover, be forever disqualified to act as a juror.—No. 17.

Malpractice by Justices of the Peace.

189. Sec. XXXVII. Any Justice of the Peace, charged with malpractice in office, by using oppression, tyrannical partiality, or any other conduct unbecoming his character as an upright magistrate, in the administration, and under color of his office, may be indicted, which indictment shall specially set forth the merits of the complaint, and a copy thereof be served on the defendant before the same is laid before the grand jury; and the prosecutor and the justice, and their witnesses, shall all have the right of appearing and being heard before the grand jury; which indictment, if found true by the grand jury, shall, as in other cases, be tried by a petit jury—and if the defendant be convicted, he shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court; and shall, moreover, be removed from office, if still in office.—No. 18.

Threatening Letters.

190. Sec. XXXVIII. If any person shall knowingly send or deliver any letter or writing, threatening to accuse another person of a crime, with intent to extort money, goods, chattels, or other valuable thing; or threatening to maim, wound, kill, or murder such person, or any of his family; or to burn or otherwise destroy or injure his or her house, or other property, real or personal, though no money, goods, chattels, or other valuable thing be demanded, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor longer than four years.—No. 19.

Extortion.

191. Sec. XXXIX. Extortion shall consist in any public officer's unlawfully taking, by color of his office, from any person, any money or thing of value, that is not due to him, or more than is due. —No. 20.

192. Sec. XL. Any public officer who shall by himself, his deputy, agent, or other person employed by him, be guilty of Extortion, in demanding and receiving other and greater fees than by law are allowed him, or shall, by color of his office, take from any person any money, or other thing of value, that is not due to him, or more than is due,
such officer shall be subject to indictment, and on conviction, shall be punished by fine at the discretion of the court, and shall moreover be dismissed from office.

**Other Offences Against Public Justice.**

193. Sec. XLI. Any other offence against public justice not herein before provided for, shall be punished by fine, or imprisonment in the common jail, or both, at the discretion of the court.

**Mutiny in the Penitentiary.**

194. Sec. XLII. If any prisoner in the penitentiary shall assail, oppose, or resist any officer of the penitentiary, or any member of the guard, with any weapon or implement, calculated to cause death or serious bodily injury, such prisoner so offending shall be deemed guilty of Mutiny, and on conviction thereof, shall be punished by an additional term of imprisonment and labor in the penitentiary, not less than two years, nor longer than five years, at the discretion of the court, to be computed from the expiration of the term of imprisonment and labor to which such prisoner shall have been previously sentenced.—No. 21.

195. Sec. XLIII. If any person shall persuade, entice, or instigate any prisoner to mutiny, such person so offending shall be guilty of a Misdemeanor, and on conviction, shall be punished by confinement and labor in the penitentiary, for any time not less than two years, nor longer than five years, at the discretion of the court, to be computed, if a prisoner in the penitentiary, from the expiration of the term of imprisonment and labor for which he shall have been previously sentenced.

**Stolen Goods from Negroes.**

196. Sec. XLIV. That from and after the passage of this Act, if any free white person or persons shall buy or receive any money, goods, chattels, or other effects, from any negro or free person of color, that has or have been stolen or feloniously taken—knowing the same to have been so stolen or feloniously taken—such person or persons so offending shall be taken and deemed to be accessory or accessories after the fact, and being convicted thereof, shall receive and suffer the same punishment as would have been inflicted on such person or persons, had he or they been convicted of stealing, or feloniously taking the same.

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No. 1.—**Perjury.**

STATE OF GEORGIA. The Grand Jurors, sworn, chosen, and selected for the county of Houston, to wit: James Wilkes, George M. Dallas, James Knox, Edward F. Jinkins, Martin Jinkins, Silas Rawls, Robert W. Baskin, James H. Dunham, John S. Jobson, Thomas Williams, William H. Miller, John J. Floyd, Tilman Downs, Warren E. Sanders, Francis W. Jobson, John J. Forsyth, Christopher B. Strong, Creed T. Woodson, Benjamin Bryan, Samuel Felder, Calvin W. Felder, James Turrentine, and John C. Clark, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Perjury: for
that the said John Doe, wickedly and maliciously intending to aggrieve one Richard Roe, and to put him, the said Richard Roe, to great expense; and also unjustly and maliciously, to cause him, the said Richard Roe, to be arrested for the sum of fifty dollars, by virtue of a certain writ, called a bail process, sued out and prosecuted at the instance of him, the said John Doe, against him, the said Richard Roe, (which bail process is returnable to the Superior Court of said county,) on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, came in proper person before Thomas B. Allen, Esquire, one of the Justices of the Peace in and for the county aforesaid, and then and there, produced a certain affidavit in writing, of him, the said John Doe, and then and there, before the said Thomas B. Allen, Esquire, in due form of law was sworn, and took his corporal oath upon the Holy Evangelists of Almighty God, concerning the truth of the matters contained in said affidavit, (he, the said Thomas B. Allen, Esquire, then and there, having lawful and competent power and authority to administer the said oath to the said John Doe, in that behalf;) and that the said John Doe, being so sworn, as aforesaid, then and there, upon his oath aforesaid, before the said Thomas B. Allen, Esquire, (the said Thomas B. Allen, Esquire, then and there, having lawful and competent power and authority to administer the said oath to the said John Doe in that behalf;) willfully, knowingly, absolutely, and falsely, in his said affidavit in writing, did then and there, depose and swear, amongst other things, in substance and to the effect following, that is to say: that the said Richard Roe (meaning the said Richard Roe, above mentioned,) was then justly indebted unto him, the said John Doe, in the sum of fifty dollars, for goods sold and delivered by the said John Doe to the said Richard Roe, and at his, (meaning the said Richard Roe's) request, as in and by the said affidavit of the said John Doe, afiled in the said Superior Court, more fully and at large appears: whereas, in truth and in fact, the said Richard Roe, at the time the said John Doe took said oath and made said affidavit aforesaid, was not indebted to him, the said John Doe, in the sum of fifty dollars, for goods sold and delivered by the said John Doe to the said Richard Roe; and whereas, in truth and in fact, the said Richard Roe was not then and there, indebted to the said John Doe, in the sum of fifty dollars, on any account whatsoever; and whereas, in truth and in fact, the said Richard Roe was not then and there, indebted to the said John Doe, in any sum whatsoever, on any account whatsoever. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, before the said Thomas B. Allen, Esquire, justice of the peace, as aforesaid, (he, the said Thomas B. Allen, Esquire, then and there, having such power and authority as aforesaid,) by his own act and consent, and of his own most wicked and corrupt mind, in manner and form aforesaid, willfully, knowingly, absolutely, and falsely, did commit willful and corrupt Perjury; to the great displeasure of Almighty God; to the evil example of all others in like case offend-
ing, and contrary to the laws of said State, the good order, peace and
dignity thereof.

October term, 1850.

Witnesses.  
James Williams, Sol. Gen.  
Richard Roe, Prosecutor.

No. 2.—False Swearing.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse John Doe, of the county and State aforesaid, with the offence of
False Swearing: for that the said John Doe, on the first day of May,
in the year of our Lord one thousand eight hundred and fifty, in the
county aforesaid, voluntarily appeared before Thomas B. Allen,
Esquire, (said Thomas B. Allen, Esquire, being one of the justices
of the peace, in and for said county;) said Thomas B. Allen, Esquire,
did then and there, administer to and receive from said John Doe a
certain oath, (affidavit or solemn affirmation, as the case may be,) and,
then and there, the said John Doe (before the said Thomas B.
Allen, Esquire, justice of the peace, as aforesaid,) was sworn, and
took his corporal oath, upon the Holy Evangelist of Almighty God,
concerning the truth of the matters contained in the said affidavit;
he, the said Thomas B. Allen, Esquire, justice of the peace, as
aforesaid, then and there, having full power and authority to admin-
ister said oath to the said John Doe, in that behalf;) and that the said
John Doe, being so sworn as aforesaid, then and there, willfully,
knowingly, absolutely, and falsely, did depose and swear, amongst
other things, in substance and to the effect following, that is to say:
[here set out that portion of the affidavit upon which the False Swear-
ing is charged;] whereas, in truth and in fact, &c. [as in the pre-
ceding form.] And so the Jurors aforesaid, &c. [as in the preceding
form.] contrary, &c.

No. 3.—Subornation of Perjury.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse Richard Roe, of the county and State aforesaid, with the offence
of Subornation of Perjury: (or False Swearing, as the case may be,) for
that heretofore, to wit: at the April term of the Superior Court
of said County, in the year of our Lord one thousand eight hundred
and forty-nine, a certain issue was joined in said court, (the said
court being helden at Perry, in the county aforesaid,) between the
State of Georgia and said Richard Roe, on a certain indictment of
Assault and Battery, alleged to be committed on the person of
Charles Smith, in which indictment Charles Smith was prosecutor,
and the said Richard Roe was defendant. And the jurors aforesaid,
upon their oath aforesaid, do say, that afterwards, and before the trial
of the said issue as hereinafter mentioned, and whilst the same was
depending, to wit: on the twentieth day of April, in the year of our
Lord one thousand eight hundred and fifty, said Richard Roe, in said
county, wickedly contriving and intending to pervert the due course
of law and justice; and wickedly and maliciously contriving and intending unjustly to aggrieve the said Charles Smith, the prosecutor in the said issue; and to deprive the said State of Georgia of the benefit of said indictment then and there in question, and to subject said prosecutor to the payment of sundry heavy costs, charges, and expenses, then and there, to wit: on the day and year last aforesaid, in the county aforesaid, did solicit, suborn, instigate, procure and persuade one John Doe, to be and appear as a witness at the trial of the said issue, for and on behalf of the said Richard Roe, the defendant in the said issue; and upon the said trial willfully, knowingly, absolutely and falsely, to swear and give in evidence, to and before the jurors which should be sworn to try the issue aforesaid, certain matters, material and relevant to the said issue; and to the matters therein and thereby put in issue, in substance and to the effect following, that is to say: that (the said Charles Smith, meaning the prosecutor in the issue aforesaid,) did on a certain day then past, to wit: on the tenth day of April in the year first aforesaid, beat, wound, bruise, and ill-treat the said Richard Roe, (meaning the defendant in the issue aforesaid,) and did knock him, the said Richard Roe, down; and with a large stick did then and there, beat, wound, and bruise, and ill-treat and greatly disfigure the said Richard Roe whilst he was so down. And the jurors aforesaid, upon their oath aforesaid, do further say, that afterwards, to wit: at the April term of the Superior Court, in and for the county aforesaid, before the honorable James H. Stark, one of the Judges of the Superior Courts of said State, to wit: on the twentieth day of April, in the year of our Lord one thousand eight hundred and fifty, at Perry aforesaid, in the county aforesaid, the issue aforesaid came on to be tried, and was then and there tried by a jury of the country in that behalf, duly sworn and taken between the parties aforesaid; upon which said trial the said John Doe, in consequence, and by the means, encouragement and effect of the said wicked and corrupt subornation and procurement of the said Richard Roe, did then and there appear as a witness for and on behalf of the said Richard Roe, the defendant, in the indictment above mentioned, and was then and there duly sworn and took his corporal oath upon the Holy Evangelist of Almighty God, before the said James H. Stark, Judge as aforesaid, that the evidence which he, the said John Doe, should give to the court there, and to the jury, so sworn as aforesaid, touching the matter then in question between the said parties, should be the truth, the whole truth, and nothing but the truth, (he, the said James H. Stark, Judge as aforesaid, then and there having sufficient and competent authority to administer the said oath to the said John Doe in that behalf); and that at and upon the trial of the said indictment so joined between the said parties, as aforesaid, it then and there became and was a material question whether the said Richard Roe assaulted and beat the said Charles Smith; and the said John Doe being so sworn as aforesaid, then and there, at the trial of the said indictment, upon his oath aforesaid, willfully, knowingly, absolutely and falsely, before the said jurors, so sworn and taken between the said parties, as aforesaid, and
before the said James H. Stark, Judge as aforesaid, did depose and swear, amongst other things, in substance and to the effect following, that is to say: that [here set out John Doe's evidence, in substance the same as is above stated, where the subornation is charged]: whereas, in truth and in fact, the said Charles Smith did not, &c. [as in No. 1.] [proceeding to assign the perjury as in No. 1]. And whereas, in truth and in fact, the said Richard Roe, at the time he so solicited, suborned, instigated and persuaded the said John Doe, willfully, knowingly, absolutely, and falsely, to swear as aforesaid, well knew that, &c. [pursuing the words in the assignment of perjury]: And so the jurors aforesaid, upon their oath aforesaid, do say, that the said Richard Roe, on the twentieth day of April, in the year last aforesaid, in the county aforesaid, did willfully, knowingly, absolutely, and falsely, suborn and procure the said John Doe to commit willful and corrupt perjury, in and by his oath aforesaid, before the said jurors, so sworn and taken, between the said parties as aforesaid, and before the said James H. Stark, Judge as aforesaid, (the said James H. Stark, Judge as aforesaid, then and there having sufficient and competent power and authority to administer the said oath to the said John Doe); to the great displeasure of Almighty God, &c. [Conclude as in No. 1.]

No. 4.—Bribery.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Bribery: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, one Richard Roe, Esquire, then and yet being one of the justices of the peace in and for said county; and also to hear and determine divers felonies, trespasses and other misdeeds committed in said county; did then and there make a certain warrant under his hand and seal, in due form of law, bearing date the day and year aforesaid; directed to all and singular the constables and other lawful officers of said county, and especially to Charles Smith, thereby commanding them, upon sight thereof, to take and bring before him, (the said Richard Roe, Esquire, so being such justice as aforesaid, or some other justice of the peace in and for said county,) the body of James Flowers, of the county aforesaid, to answer, &c., &c. [as in the warrant]; and which said warrant afterwards, to wit: on the day and year aforesaid, in the county aforesaid, was delivered to the said Charles Smith, then and there, being one of the constables of said county, to be executed in due form of law. And the Jurors aforesaid, upon their oath aforesaid, do say, that said John Doe, in the county aforesaid, well knowing the premises, but contriving and unlawfully intending to pervert the due course of law and justice, and to prevent the said James Flowers from being arrested and taken, under and by virtue of said warrant, afterwards, to wit: on the day and year aforesaid, in the county aforesaid, unlawfully, wickedly, and corruptly, did give to the said Charles Smith, so being constable
as aforesaid, and having in his custody and possession the said warrant, so delivered to him to be executed as aforesaid, the sum of ten dollars, if the said Charles Smith would refrain from executing the said warrant, and from taking and arresting the said James Flowers, under and by virtue of the same, for and during fourteen days from that time; that is to say, from the time he, the said John Doe, so gave the said ten dollars to the said Charles Smith, constable, as aforesaid. And the Jurors aforesaid, on their oath aforesaid, do say, that said Charles Smith, constable, aforesaid, on the day and year aforesaid, in the county aforesaid, as a bribe and undue reward, did accept, and then and there receive the ten dollars aforesaid, for the purposes aforesaid, from the said John Doe. And so the Jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, on the first day of May, in the year aforesaid, did bribe the said Charles Smith, constable, as aforesaid, to neglect and omit to do his duty as such constable, and to refrain from taking and arresting the said James Flowers, under and by virtue of the warrant aforesaid: to the evil and pernicious example of all others in like case offending; contrary, &c.

No. 5.—Stealing, &c., Public Documents.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Stealing: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in said county, being clerk of the superior court of said county, and as clerk aforesaid, having in his possession and control the conveyancing records, the said conveyancing records belonging to the office of clerk of the Superior Court of said county; a certain record book, to wit, record book letter A, did knowingly and willfully steal, take, and carry away; contrary, &c.

No. 6.—Cruelty in Jailors.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, jailor, of the county and State aforesaid, with willful inhumanity (or oppression) to a prisoner: for that the said John Doe, in said county, (being then and there, jailor of said county, and by virtue of said appointment, having under his care and in his custody the common jail of said county,) on the first day of May, in the year of our Lord one thousand eight hundred and fifty, Richard Roe, was confined a prisoner in said jail, in the care and custody of said John Doe, jailor as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, jailor as aforesaid, inhumanly and unlawfully did, then and there, refuse and neglect, for the space of twelve hours, to furnish said Richard Roe, with food or drink; contrary to the principles of humanity, and contrary, &c.
No. 7.—Officers detaining Books, &c., from Successors.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, late clerk of the superior court, with the offence of willfully and unlawfully withholding from Richard Roe, his successor, the records (papers, documents, books or other writings, as the case may be,) appertaining and belonging to his office: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, was clerk of the superior court of said county, and as clerk as aforesaid, was lawfully possessed of the records, papers, documents, books and other writings, appertaining and belonging to the said office of clerk of the superior court. And the jurors aforesaid, upon their oath aforesaid, do say, that the term of office of said John Doe, as clerk, as aforesaid, having then and there expired, and an election of a successor of said John Doe, clerk as aforesaid, having been duly and lawfully held; that at said election Richard Roe having been elected as successor to said John Doe, in his office of clerk as aforesaid; and said Richard Roe, then and there, having been duly commissioned and qualified, as clerk of the superior court of said county, did, then and there, apply to said John Doe, clerk as aforesaid, and demand from said John Doe, as his successor, the records, papers, documents, books, and other writings appertaining and belonging to his office. And the jurors aforesaid, upon their oath aforesaid, do say, that said John Doe, as aforesaid, did, then and there, willfully and unlawfully, withhold, detain and refuse to deliver up to said Richard Roe, his successor as clerk as aforesaid, the said records, papers, documents, books, and other writings appertaining and belonging to said office of clerk of the superior court, to the manifest hindrance of justice; contrary, &c.

No. 8.—Personating Bail, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Personating Bail (or judgment): for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, before the honorable James H. Stark, one of the judges of the superior courts of said State, in and for said county (the said James H. Stark, judge as aforesaid, then and there, having lawful authority to take any recognizance of bail, in any suit then depending in said court), then and there, did acknowledge a certain Recognizance of Bail, in the name of Richard Roe, in a certain cause then depending in said court, wherein Charles Smith was plaintiff, and said John Doe defendant; he, the said Richard Roe, not being then and there, privy or consenting to the said John Doe, so acknowledging such recognizance in his name, as aforesaid; said John Doe, not being then and there, attorney of record in said cause; to the great damage of said Richard Roe; contrary, &c.
No. 9.—Obstructing Legal Process.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of knowingly and willfully Obstructing Legal Process; for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, knowingly and willfully did obstruct, resist, and oppose one George M. Bancomb, sheriff of said county, then and there being, in executing a lawful process, to wit: a writ of fieri facias, issued from the superior court of said county, on the first day of January, in the year of our Lord one thousand eight hundred and fifty, witnessed by the honorable James H. Stark, one of the judges of the superior courts of said State, and signed by William H. Miller, clerk of said superior court; which writ of fieri facias was in favor of Richard Roe, against said John Doe; and there being in the hands of the said George M. Bancomb, sheriff as aforesaid, and for him to execute and to cause to be made the sum of money in said writ of fieri facias mentioned; which said writ of fieri facias was in terms and effect as follows: to wit: [here set out the writ of fieri facias.] And the said George M. Bancomb, sheriff as aforesaid, by virtue of said writ of fieri facias, did, on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty, levy on and take possession of the following slaves, to wit: Jacob, a man about twenty-five years of age, of the value of five hundred dollars, the property of the said John Doe, for the purpose of selling said property and satisfying said writ of fieri facias, the same being for the sum of one thousand dollars, principal; three hundred dollars interest, and fifteen dollars costs; with accruing interest on the principal sum, as mentioned and set out in said writ of fieri facias. And the said George M. Bancomb, sheriff as aforesaid, having duly and lawfully advertised said property for sale in the Macon Georgia Telegraph; to be sold on the first day of May, (said day being the first Tuesday in the month) in the year of our Lord one thousand eight hundred and forty-eight, at the court-house door, in the town of Perry, in said county, for the purpose of satisfying the writ of fieri facias aforesaid. And the Jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, on the said first day of May, in the year aforesaid, in the county aforesaid, with force and arms, the said property, so levied on and advertised as aforesaid and brought to the place of sale, by said George M. Bancomb, sheriff as aforesaid, (on the day and year aforesaid, and for the purpose aforesaid,) did knowingly and willfully take and carry off, without the leave, knowledge, or approbation of said George M. Bancomb, sheriff as aforesaid, or the leave or knowledge of any other person having authority to permit said John Doe to take and carry away said property, by reason whereof said George M. Bancomb, sheriff as aforesaid, was obstructed, resisted, and opposed in bringing said property to sale; said amount in said writ of fieri facias being yet due and unpaid, whereby said John Doe did then and there, knowingly and willfully obstruct the execution of said lawful process; to the manifest hindrance of justice; contrary, &c.
No. 10.—Assault, &c., under Color of Office.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, sheriff of the county aforesaid, with the offence of Assault, under color of his office, without a lawful necessity so to do: for that the said John Doe, (being sheriff of the said county of Houston,) on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, having in his hands then and there, a writ of capias ad satisfaciendum, issued from the superior court of said county, in favor of Charles Smith against Richard Roe, did, then and there, under color of executing said writ of capias ad satisfaciendum, assault said Richard Roe, without a lawful necessity so to do; contrary, &c.

No. 11.—Rescue.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Rescue: for that on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, Richard Roe, then being one of the constables of said county, brought one Charles Smith before Thomas B. Allen, Esq., then and yet being one of the justices of the peace in and for the county aforesaid, and also to hear and determine divers felonies, trespasses and other misdeeds, committed in said county; and the said Charles Smith was, then and there, charged before the said Thomas B. Allen, Esq., by one Betsey Claybank, spinster, upon the oath of said Betsey, that he, the said Charles Smith, had then lately before, violently and against her will, feloniously ravished and carnally known her, the said Betsey; and the said Charles Smith was, then and there, examined before the said Thomas B. Allen, Esq., the justice aforesaid, touching said offence, so to him charged, as aforesaid; upon which the said Thomas B. Allen, Esq., justice aforesaid, (said Charles Smith, then and there, refusing and failing to give bail as required) did, then and there, make a certain warrant of commitment, under his hand and seal, in due form of law, bearing date the said first day of May, in the year aforesaid, directed to said Richard Roe, constable, and Francis W. Jobson, keeper of the common jail of said county, commanding him, the said Richard Roe, constable as aforesaid, to convey him, the said Charles Smith, and deliver him into the custody of him, the said Francis W. Jobson, jailor as aforesaid; and him, the said Francis W. Jobson, jailor as aforesaid, that he should receive into his custody the said Charles Smith, and safely keep him in said jail, until he, by due course of law, should be discharged; which said commitment, to wit: on the day and year aforesaid, in the county aforesaid, was delivered to said Richard Roe, constable as aforesaid, (said Richard Roe, constable as aforesaid, then and there, having said Charles Smith in his custody, for the cause aforesaid, and for the purpose of delivering said Charles Smith, to said Francis W. Jobson, jailor as aforesaid, for the purpose aforesaid, together with the commitment aforesaid.) And the Jurors aforesaid, upon their oath aforesaid, do say, that the said John
Doe, whilst the said Charles Smith was in the custody of the said Richard Roe, constable, as aforesaid, under the said commitment, as aforesaid, and whilst the said Richard Roe, constable, as aforesaid, was conveying the said Charles Smith, under and by virtue of said commitment, to the said Francis W. Jobson, jailor as aforesaid, to wit: on the day and year aforesaid, in the county aforesaid, in and upon the said Richard Roe, (then and there being a constable, as aforesaid, and then and there, lawfully having the said Charles Smith in his custody, by virtue of said commitment, for the cause aforesaid,) in the due execution of his said office, then and there being, did make an assault, and him, the said Richard Roe, constable as aforesaid, then and there, did beat, wound, and ill treat, and that the said John Doe, the said Charles Smith, out of the custody of the said Richard Roe, constable as aforesaid, and against the will of him, the said Richard Roe, constable as aforesaid, then and there, forcibly and knowingly, did free and rescue and put at large, to go whithersoever he would; and that the said Charles Smith himself out of the custody of the said Richard Roe, constable as aforesaid, and against the will of him, the said Richard Roe, constable as aforesaid, then and there, forcibly and knowingly, did free and rescue and put at large, to go whithersoever he would; to the great hindrance of justice; to the evil example of all others in like case offending; and contrary, &c.

No. 12.—Aiding Prisoner to Escape.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Aiding a Prisoner, lawfully committed to jail, for an offence against the State, to make his escape: for that at October term, of the Superior Court, held in and for the county aforesaid, in the year of our Lord eighteen hundred and forty-nine, one bill of indictment was preferred before the Grand Jury, then and there sworn, chosen, and selected, (by James Masters, Solicitor-General of the Flint circuit,) to wit: [here insert the names of the Grand Jurors who found the bill of indictment against the party escaping,] charging one Richard Roe with the offence of Assault and Battery, committed on the body of one Charles Smith, on the first day of October, in the year of our Lord one thousand eight hundred and forty-nine, in said county. And the said last mentioned Grand Jurors, at said October term, in the year aforesaid, to wit: eighteen hundred and forty-nine, did then and there return a true bill of indictment against said Richard Roe, for the offence of Assault and Battery. And at said October term, eighteen hundred and forty-nine, of the Superior Court aforesaid, the said Richard Roe was arraigned on said bill of indictment, so found and returned as aforesaid, and pleaded "not guilty" to the offence therein charged against him. And said Richard Roe was then and there, in due form of law, tried by a jury of the country, on said issue so formed as aforesaid; which jury were sworn, well and truly to try the issue formed on said bill of indictment, between the State of Georgia and said Richard Roe, then and there charged with the
offence of Assault and Battery, and a true verdict to give, according
to evidence. And the jury so as aforesaid sworn, to try said issue,
returned a verdict of "guilty" against said Richard Roe. And the
honorable John J. Floyd, one of the judges of the superior courts of
said State, then and there presiding, considered and adjudged, that
the said Richard Roe should pay a fine of ten dollars, be confined
in the common jail of said county, for the space and term of ten
days, and the costs of said indictment. And the said Richard Roe, being
so convicted and sentenced as aforesaid, was lawfully committed to
the custody of James West, Sheriff of said county; and in obedience
to said sentence, so delivered by the court as aforesaid, said Richard
Roe was duly committed to the jail aforesaid, on the twentieth day of
October, eighteen hundred and forty-nine. And afterwards, to wit:
on the thirtieth day of October, in the year of our Lord one thousand
eight hundred and forty-nine, in the county aforesaid, (whilst the said
Richard Roe was such prisoner, confined in the common jail, as aforesaid,) the said John Doe, with force and arms, did, then and there, aid
and assist the said Richard Roe to escape from said jail, (he, the said
Richard Roe, being then and there lawfully committed and in custody,
as aforesaid,) without the consent or privity of the keeper of said
jail, by conveying and delivering to said Richard Roe, then and there,
a chisel, (being an instrument proper to facilitate the escape of pris
oners,) with the intent to aid and assist the said Richard Roe, so be
ing such prisoner and in custody, as aforesaid, to escape, and to at
tempt to escape from and out of said jail; the term of imprisonment
of said Richard Roe ordered by said court, as aforesaid, not being,
then and there, ended and completed; contrary, &c.

No. 13.—Voluntary Escape.

In the name and behalf of the citizens of Georgia, charge and ac
cuse John Doe, jailor, of the county aforesaid, with the offence of
Voluntary Escape: for that the jurors aforesaid, upon their oath
aforesaid, do say, that heretofore, to wit: at the Superior Court,
holden at Perry, to wit: in the county aforesaid, [so continuing the
record of the conviction of the party who escaped, stating it, however,
in the past and not in the present tense; then proceed thus]: as by
the record thereof more fully and at large appears; which said judg
ment still remains in full force and effect, and not in the least re
versed or made void. And the jurors first aforesaid, upon their oath
aforesaid, do say, that afterwards, to wit: at the said term of the
Superior Court above mentioned, he, the said Richard Roe, was then
and there committed to the care and custody of said John Doe, he, the
said John Doe, then and still being keeper of the common jail in and
for the said county of Houston; there to be kept and imprisoned in the
jail aforesaid, according to and in pursuance of the judgment and
sentence aforesaid; and the said John Doe, jailor, as aforesaid, him,
the said Richard Roe, then and there had, in the custody of him, the
said John Doe, jailor, as aforesaid, for the cause aforesaid, in the jail
aforesaid. And the jurors first aforesaid, upon their oath aforesaid,
do say, that the said John Doe, jailor, as aforesaid, in the said county of Houston, afterwards, and before the expiration of the six months for which the said Richard Roe was so ordered to be imprisoned as aforesaid, and whilst the said Richard Roe was so in the custody of the said John Doe, jailor, as aforesaid, to wit: on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, in the county aforesaid, feloniously, [if the offence for which Richard Roe was convicted were a felony], voluntarily, did permit and suffer the said Richard Roe to escape and go at large whithersoever he would; contrary to the duty of the said John Doe, jailor, as aforesaid; in manifest hindrance of justice; to the evil example of all others in like case offending; and contrary, &c.

No. 14.—Compounding Felony.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Compounding Felony: for that the Jurors aforesaid, upon their oath aforesaid, do say, that heretofore, to wit: on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, one Jane, the wife of Richard Roe, feloniously stole, took, and carried away, one silver Goblet, of the value of one hundred dollars, of the goods and chattels of said John Doe; contrary to the laws of said State. And the said John Doe, in the county aforesaid, well knowing the said felony to have been, by the said Jane, so as aforesaid, done and committed, but contriving and intending, unlawfully and unjustly, to pervert the due course of law and justice in that behalf, and to cause and procure the said Jane, for the felony aforesaid, to escape with impunity, afterwards, to wit: on the day and year aforesaid, in the county aforesaid, unlawfully, and for wicked gain's sake, did compound the said felony, with the said Richard Roe, the husband of the said Jane, and then and there, did exact, take, receive and have, of the said Richard Roe, the sum of fifty dollars, for and as a reward for compounding the said felony, and desisting from all further prosecution against the said Jane, for the felony aforesaid; and that the said John Doe, on the day and year aforesaid, in the county aforesaid, did thereupon desist, and from that time hitherto, hath desisted, from all further prosecution of the said Jane, for the felony aforesaid, to the great hindrance of justice; contrary, &c.

No. 15.—Conspiracy.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe and his wife Sally, and James Jones, of the county and State aforesaid, with the offence of Conspiracy: for that the Jurors aforesaid, upon their oath aforesaid, do say, that said John Doe and his wife Sally, and James Jones, are evil-disposed persons, and wickedly devising and intending, not only to deprive one Charles
Smith of his good name, fame, credit, and reputation, but also to
subject him, as far as in them lay, to the pains and penalties by the
laws of this State made and provided against and inflicted upon per-
sons guilty of rape, on the first day of May, in the year of our Lord
one thousand eight hundred and fifty, with force and arms, in the
county aforesaid, did, amongst themselves, conspire, combine, confed-
erate and agree together, falsely and maliciously, to charge and ac-
cuse the said Charles Smith, that he, the said Charles Smith, had
then lately before feloniously ravished and carnally known, the said
Sally, forcibly and against her will and consent. And the Jurors
aforesaid, upon their oath aforesaid, do further say, that the said
John Doe and Sally his wife, and said James Jones, afterwards, on
the day and year aforesaid, in the county aforesaid, in pursuance of,
and according to the said conspiracy, combination, confederacy and
agreement amongst themselves, had as aforesaid,* [here set out the
overt acts, as in treason, which see; introducing the second and each
of the subsequent acts, thus: And the Jurors aforesaid, upon their
oath aforesaid, do further say, that in further pursuance of, and
according to, the said conspiracy, combination, confederacy and agree-
ment, amongst them, the said John Doe and Sally his wife, and
James Jones, had as aforesaid, they, the said, &c. on, &c. at, &c. &c.,
continuing the indictment from the above asterisk, thus:] falsely and
maliciously, in the presence and hearing of divers persons, did charge
and accuse the said Charles Smith with and of the rape aforesaid.
And the Jurors aforesaid, upon their oath aforesaid, do further say,
that, in further pursuance of, and according to the said conspiracy,
combination, confederacy and agreement, amongst them, the said
John Doe and Sally his wife, and James Jones, had as aforesaid, she,
the said Sally, afterwards, to wit: [on the day and year aforesaid, in
the county aforesaid; did, upon her oath, falsely and maliciously,
charge and accuse the said Charles Smith, before Thomas B.
Allen, Esquire, then and yet being one of the justices of the peace
in and for the county aforesaid; and also to hear and determine di-
vers felonies, trespasses and other misdeeds, committed in the said
county; that he, the said Charles Smith, had then lately before,
feloniously ravished and carnally known her, the said Sally, forcibly
and against her will and consent.] And the Jurors aforesaid, upon
their oath aforesaid, do further say, that in further pursuance of, and
according to, the said conspiracy, combination, confederacy and agree-
ment, amongst them, the said John Doe and Sally his wife, and
James Jones, had as aforesaid; she, the said Sally, by the name of
Sally, the wife of John Doe, afterwards, to wit: at the Superior
Court, holden in and for said county, on Monday, the twentieth
day of October, in the year of our Lord one thousand eight hundred and
fifty, before the honorable James H. Stark, one of the judges of the
Superior Courts of said State, then and there presiding, and also to
hear and determine divers felonies, trespasses, and other misdeeds
committed in said county, did falsely and maliciously exhibit a cer-
tain bill, commonly called a bill of indictment, against the said
Charles Smith, before the grand jurors, then and there, sworn, chosen,
and selected, in and for said county, at said term, to wit: [here insert the names of the grand jurors before whom the indictment for rape was preferred,] good and lawful men of the said county, then and there sworn and charged to inquire for the body of the said county; which said bill was, by the said jurors, then and there, returned into the said court, before the said James H. Stark, judge, as aforesaid, thus indorsed: "No Bill;" which said bill is in these words, that is to say: [here set out the indictment verbatim; and then add, with intent to obtain and acquire to them, the said John Doe and Sally his wife, and the said James Jones, of and from the said Charles Smith, divers sums of money for compounding the said pretended felony and rape, so falsely charged upon the said Charles Smith, as aforesaid; if such be the fact, and there will be no difficulty in proving it:] to the great damage, scandal, infamy and disgrace of the said Charles Smith; to the evil example of all others in like case offending; contrary, &c.

No. 16.—Barratry.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Common Barratry: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers other days and times, as well before as afterwards, was, and yet is, a common barrator; and that he, the said John Doe, on the day and year aforesaid, and on divers other days and times, in the county aforesaid, did frequently excite and stir up suits and quarrels between individuals, to the evil example of all others in like case offending; contrary, &c.

Note.—Barratry "signifies the habitual moving, exciting, or maintaining, suits and quarrels, either at law or otherwise. All kinds of disturbances of the peace, spreading false rumors and calumnies, &c., come under this denomination."

"But a man cannot be thus guilty in respect of a single act."

"Nor can an attorney be indicted for this crime, merely from maintaining another in a groundless action.

"It has been said, that some coverts cannot be thus indicted, but the better opinion seems to be otherwise, for as they are able to excite quarrels, they ought to answer for them.

"The case of barratry is one of those excepted instances, where it is not necessary to charge any specific act, but the allegation that the defendant is a common barrator will suffice; the reason of which is, that the offence charged consists in habitual conduct, and not in a single malfeasance.

"But the prosecutor must, before the trial, inform the defendant by a notice, of the particular acts on which he intends to rely, or the court will not suffer him to proceed; and no other acts can be given in evidence, than those thus specified.

"No place need be specified in the indictment, because the accusation, involving several acts, may fairly be supposed to have occurred at several places, and therefore the trial must be from the body of the county."

No. 17.—Embracery.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Embracery: for the jurors aforesaid, upon their oath aforesaid, do say, that at the April term of the superior court, holden in and for
the county aforesaid, in the year of our Lord one thousand eight hundred and fifty, (the honorable James H. Stark, one of the judges of the superior courts of the State of Georgia, then and there presiding,) one Richard Roe, was then and there, being tried for the offence of Assault and Battery, by a jury of the country, then and there empannelled to try said Richard Roe. And the jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, (the trial of the said Richard Roe, then and there, pending and undetermined,) wickedly and corruptly, did procure a juror, (to wit: Charles Smith, then and there empannelled to try said Richard Roe, for the offence of Assault and Battery, as aforesaid,) to take money, to wit: the sum of fifty dollars, to influence said Charles Smith to return a verdict of not guilty in favor of said Richard Roe, on his trial aforesaid; to the great and manifest hindrance of justice; contrary, &c.

No. 18.—Malpractice.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, Esquire, justice of the peace of the County and State aforesaid, with the offence of Malpractice in office: for that the jurors aforesaid, upon their oath aforesaid, do say, that on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, one Richard Roe, then being one of the constables of said county, brought one Charles Smith before said John Doe, Esquire, then and yet being one of the justices of the peace in and for said county, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county, and the said Charles Smith, then and there, was charged before the said John Doe, Esquire, justice as aforesaid, with having committed a certain supposed Assault and Battery, and the said Charles Smith was then and there examined before the said John Doe, Esquire, justice of the peace as aforesaid, touching the said supposed offence, so to him charged as aforesaid. And the jurors aforesaid, upon their oath aforesaid, do further say, that the said John Doe, Esquire, justice of the peace, as aforesaid, oppressively, and in a manner unbecoming his character as an upright magistrate, in the administration and under color of his office, and in a manner tending to oppress the said Charles Smith, in this behalf, and to put him to great charge and expense, and to cause him to undergo and suffer great pain, torture and anguish, of body and mind, afterwards, to wit: on the day and year aforesaid, in the county aforesaid, did order and direct that the said Charles Smith should find sureties for his personal appearance at the then next term of the superior court, to be held in and for the county aforesaid, on the fourth Monday in October, in the year aforesaid, to answer said charge. And the jurors aforesaid, upon their oath aforesaid, do further say, that said Charles Smith accordingly, then and there, did offer to give ample and good bond and security for his personal appearance at said superior court, so to be helden as aforesaid, but he, the said John Doe, Esquire, justice of the peace, as aforesaid, then and there oppressively, and in a manner unbecoming his
character as an upright magistrate in the administration and under
color of his office, did refuse to take bond and security for the personal
appearance of said Charles Smith, at said superior court, so to be
helden as aforesaid; the said John Doe, Esquire, justice of the peace,
as aforesaid, wickedly, maliciously, and oppressively, contriving and
intending as aforesaid, wrongfully, unjustly, maliciously, and oppres-
sively, and contrary to the laws of said State, then and there, (by vir-
tue of and under color of a certain warrant under his hand and seal,
as such justice of the peace, as aforesaid) did commit the said Charles
Smith a prisoner to the common jail of said county, in said county;
to be there safely kept until he should be fully examined con-
cerning the premises; and then and there, in a tyrannical and op-
pressive manner, ordered, directed, and commanded, the then keeper
of said prison to keep the said Charles Smith under close confine-
ment in said prison, [and to deny him the use of pen, ink, and pa-
per, and to allow no letter to be delivered to or from the said Charles
Smith; and also to allow no person to see or speak to him, the said
Charles Smith.] And the jurors aforesaid, upon their oath aforesaid,
do further say, that the said John Doe, Esquire, justice of the peace
as aforesaid, by virtue and under color of the warrant aforesaid, after-
wards, to wit: on the day and year aforesaid, and from thence
for a long space of time, to wit, for the space of ten days, then next
following, in the county aforesaid, wrongfully, unjustly, oppressively,
and maliciously, and contrary to the laws of said State, did cause and
procure the said Charles Smith to be closely confined and imprisoned
in the said prison; [and to be denied the use of pen, ink, and paper,
and to be restrained from all communication with his friends and relations,]
to wit, in said county; whereby the said Charles Smith, during all
that time, underwent and suffered great pain, torture, oppression, and
anguish, of body and mind; and was deprived of his liberty; and
was put to great charge and expense, in and about obtaining his dis-
charge and release from the said commitment and imprisonment, to
the great scandal of the administration of justice in said State; to the
evil example of all others in like case offending; and contrary, &c.

No. 19.—Threatening Letter.

In the name and behalf of the citizens of Georgia, charge and ac-
cuse John Doe, of the county and State aforesaid, with the offence of
sending Threatening Letter: for that the said John Doe, in the coun-
try aforesaid, on the first day of May, in the year of our Lord one
thousand eight hundred and fifty, knowingly did send (or deliver) to
one Richard Roe, a certain Letter, (or writing) directed to said
Richard Roe, by the name and description of Mr. Richard Roe, threat-
ening to accuse said Richard Roe with the crime of Larceny, with in-
tent to extort money (goods, chattels, or other valuable thing,) from
the said Richard Roe, with menaces, and without any reasonable or
probable cause; and which letter (or writing) is as follows, that is
to say: [here set out the letter or writing verbatim:] contrary, &c.
No. 20.—Extortion.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, constable, of the County and State aforesaid, with the offence of Extortion: for that on the first day of May, in the year of our Lord one thousand eight hundred and fifty, said John Doe, then being one of the constables of said county, in the county aforesaid, did take and arrest one Richard Roe, by color of a certain warrant, commonly called a bench warrant, which he, the said John Doe, constable, as aforesaid, then and there, alleged to be in his possession; and that the said John Doe, constable, as aforesaid, afterwards, and whilst the said Richard Roe so remained in his custody, as aforesaid, on the day and year aforesaid, in the county aforesaid, by color of his said office, did extort and take of and from the said Richard Roe the sum of ten dollars, as and for a fee due to him, the said John Doe, constable, as aforesaid, as such constable, as aforesaid, for the obtaining and discharging of the said warrant, as he, the said John Doe, constable, as aforesaid, then and there alleged; whereas, in truth and in fact, no fee whatsoever was then due from the said Richard Roe, to the said John Doe, constable, as aforesaid, in that behalf; in contempt of the laws of said State; to the evil example of all others in like case offending; contrary, &c.

No. 21.—Mutiny in Penitentiary.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, a prisoner in the penitentiary, with the offence of Mutiny: for that the said John Doe, being a prisoner in the penitentiary, and being a wicked and evil-disposed person, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in the penitentiary aforesaid, to wit: with a certain hatchet, which the said John Doe, a prisoner in the penitentiary, as aforesaid, then and there, had and held in his right hand, in and upon one Richard Roe, an officer in said penitentiary, then and there did assail, (said hatchet being a weapon calculated to cause death or serious bodily injury;) contrary, &c.
CHAPTER XII.

NINTH DIVISION.

Offences against the Public Peace and Tranquillity.

Unlawful Assemblies—Disturbing the Public Peace.

197. Sec. I. If any two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse upon being desired or commanded to do so by a judge, justice, sheriff, constable, coroner, or other peace officer, such persons so offending shall be guilty of a Misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court.—No. 1.

Riot.

198. Sec. II. If any two or more persons, either with or without a common cause of quarrel, do an unlawful act of violence, or any other act in a violent and tumultuous manner, such persons so offending shall be guilty of a Riot, and, on conviction, shall be punished by fine or imprisonment in the common jail, or both, at the discretion of the court; but if the circumstances attending the riot shall be of an atrocious or aggravated nature, the offenders may be imprisoned at labor in the penitentiary, for any time not less than one year, nor longer than three years.—No. 2.

Affrays.

199. Sec. III. Affrays are the fighting of two or more persons in some public place, to the terror of the citizens and disturbance of the public tranquillity. Persons so offending shall be indicted, and on conviction, shall be punished by fine, or imprisonment in the common jail, or both, at the discretion of the court; and it shall be considered a great aggravation of this offence, if any contempt or disobedience of the magistrate or other peace officer commanding the peace, shall be proved.—No. 3.

Duelling—Principals.

200. Sec. IV. If any person shall deliberately challenge, by word or writing, the person of another, to fight with sword, pistol, or other deadly weapon; or if any person so challenged shall accept the said
challenge, in either case, such person, so giving or sending, or accept- 
ing any such challenge, shall, on conviction, be punished by a fine not 
less than five hundred dollars, and be imprisoned in the common jail 
of the county for any time not exceeding six months. Or, if the jury 
should so recommend, such person shall, in addition to the fine herein 
imposed, be punished by imprisonment and labor in the penitentiary, 
for any time not less than one year, nor longer than two years.—
No. 4.

Seconds, same Punishment.

201. Sec. V. If any person shall knowingly and willfully carry and 
deliver any written or printed challenge, or verbally deliver any mes-
sage or challenge to another, to fight with sword, pistol, or other dead-
ly weapon; or shall consent to be a second in any such intended duel 
or combat, such person so offending shall, on conviction, be punished 
in the same manner as is prescribed in the preceding section.—No. 5.

[It shall be sufficient to form an indictment, generally, against 
either of the principals for challenging another to fight at deadly 
weapons; and, notwithstanding it may appear on the trial, that the 
defendant only accepted the challenge, it shall be sufficient to convict 
and render him liable to the penalties aforesaid, and in like manner an 
indictment against the second may be framed generally, for carrying 
and delivering a challenge; and the proof of the mere act of fighting, 
and the defendant being present thereat, shall be sufficient to convict 
the defendant upon an indictment so framed; and if the duel shall 
take place within this State, the mere act of fighting shall be full and 
complete evidence of the charges respectively, of giving or receiving, 
or of carrying and delivering a challenge, without other proof thereof.]

Fighting, High Misdemeanor.

202. Sec. VI. If any person shall be engaged in the act of fighting 
a duel with sword, pistol, or other deadly weapon, either as principal 
or second, such person shall be guilty of a High Misdemeanor, and on 
conviction, shall be punished by imprisonment and labor in the peniten-
tiary, for any time not less than four years, nor longer than eight 
years. Provided, nevertheless, that if death should ensue from such 
duel, then all the parties, both principals and seconds, shall be guilty 
of Murder, and suffer the punishment of death.—No. 6.

Officers not preventing Duels.

203. Sec. VII. If any justice or other public officer, bound to pre-
serve the public peace, shall have knowledge of an intention in any 
person or persons to fight with any deadly weapon, and shall not use 
and exert his official authority to arrest the parties, and prevent the 
duel, by binding over the parties concerned to keep the peace towards 
each other, such judge, justice, or other peace officer, so offending 
shall, on conviction, be dismissed from office.—No. 7.

Proclaiming as Coward, &c.

204. Sec. VIII. If any person or persons shall, in any newspaper 
or hand-bill, written or printed, publish or proclaim any other person
or persons as a coward or cowards; or use any other opprobrious and abusive language for not accepting a challenge or fighting a duel, such person or persons so offending shall, on conviction, be punished by a fine not exceeding five hundred dollars, and imprisonment in the common jail of the county, not exceeding sixty days, at the discretion of the court.—No. 8.

Libel.

205. Sec. IX. A Libel is a malicious defamation, expressed either by printing, or writing, or signs, pictures, and the like, tending to blacken the memory of one who is dead, or the honesty, virtue, integrity, or reputation of one who is alive, and thereby expose him or her to public hatred, contempt, or ridicule: every person convicted of this offence shall be punished by a fine not exceeding one thousand dollars, and by imprisonment in the common jail of the county, for any time not exceeding one year, at the discretion of the court.—No. 9.

Printer, Witness.

206. Sec. X. In all prosecutions under the two preceding sections of this Division, the printer or publisher of the newspaper, hand-bill, or other publication containing the offensive or criminal matter, shall be a competent witness; and if such printer or publisher shall refuse to testify in the cause, or to give up the real name of the author, or person authorizing and causing the publication, so that he may be indicted; then such printer or publisher shall be deemed and considered the author himself, and be indicted and punished as such; and may, moreover, be punished for a contempt of the court, as any other witness refusing to testify.

Truth in Evidence.

207. Sec. XI. In all cases of indictment for a Libel or for Slander, the person prosecuted shall be allowed to give the truth in evidence.

Forcible Entry and Forcible Detainer.

208. Sec. XII. Forcible Entry is the violently taking possession of lands and tenements, with menaces, force and arms, and without authority of law.—No. 10.

209. Sec. XIII. Forcible Detainer is the violently keeping possession of lands and tenements with menaces, force and arms, and without authority of law.—No. 11.

Punishment of Forcible Entry or Detainer.

210. Sec. XIV. Any person who shall be guilty of a Forcible Entry or a Forcible Detainer, or both, may be indicted, and, on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court: and the court before whom the conviction takes place, shall cause restitution of possession of the premises, to be made to the party aggrieved: Provided, always, that if the party forcibly detaining lands and tenements, or those under whom he claims, shall have been in peaceable possession of the same for the space of three years or more, immediately preceded-
ing the filing of the complaint, such person or party shall not be sub-
ject to the penalties of this section, nor shall restitution of possession
be made. *And provided, also*, that the only questions to be submitted
to, and determined by the jury, in trials for Forcible Entry or Forcible
Detainer, shall be the possession and the force, without regard to the
merits of the title on either side.—*No. 12.*

**Justices of the Peace to try the Fact.**

211. Sec. XV. Any one or more justice or justices of the peace,
upon complaint, made on oath, of any Forcible Entry into lands or
tenements, or of any Forcible Detainer of the same, shall have power
to draw a jury of twelve men from the jury box of the district in
which the lands and tenements so alleged to be forcibly entered or
detained are situated, and cause the sheriff of the county, or the con-
stable of the district, to summon them to be and appear at the usual
place of holding court, of the said district, on a certain day to be
appointed by the said justice or justices, for the purpose of trying the
fact of such forcible entry or detainer: And the said justice or jus-
tices shall also issue a summons, to be directed to the person or persons
charged with such forcible entry or detainer, and cause the same to
be served on him or them, by the sheriff, or by the constable, at least
five days before the time appointed for trial, requiring him or them to
appear and defend the charge alleged against him or them. And if
all the jurors should not attend, or if there should be any legal objec-
tion to any of them, then the justice or justices may cause the jury to
be completed by *tales* jurors: And upon the trial, the only facts which
the jury shall inquire into, shall be the possession and the force; but
they shall have no power to inquire into the merits of the title, on
either side. The following oath shall be administered to the jurors,
viz:—"You shall well and truly inquire whether A B has made
any forcible entry into the lands or tenements of C D, and him ejected
therefrom, or forcibly detains the lands or tenements of the said C D;
and a true verdict give, according to the facts as they may appear to
you in evidence—so help you God." And if, upon the trial of such
case, the jury shall find such forcible entry or forcible detainer, or both,
then the said justice or justices shall give judgment accordingly, and
cause the sheriff to make restitution of possession of the premises to
the party aggrieved: *Provided, nevertheless*, that if the person or per-
sons charged with such forcible entry or detainer, or those under
whom he or they claim, shall have been in peaceable possession of the
premises, for the space of three years or more, as aforesaid, then no
restitution of possession shall be made. *And provided, also*, that no
proceedings under this section shall exempt any person guilty of a
forcible entry or detainer, from indictment and punishment, under
and by virtue of the preceding section of this Division.

**Other Offences against Public Peace.**

212. Sec. XVI. All other offences against the public peace, not
provided for in this Code, shall be prosecuted and indicted as hereto-
fore, and the punishment in every case shall be by fine, or imprison-
ment in the common jail of the county, or both, at the discretion of
the court.

An Act to Secure to Churches or Religious Societies the Lots of
Land Conveyed to them for Erecting Churches and Meeting
Houses.

1. All deeds of conveyance heretofore made, and which may hereafter be
made by any person or persons, for any lots of land within this State, to any
church or religious society, or to trustees for the use of any church or religious
society, for the purpose of erecting churches or meeting-houses, are and shall
be deemed and taken to be good and valid, and available in law for the in-
tents, uses, and purposes contained in such deeds of conveyance; and all lots of
land so conveyed shall be fully and absolutely vested in such church or reli-
gious society, or in their respective trustees, for the uses and purposes in the said
deed expressed, to be holden to them, or their trustees, for their use, by suc-
cession, according to the mode of church government or rules of discipline
exercised by such churches or religious societies, respectively.

2. All trustees to whom conveyances are or shall be made for the purposes
hereinbefore expressed, shall be subject to the authority of the church or relig-
ious society for which they hold the same in trust, and may be expelled from
the said trust by such church or society, according to the form of government
or rules of discipline by which they may be governed. And every church or
religious society shall be and they are hereby authorized and empowered to fill
up all vacancies which may happen in the said trusts by death, removal, expul-
sion; or otherwise; and when any vacancy shall be filled up, the same shall be
certified under the hand or hands of the person or persons presiding in the
said society, and according to the form of government or discipline practiced by
the said church or society; which certificate shall express the name of the person
appointed to fill the vacancy, and the name of the person in whose place he
shall be appointed; and the said certificate being recorded in the office of the
clerk of the Superior Court of the county in which the land lies, the person so
appointed to fill such vacancy shall be as fully vested with such trust as if a
party to and named in the original deed.—Act of 1805.

An Act to Protect Religious Societies in the Exercise of their
Religious Duties.

1. If any person or persons whomsoever shall interrupt or disturb any con-
gregation of white persons assembled at any church, chapel, or meeting-house,
or any other place for public worship, during the time of divine service, it shall
be the duty of any justice of the peace, sheriff, constable, or any civil officer of
the county, being present where the offence shall be committed, to take the
person or persons so offending into custody, or on complaint made by any per-
son on oath, to issue a warrant against him or them so offending; and the said
justice is hereby empowered to impose a fine on such offender not exceeding
five pounds, or on default of payment of the same, to commit him or them to
the common jail of the county, or to the nearest jail thereto, for a space of
time not exceeding ten days; and if such offender be a slave, to order him or
her to be punished by whipping on the bare back, not exceeding thirty-nine
lashes.

2. It shall be the duty of the sheriff, and other officers, who may collect the
fines and forfeitures imposed by this act, to make a return of the amount so
collected, to the clerk of the inferior court, and to pay the same into the hands
of the overseers of the poor, for the sole purpose of supporting the poor of the
county wherein such offence shall have been committed. And no congregation
or company of negroes shall, under pretence of divine worship, assemble themselves contrary to the act for regulating patrols.—Act of 1792.

An Act to Amend the Foregoing.

1. It shall not be lawful for any person to sell, or cause to be sold, any wine, cider, beer, whiskey, gin, rum, or brandy, or any other intoxicating liquors, within one mile of any meeting-house, or other place set apart or publicly resorted to for divine worship, during the time appropriated to such worship.

2. For every offence committed in violation of this act, the offender or offenders shall be subject to the penalty of thirty dollars, which shall be recoverable after the manner pointed out in the first clause of the above-quoted act, (Act of 1792,) which fine shall be put into the hands of the justices of the inferior court, and become a part of the county funds where such offence shall have been committed: Provided, nevertheless, that the penalties of this act shall not extend to licensed retailers of liquors actually residing within the limits herein pointed out.—Act of 1808.

AN ACT to amend an act entitled An Act to protect religious societies in the exercise of their religious duties, approved December thirteenth, seventeen hundred and ninety-two, and an Act to amend the foregoing Act, approved December twenty-second, eighteen hundred and eight:

1. That if any free white person shall violate the provisions of the before-quoted Acts, it shall be deemed and held in law a MISDEMEANOR, and shall be indictable in the superior courts of this State, as in other criminal cases; and it shall be the duty of the justices of the peace to bind the offenders to be and appear at the superior courts of this State, as in other criminal cases.

2. That if any free white person shall be convicted for a violation of the aforesaid Acts, he shall be fined in a sum not exceeding FIFTY dollars, nor less than TEN dollars.—Act of 1841.

Warrant against a Disturber of Public Worship.

STATE OF GEORGIA, In person appeared before me, James Mack, Houston County. a justice of the peace in and for said county, John Doe, who being duly sworn, saith, that on the thirtieth day of April, last past, at the Methodist Episcopal Camp Ground, in the county aforesaid, during the time of divine service at said Camp Ground, Richard Roe, of said county, committed a Misdemeanor, by interrupting and greatly disturbing the service, then and there, by loudly cursing and swearing, and using other means of disturbance, to the annoyance of the congregation of white persons, then and there worshiping.

Sworn to and subscribed, before me, this May 1, 1850.

James Mack, J. P.

STATE OF GEORGIA, To any lawful officer, to execute and return.

Whereas, I have received information, this day, on the oath of John Doe, that on the thirtieth day of April, last past, at the Methodist Episcopal Camp Ground, in the county aforesaid, during the time of divine service at said Camp Ground, Richard Roe, of said county, committed a Misdemeanor, by interrupting and greatly disturbing the service, then and there, by loudly cursing and swearing, and using other means of disturbance, to the annoyance of the congregation of white persons then and there worshiping: These are, therefore, to
authorize and command you, in the name of the State, immediately, on sight hereof, to arrest the said Richard Roe, and bring him before me, or some other justice of the peace for said county, that he may be dealt with as the law directs. Herein fail not.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

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PENAL CODE OF GEORGIA. 143

Commitment.

STATE OF GEORGIA, | By James Mack, a Justice of the Peace in and
Houston County. | for said county.

To John Jacobs, one of the constables in and for said county, and to
the keeper of the common jail of said county.

Whereas, on the first day of May, instant, information, on oath, was made before me, that Richard Roe, of said county, did, on the thirtieth day of April, last past, at the Methodist Episcopal Camp Ground, in said county, commit a Misdemeanor, by interrupting and greatly disturbing the service, then and there, by loudly cursing and swearing, and using other means of disturbance, to the annoyance of the congregation then and there worshiping; upon which information, a warrant was issued for the apprehension of the said Richard Roe; upon the return of which warrant, and the examination of witnesses, it appeared that the said charge was fully sustained, whereupon the said Richard Roe was required to find bail in the sum of two hundred dollars, which said Richard Roe failed and refused to do; whereupon, I proceeded, according to the statute in such case made and provided, to order, and do hereby order, that said Richard Roe be and he hereby is committed to the common jail of said county, there to be kept, in close custody: Therefore, you, the said constable, are hereby commanded to deliver the body of him, the said Richard Roe, to him, the said jailor; and you, the said jailor, into the said jail, are hereby required and commanded him, the said Richard Roe, to receive and keep, in close and safe custody, until he shall be delivered by due course of law. Herein fail not.

Given under my hand and seal, this May 1, 1850.

JAMES MACK, J. P. [L. S.]

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Profaneness,—Immorality,—Lord's Day.

An Act for preventing and punishing Vice, Profaneness, and Immorality, and for keeping Holy the Lord's Day, commonly called Sunday.

Whereas there is nothing more acceptable to God than the true and sincere worship and service of him, according to his holy will; and that the keeping holy the Lord's Day is a principal part of the true service of God, which in this province is too much neglected by many:
1. [Compels all persons to attend worship—repugnant to the present constitution.]

2. No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings, upon the Lord's day, or any part thereof, (works of necessity or charity only excepted,) and that every person being of the age of fifteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of ten shillings. And that no person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandises, fruit, herbs, goods or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth or exposed to sale, or pay ten shillings.

3. [ Restrains travelling on Sunday obsolete.]

4. No public sports, or pastimes, as bear-baiting, bull-baiting, foot-ball playing, horse-racing, shooting, hunting, or fishing, interludes, or common plays, or other games, exercises, sports, or pastimes whatsoever, shall be used on the Lord's day, by any person or persons whatsoever; and that all and every person and persons so offending in any of the premises shall forfeit, for every such offence, the sum of five shillings sterling.

5. No vintner, innholder, or other person keeping any public-house of entertainment, shall entertain or suffer any person or persons, (except strangers or lodgers,) in such houses, or out-houses, to abide or remain; nor shall they suffer any person or persons whatsoever, in their said houses, or out-houses, yards, orchards, or fields, to abide, or remain, drinking, or in any manner idly spending their time on the Lord's day, upon the pains and penalties of five shillings, for every person offending, payable by themselves respectively, that shall be found so drinking or abiding in any such public-house, or dependencies thereof, as aforesaid; and the like sum of five shillings to be paid by the keeper of such house for every person entertained by them.

6. And for the better keeping of good order on the Lord's day, Be it enacted, That the church-wardens and constables of each parish respectively, or any one or more of them, shall once in the forenoon and once in the afternoon, in the time of divine service, walk through the town of Savannah, and the respective towns of this province, to observe, suppress, and apprehend all offenders whatsoever contrary to the true intent and meaning of this act; and they shall have power, and are hereby authorized and empowered, to enter into any public-house or tippling house, to search for any such offenders; and in case they are denied entrance, shall have power, and are hereby authorized and empowered, to break open, or cause to be broke open, any of the doors of the said house, and enter therein; and all persons whatsoever are strictly commanded and required to be aiding and assisting, to any constables, or other officers, in their execution of this act, under the penalty of ten shillings sterling for every refusal.

7. For better execution of all and every the foregoing orders, every justice of the peace within his county, or parish, shall have power and authority to convene before him, any person or persons whatsoever, who shall offend in any of the particulars before mentioned, and upon his own view, or confession of the party, or proof of any one or more witnesses upon oath, which the said justices are, by this Act, authorized to administer, the said justice or justices, shall give a warrant under his, or their, hand and seal, to the constables, or church-wardens, or either, or any of them, of the parish, or parishes, where such offence shall be committed, to seize the said goods, cried, showed forth, or put to sale, as aforesaid, and to sell the same; and as to other penalties and forfeitures, to impose the fine and penalty for the same, and to levy the said forfeitures and penalties, by way of distress, and sale of goods, of every such
offender, returning the overplus, (if any there be,) after reasonable charges allowed, for the distress and sales. And in case of default of such distress, or in case of insufficiency or inability of the said offender to pay the said forfeiture or penalties, that then the party offending be set publicly in the stocks, for the space of two hours; and all and singular the forfeitures and penalties aforesaid, shall be employed and converted to the use of the poor of the parish where the said offences shall be committed, and be delivered into the hands of the churchwardens or overseers of the poor for that end; saving only, that it shall and may be lawful to and for any such justice or justices, out of the said penalties or forfeitures, to reward any person or persons that shall inform of any offence, against this Act, according to his or their discretion, so as such reward exceed not the third part of the forfeitures or penalties. Provided, that nothing in this act contained shall extend to the prohibiting of dressing of meat in families, or dressing, or selling of meat in inns, victualling-houses, or other public houses, for such as cannot be otherwise provided; nor to the buying or selling of milk and fish before nine of the clock in the morning, and milk after four of the clock in the afternoon: Provided, also, that no person or persons shall be impeached, prosecuted, or molested, for any offence before mentioned in this act, unless he or they be prosecuted for the same within ten days after the offence committed.

8. No person or persons, upon the Lord's day, shall serve, or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree, except in cases of treason, felony, or breach of the peace; but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatsoever. And the person or persons so serving or executing the same, shall be liable to the suit of the party grieved, and to answer damages to him for the doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment or decree, at all. And in case any person or persons shall be imprisoned or detained in custody by any writ, process, warrant, order, judgment, or decree, so served or executed upon the Lord's day, upon motion or petition made to the chief justice, or any one of the assistant justices, for the time being, it shall be lawful for the chief justice, or assistant justice, or justices, and he or they, are hereby authorized and required immediately to order such person or persons to be discharged out of prison and custody, and to be clear, not only from such writ, process, warrant, order, judgment, or decree, so served or executed upon any person during the time of the said person's being imprisoned or detained upon the account of any such writ, process, warrant, order, judgment, or decree, but also from all and every other writ, process, warrant, order, judgment, or decree, so served or executed upon any person during the time of the said person's being imprisoned or detained upon the account of any such writ, process, warrant, order, judgment, or decree, so served or executed upon the Lord's day, and such person shall be allowed by the said chief justice, or assistant justices, such reasonable time as he or they shall think fitting, to return to his home or habitation, free from any arrest or hindrance whatsoever, in civil matters.

9. If any action, suit, or information, shall be commenced against any person or persons, for what he or they shall do, in pursuance or execution of this act, such person or persons so sued, may plead the general issue, (not guilty,) and upon issue joined, give this act and the special matter in evidence. And if the plaintiff or prosecutor shall become nonsuit, or suffer discontinuance, or if a verdict pass against him, the defendant or defendants shall recover his or their treble costs, for which he or they shall have the like remedy as in any case where costs, by law, are given to the defendant.—Act of 1762.
No. 1.—Disturbing the Peace, &c.

STATE OF GEORGIA, The Grand Jurors, sworn, chosen, and selected for the county of Houston, to wit: Joel W. Mann, John S. Jobson, Tilman Downes, Sampson B. King, Ephraim S. Mann, Robert Walker, Martin Jinkins, Silas Rawls, Alfred Nelson, James Bane, William H. Talton, Edward O. Jinkins, Warren E. Sanders, James Willis, John J. Forsyth, Matthew Willson, Matthew H. Means, Creed T. Woodson, Christopher B. Strong, William H. Miller, James H. Dunham, Thomas B. Allen, and Samuel Felder, in the name and behalf of the citizens of Georgia, charge and accuse John Doe and Richard Roe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe and Richard Roe, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, with force and arms, in the town of Perry, in the county aforesaid, (together with divers other evil-disposed persons, to the Jurors aforesaid unknown;) having assembled and gathered together, then and there, for the purpose of disturbing the public peace, (or for the purpose of committing any unlawful act,) and then and there being commanded by Charles Smith, Esquire, one of the justices of the peace in and for said county, to disperse, did not and would not disperse; but then and there, remained assembled together as aforesaid, for the purpose aforesaid; contrary to the laws of said State, the good order, peace and dignity thereof.

October term, 1850.

Witness, 
Charles Smith, Esq.

No. 2.—Riot.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe and Richard Roe, of the county and State aforesaid, with the offence of Riot: for that the said John Doe and Richard Roe, (together with divers other evil-disposed persons, to the Jurors aforesaid unknown;) on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, at Perry, to wit: in the county aforesaid, in a violent and tumultuous manner, did assemble and gather together, to disturb the peace of said State; and being so then and there assembled and gathered together, did, in a violent and tumultuous manner, then and there, do an unlawful act of violence, by cutting down the sign-post erected at the Liberty Hotel; contrary, &c.

No. 3.—Affray.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe and Richard Roe, of the county and State aforesaid, with the offence of Affray: for that the said John Doe and Richard Roe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force
and arms, in a public street in the town of Perry, in said county, the same being a public place, did then and there unlawfully fight together and contend, to the terror of the citizens, and disturbance of the public tranquility; contrary, &c.

No. 4.—Duelling.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Challenging to fight a Duel: for that the said John Doe, unlawfully, wickedly, and deliberately designing and intending great bodily harm to one Richard Roe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, pursuance of, and for the completing his said malicious, wicked, and deliberate intent and design, with force and arms, did then and there, deliberately, in writing, challenge the said Richard Roe, unlawfully, to fight a duel with pistols, with and against him, the said John Doe; which challenge to fight as aforesaid, is as follows, to wit: [here set out the challenge verbatim:] to the great damage of him, the said Richard Roe; contrary, &c.

No. 5.—Second in Duel.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Carrying and Delivering a Challenge to fight a Duel with pistols: for that the said John Doe, intending to procure great bodily harm and mischief to be done to one Richard Roe, and to incite and provoke the said Richard Roe unlawfully to fight a Duel, with and against one Charles Smith, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in the county aforesaid, did knowingly and willfully, carry and deliver a certain written challenge, of and from the said Charles Smith, to the said Richard Roe, unlawfully to fight a Duel, with pistols, with and against the said Charles Smith, which said written challenge is as follows, that is to say: [here set out the written challenge:] to the great damage of him, the said Richard Roe; contrary, &c.

No. 6.—Fighting a Duel.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe and Richard Roe, with the offence of High Misdemeanor: for that the said John Doe and Richard Roe, being evil-disposed persons and disturbers of the peace, and intending to do great harm and bodily injury to each other, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, with force and arms, did fight a duel, with and against each other, with pistols, as principals; contrary, &c.
No. 7.—Officer Not Preventing Duel.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, Esquire, one of the justices of the peace, in and for said county, with the offence of Not Preventing a Duel: for that the said John Doe, Esquire, being one of the justices of the peace, in and for said county; on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, in the county aforesaid, had knowledge of the intention of Charles Smith and Richard Roe, then and there, to fight a Duel with pistols. And the jurors aforesaid, upon their oath aforesaid, do say, that said John Doe, Esquire, justice of the peace, as aforesaid, having knowledge of the said Charles Smith and Richard Roe's intention to fight, as aforesaid, did not, then and there, exert his official authority to arrest the parties, and prevent the said Duel, by binding over the said Charles Smith and Richard Roe, to keep the peace towards each other; contrary, &c.

No. 8.—Proclaiming as Coward.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Publishing as Coward: for that the said John Doe, being of a turbuleat, wicked, and malicious disposition, and designing and intending to do great bodily harm and mischief to one Richard Roe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in the county aforesaid, did unlawfully and maliciously send a certain written challenge to the said Richard Roe, and did thereby provoke, excite, and challenge the said Richard Roe, unlawfully to fight a Duel, with and against him; the said John Doe, with pistols, which said written challenge is as follows, to wit: [here set out the challenge.] And the jurors aforesaid, upon their oath aforesaid, do say, that the said Richard Roe, having then and there refused to fight with and against him, the said John Doe, in pursuance of such unlawful, wicked, and malicious challenge, as aforesaid; he, the said John Doe, for the purpose of completing his said evil-disposed purpose and design, and further to provoke and incite the said Richard Roe, to fight a Duel, with and against him, the said Richard Roe, afterwards, to wit: on the day and year aforesaid, in the county aforesaid, with force and arms, unlawfully, wickedly, and maliciously, did stick up, place, and expose to public view; and procure and cause to be stuck up, placed, and exposed to public view, to wit: upon and against a certain sign-post, of and belonging to a certain tavern and public inn, then and there known by the name of Liberty Hall, a certain hand-bill, with the name of him, the said John Doe, thereunto subscribed, containing opprobrious and abusive language against said Richard Roe, for not accepting the said challenge, and fighting him, the said John Doe, which hand-bill is as follows, that is to say: "In consequence of an anonymous letter, received by me, (meaning himself, the said John Doe,) which I (again meaning himself, the said John Doe,) have reason to believe, was written by Richard Roe, (meaning the said Richard Roe,) I (meaning himself, the said John Doe,) have sent him, (meaning the said Richard Roe,) a challenge,
hoping for satisfaction suitable to a gentleman; which he, (meaning the said Richard Roe,) has refused; therefore, I, (meaning himself, the said John Doe,) now post him (meaning the said Richard Roe,) as a coward. John Doe, Perry, Houston county, May 1, 1850."

To the great damage, scandal and disgrace of the said Richard Roe; contrary, &c.

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**No. 9.—Libel.**

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the State and county aforesaid, with the offence of Libel: for that said John Doe, maliciously intending to injure, vilify, and prejudice the honesty, virtue, integrity, and reputation of one Richard Roe, and to bring him into great contempt, scandal, infamy, and disgrace, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, in the county aforesaid, maliciously did write and publish, and cause and procure to be written and published, a false, scandalous, malicious and defamatory Libel, in the form of a letter, directed to Richard Roe, [or, if the publication were in any other manner, so state it,] containing divers false, scandalous, malicious, and defamatory matters and things, of and concerning the said Richard Roe, and of and concerning, &c. [here insert such of the subjects of the Libel as it may be necessary to refer to by the inuendoes, in setting out the Libel,] according to the tenor and effect following, that is to say: [here set out the Libel, together with such inuendoes as may be necessary to render it intelligible,] he, the said John Doe, then and there well knowing the said defamatory Libel to be false; to the great damage, scandal, and disgrace of the said Richard Roe, to the evil example of all others in like case offending; and thereby to expose said Richard Roe to public hatred, contempt, and ridicule; contrary, &c.

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**No. 10.—Forcible Entry.**

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Forcible Entry: for that one Richard Roe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, was possessed of a certain lot of land, with the appurtenances there situate and being: to wit: [lot of land number forty-nine, in the tenth district of said county, containing two hundred, two and a half acres;] and being so possessed thereof, as aforesaid, said John Doe, afterwards, to wit: on the day and year aforesaid, into said lot of land and appurtenances aforesaid, with strong hand, violently did enter and take possession; with menaces, force and arms, and without authority of law; and the said Richard Roe, from the peaceable possession of said lot of land and appurtenances, then and there, with strong hand, and with menaces, force and arms, violently and unlawfully did expel and put out; the said Richard Roe, from the aforesaid first day of May, in the year aforesaid, until the day of pre-
ferring this indictment, from the possession of said lot of land and appurtenances, with strong hand, and violently and injuriously then and there, did keep out, and still doth keep out, to the great damage of the said Richard Roe; contrary, &c.

No. 11.—Forcible Detainer.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Forcible Detainer: for that one Richard Roe, on the first day of January, in the year of our Lord one thousand eight hundred and forty-eight, in the county aforesaid, was possessed of a certain lot of land, and appurtenances, there situate and being, to wit: [lot of land number forty-nine, in the tenth district of said county, containing two hundred, two and a half acres; and being so possessed thereof, as aforesaid, on the day and year aforesaid, leased and to farm let, the said lot of land and appurtenances, to the said John Doe, verbally, for and during the said year of our Lord one thousand eight hundred and forty-eight, and which said lease was to and did expire on the thirty-first day of December, in the said year of our Lord one thousand eight hundred and forty-eight. And the jurors aforesaid, upon their oath aforesaid, do say, that notwithstanding the expiration of the said lease, the said John Doe, on the first day of January, in the year of our Lord one thousand eight hundred and forty-nine, and until the day of preferring this indictment, the said Richard Roe, from the peaceable possession of said lot of land and appurtenances, then and there unlawfully, violently, and with menaces, force and arms, without authority of law, and with strong hand, did keep; and did then and there keep, and still doth continue to keep possession of said lot of land from the said Richard Roe, to the great damage of the said Richard Roe; contrary, &c.

No. 12.—Forcible Entry and Detainer.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Forcible Entry and Detainer: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and forty-nine, in the county aforesaid, with divers other persons, to the jurors aforesaid unknown; with menaces, force and arms, and without authority of law, and with strong hand, into a certain lot of land and appurtenances, to wit: [lot of land number forty-nine, in the tenth district of said county, containing two hundred, two and a half acres,] there situate and being; and then and there in the possession of one Richard Roe, violently, with menaces, force and arms, without authority of law, and with strong hand, did enter; and the said John Doe, together with the said other evil-disposed persons, to the jurors aforesaid unknown as aforesaid, then and there, with menaces, force and arms, and without authority of law, violently, with menaces, force and arms, injuriously, and with strong hand, the said
Richard Roe from the possession of the said lot of land, did expel, amove, and put out; and the said Richard Roe, so as aforesaid, expelled, amoved, and put out, from the possession of the said lot of land then and there, with menaces, force and arms, and without authority of law, violently, with menaces, force and arms, injuriously, and with strong hand, did keep out, and still do keep out; and other wrongs and injuries to the said Richard Roe, then and there did; to the great damage of the said Richard Roe; contrary, &c.

CHAPTER XIII.

TENTH DIVISION.

Offences against the Public Morality, Health, Police, and Decency.

Polygamy or Bigamy.

213. Sec. I. Polygamy, or Bigamy, shall consist in knowingly having a plurality of husbands or wives, at the same time.—No. 1.

Punishment for Polygamy or Bigamy—if before Married.

214. Sec. II. If any person or persons within this State, being married, do or shall at any time hereafter marry any person or persons, the lawful husband or wife being alive, and knowing that such lawful husband or wife is living, such person or persons so offending shall, on conviction, be punished by confinement at labor in the penitentiary, for any time not less than two years, nor longer than four years, and the second marriage shall be void; but five years' absence of the husband or wife, and no information of the fate of such husband or wife, shall be sufficient cause of acquittal of the person indicted; and in every case the issue of such second marriage, born before the commencement of any prosecution for Polygamy, or within the ordinary time of gestation thereafter, shall, notwithstanding the invalidity of such marriage, be considered as legitimate.

Punishment, if before Unmarried.

215. Sec. III. If any man or woman, being unmarried, shall knowingly marry the wife or husband of another person, such man or woman shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than three years.—No. 2.
216. Sec. IV. If any person shall commit incestuous fornication or adultery; or intermarry within the Levitical degrees of consanguinity or affinity, such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one, nor longer than three years; and such marriage shall be void.—No. 3.

Incest.

217. Sec. V. Any man and woman who shall live together in a state of Adultery, or Fornication, or of Adultery and Fornication; or who shall otherwise commit Adultery or Fornication, or Adultery and Fornication, shall be severally indicted, and on conviction, such offenders shall be severally fined or imprisoned in the common jail of the county, or both, at the discretion of the court: Provided, that the fine shall not exceed the sum of five hundred dollars, and the imprisonment shall not extend beyond the term of sixty days. But it shall at any time be in the power of the parties to prevent or suspend the prosecution, and the punishment, by marriage, if such marriage can be legally solemnized.—Nos. 4, 5, and 6.

Adultery and Fornication.

218. Sec. VI. Any person who shall be guilty of open Lewdness, or any notorious act or public indecency, tending to debauch the morals; or of keeping open a house, on the Sabbath day or Sabbath night, shall, on conviction, be fined or imprisoned in the common jail, or both, at the discretion of the court.—Nos. 7 and 8.

Lewdness and Tippling Houses.

219. Sec. VII. If any person shall maintain and keep a Lewd House, or place for the practice of fornication or adultery, either by himself or herself, or others, he or she so offending shall, on conviction, be punished by fine, or imprisonment in the common jail, or both, at the discretion of the court.—No. 9.

Disorderly Houses.

220. Sec. VIII. Any person who shall keep and maintain, either by himself or herself, or others, a common, ill-governed and disorderly house, to the encouragement of idleness, gaming, drinking, or other misbehavior, or to the common disturbance of the neighborhood or orderly citizens, such persons so offending shall, on conviction, be punished, by fine or imprisonment in the common jail, or both, at the discretion of the court.—No. 10.

Gaming Houses.

221. Sec. IX. If any person shall, by himself, servant, or agent, keep, have, use, or maintain, a gaming house or room; or shall in any house, place, or room, occupied by him, permit persons, with his knowledge, to come together and play for money, or any other valuable thing, at any game of faro, loo, brag, bluff, or any other game played with cards, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, and imprisoned in the common jail of the county, for any time not exceeding three months.—No. 11.
Gaming Tables.

222. Sec. X. If any person shall, by himself, or servant, or any other agent, keep, or employ any faro table; E O table, or A B C table; or other table of like character; and shall, either by himself or agent, preside or deal at any faro table; or use any E O or A B C table; or other table of like character; for the purpose of playing and betting at the same, such person so offending shall, on conviction, be fined in a sum not exceeding five hundred dollars, or be imprisoned in the common jail of the county, for any time not exceeding six months, or both, at the discretion of the court.—No. 12.

Betting.

223. Sec. XI. If any person shall play and bet for money, or other things of value, at any game of faro, loo, brag, bluff, three-up, poker, vingtun, euchre, or any other game or games played with cards; or shall play and bet for money, or other things of value, at any E O or A B C table, or other table of like character, or shall bet at any game of nine-pins or ten-pins, or of any other number of pins, such person so offending shall, on conviction, be fined in a sum not less than twenty dollars, nor more than one hundred dollars.—No. 13.

Players Competent Witnesses.

224. Sec. XII. On the trial of any person for offending against the three preceding sections of this Division, any other person who may have played and betted at the same time or table, shall be a competent witness; and be compelled to give evidence; and nothing then said by such witness shall at any time be received or given in evidence against him, in any prosecution against the said witness, except on an indictment for perjury, in any matter to which he may have testified.

Judges to give Gambling in Charge to Grand Jury.

225. Sec. XIII. It shall be the duty of the judges of the superior courts of this State, at the opening or commencement of every court, to give in charge to the grand juries, respectively, the substance of the sections contained in this Code relative to gambling.

Suspected Rooms or Houses may be Broken Open.

226. Sec. XIV. It shall be lawful for any lawful officer, with legal authority, to break open suspected rooms or houses, where it is commonly known that gaming is carried on; and to take any persons found gaming, and bind or cause them to be bound over to the next superior court to be held in and for the county where such offences may be committed, and if such person or persons, so found gaming, shall fail or refuse to give security for his or their appearance at court to answer for such offences, then it shall be lawful to commit such person or persons to jail.

Selling Unwholesome Provisions.

227. Sec. XV. Any butcher, or other person, selling the flesh of a diseased animal, or other unwholesome provisions, shall be indicted, and, on conviction, shall be punished by fine, or imprisonment in the common jail; or both, at the discretion of the court.—No. 14.
Unwholesome Bread or Drink.

228. Sec. XVI. Any baker, brewer, distiller, merchant, grocer, or other person, selling unwholesome bread, drink, or pernicious and adulterated liquors, knowing them to be so, shall be indicted, and, on conviction, shall be fined or imprisoned in the common jail, or both, at the discretion of the court.—No. 15.

Sec. XIX. and XVIII. repealed—[Relative to Physicians.]

License must be Shown.

229. Sec. XIX. On the trial of any indictment for either of the offences mentioned in the two preceding sections, it shall be incumbent on the defendant to show that he has been acting under a license from the Board of Physicians of the State of Georgia, to exempt himself from the penalties of the section under which he may be indicted.

Spreading Small-pox.

230. Sec. XX. Any physician, surgeon, or other person, willfully endeavoring to spread the small-pox, without inoculation, or by inoculation with matter of the small-pox, or using any other inoculation than that called vaccination, unless by special commission or authority from the inferior court of the county, where the small-pox shall make its appearance, shall be indicted, and, on conviction, fined in a sum not exceeding one thousand dollars, and be imprisoned in the common jail, at the discretion of the court.—No. 16.

Violation of Quarantine.

231. Sec. XXI. Any person who shall come into this State, by land or water, from any place infected with a contagious disease, and in violation of quarantine regulations, shall be indicted in any county in this State in which he may be found, and, on conviction, sentenced to pay a fine not exceeding five hundred dollars, and also be imprisoned in the common jail, at the discretion of the court.—No. 17.

Vagrants.

232. Sec. XXII. Any person wandering or strolling about, or leading an idle, immoral, or profligate course of life, who has no property to support himself or herself, and who is able to work or otherwise to support himself or herself, in a respectable way, shall be deemed and considered a vagrant, and shall be indicted as such, as in other cases, and, on conviction, shall be punished by confinement and hard labor in the penitentiary, for any time not less than two years, nor longer than four years: Provided, nevertheless, that after such indictment has been found against any person, such person shall be discharged and released from prosecution, if he or she, after the indictment has been found, and, before the trial, shall tender in open court, a bond, with sufficient security, for his or her good behavior and future industry, for one year: Provided, also, that the said bond shall be for any amount not more than four hundred dollars.—No. 18.

False Keys, Pick-lock, &c.

233. Sec. XXIII. If any person shall be apprehended, having upon him or her, any pick-lock, key, crow, bit, or other instrument, with
intent to break and enter into any dwelling-house, warehouse, store, shop, coach-house, stable, or out-house, in order to steal or commit any other crime; or shall have upon him any pistol, hanger, cutlass, bludgeon, or other offensive weapon, with intent to commit a crime on any person, which if committed would be punishable by death, or confinement in the penitentiary; or shall be found in or upon any dwelling-house, warehouse, store, shop, coach-house, stable, or out-house, with intent to steal any goods or chattels, every such person shall be deemed a rogue and vagabond, and on conviction, shall be punished by confinement and labor in the penitentiary, for any time not less than one year, nor longer than five years, or by imprisonment in the common jail of the county, at the discretion of the court.

—No. 19.

Nuisances.

234. Sec. XXIV. All nuisances not here mentioned, which tend to annoy the community, or injure the health of the citizens in general, or to corrupt the public morals, shall be indictable and punishable by fine or imprisonment, in the common jail of the county, or both, at the discretion of the court. And any nuisance which tends to the immediate annoyance of the citizens in general, is manifestly injurious to the public health and safety, or tends greatly to corrupt the manners and morals of the people, may be abated and suppressed by the order of any two or more justices of the peace of the county, founded upon the opinion and verdict of twelve freeholders of the same county, who shall be summoned, sworn and empanelled for that purpose; which order shall be directed to, and executed by the sheriff of the county, or his deputy. And if the nuisance exist in a town or city, under the government of a mayor, intendant, aldermen, wardens, or a common council, or commissioners, such nuisance, by and with the advice of said aldermen, wardens, or council, or commissioners, may be abated and removed, by order of said mayor or intendant, or commissioners, which order shall be directed to and executed by the sheriff or marshal of said town or city, or his deputy; and reasonable notice shall in every case be given to the parties interested, of the time and place of meeting of such justices and freeholders, or of such mayor, intendant and aldermen, wardens, or council, or commissioners: Provided, always, that when the nuisance complained of, is a grist or saw-mill, or other water machinery, of valuable consideration, the same shall not be destroyed or abated, except upon the affidavits of two or more freeholders, before one or more of the justices of the inferior court of the county, in which the nuisance complained of may exist, testifying that the health of the neighborhood, according to their opinion and belief, is materially injured by such mill-dam, or other obstruction to a water-course, by other machinery, as may be complained of; whereupon it shall be the duty of such inferior court, as soon as practicable, to cause a jury of twelve men to be drawn from the jury-box, and summoned for the trial of the cause, who, together with the said court, shall attend at the court-house of said county, to adjudge the case of nuisance complained of; and both parties shall have a reasonable time allowed them to summon their witnesses and procure their attendance.—No. 20.
235. That when it may become necessary for the justices of the inferior court of the State to cause a jury to be drawn, summoned, and empannelled, to try a cause of nuisance, arising from water machinery, mill-dam, or otherwise, that the clerk, sheriff, witnesses and jurors, be allowed such fees, in said cases, as are allowed by law in the inferior courts of this State.

236. That when any sheriff or other officer, acting under the order of said court, shall remove any nuisance, machinery, or mill-dam, he shall be allowed such fees as the court may deem reasonable and just.

Disinterring Dead Bodies.

237. Sec. XXV. If any person or persons shall remove the dead body of any human being from the grave, or other place of interment; or from any vault, tomb, or sepulchre, or from any other place, without the consent of the friends of said deceased, except malefactors, executed under sentence of the law, for the purpose of selling or dissecting the same, or from mere wantonness, such person or persons so offending, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court; and any person who shall receive or purchase such dead body, knowing it to have been disinterred or removed from any tomb, vault or sepulchre, or such other place, for the purposes aforesaid, shall, on conviction, receive the same punishment.—Nos. 21 and 22.

Putative Father of Bastard.

238. Sec. XXVI. If any putative father of a bastard child or children, shall refuse or fail to give security for the maintenance and education of such child or children, when required to do so in terms of the law, such putative father shall be indicted for a misdemeanor, and on conviction of the fact of being the father of such bastard child or children, and of his refusal or failure to give such security, he shall be punished by a fine of seven hundred dollars for each child, which said fine shall be paid over to the inferior court of the county, to be by them improved and applied, from time to time, as occasion may require, for the maintenance and education of such child or children; and if the offender is unable to pay the said fine or fines, he shall be punished by imprisonment in the common jail for the space of three months.—No. 23.

Retailing Spirits Without License.

239. Sec. XXVII. If any person shall keep a tippling-shop, or retail liquors; or sell by retail, in quantities less than one quart, any wine, brandy, rum, gin, whiskey, or other spirituous liquors; or any mixture of such liquors, in any house, booth, arbor, stall, or other place whatever, without license from the inferior court of the county, except in corporate towns or cities, where by law, authority to grant licenses, is vested in the corporate authorities of said towns or cities, such person so offending, shall be guilty of a misdemeanor, and on conviction, shall be fined in the sum of fifty dollars, and on failure to pay such fine, shall be imprisoned in the common jail, for the space of thirty days.—No. 24.
Marrying Without License.

240. Sec. XXVIII. If any minister of the gospel, judge, justice of the inferior court, or justice of the peace, shall join together in matrimony, any man and woman, without a license, or publication of banns, as provided by law; or where either of the parties within his own knowledge, shall be an idiot or lunatic, or subject to any other disability which would render such contract or marriage improper and void; such minister, judge, justice of the inferior court, or justice of the peace, shall be guilty of a misdemeanor, and on conviction, shall be fined in a sum not less than one hundred dollars, nor more than five hundred dollars, which said fine, when collected, shall be paid over to the justices of the inferior court of the county where the offence was committed, for the use of the poor school fund of said county.—No. 25.

Voting more than Once.

241. Sec. XXIX. If any person shall hereafter vote more than once at any election which may be held in any county of this State, or vote out of the county in which he may usually reside; for members of the Legislature, or for county officers, such person shall be indicted for a Misdemeanor, and on conviction, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor more than two years.—No. 26.

Buying or Selling a Vote.

242. Sec. XXX. If any person shall hereafter buy or sell, or offer to buy or sell, a vote; or be concerned in buying or selling a vote; or shall unlawfully vote at any election which may be held in any county in this State, such person shall be indicted for a Misdemeanor, and, on conviction, shall be punished by imprisonment and labor in the penitentiary, for a term not less than one year, nor more than four years.—No. 27.

243. That, if any person under the age of twenty-one years, and above the age of fourteen, shall vote illegally at any election, he shall be fined in a sum not exceeding one hundred dollars, or imprisoned in the common jail of the county, at the discretion of the court.

No. 1.—Polygamy or Bigamy.

The grand jurors sworn, chosen and selected for the county of Houston, to wit: George F. Cooper, George W. Ross, John S. Jobson, Mathew Wilson, Tilman Downs, John J. Forsyth, Thomas B. Allen, Sampson B. King, James Willis, James H. Dunham, William H. Miller, John J. Floyd, Robert Walker, James Knox, Thomas Gurr, Francis W. Jobson, Silas Rawls, Martin Jinkins, Alfred Nelson, Edward O. Jinkins, Creed T. Woodson, Christopher B. Strong and Calvin W. Felder, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Bigamy: for that the said John Doe, in the county aforesaid, on the first day of April, in the year of our Lord one thousand eight hundred and forty-nine, did marry one Sarah Roe, spinster, and her, the said Sarah, then and there, had to his wife; and the said John Doe, afterwards and whilst he was so mar-
ried to the said Sarah, as aforesaid, to wit: on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, knowingly, did marry and take to wife, one Julia Smith; and to her, the said Julia, was then and there married; the said Sarah, his former wife, being then alive; of which fact, the said John Doe, had then and there, full knowledge; contrary to the laws of said State, the good order, peace and dignity thereof.

October term, 1850.


No. 2.—Unmarried Man, Marrying another Man's Wife.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Marrying the wife of another man: for that the said John Doe, being an unmarried man, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did then and there, knowingly, marry Sarah Roe, then and there, the wife of Richard Roe, the said Richard Roe being, then and there, in life; contrary, &c.

No. 3.—Incest.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Intermarrying within the Levitical degrees of consanguinity: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did then and there, knowingly and willfully, intermarry with one Sarah Doe, the daughter of James Doe, the brother of the full blood of him, the said John Doe; the said Sarah Doe being then and there the niece of him, the said John Doe; contrary, &c.

No. 4.—Living in a State of Fornication.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Fornication: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers days and times before and after that day, and previous to the finding of this bill of indictment, said John Doe, being an unmarried man, as aforesaid, had carnal knowledge of the body of one Betsey Claybank; and did, then and there, commit the crime of fornication with the said Betsey, she, then and there, being a single woman; contrary, &c.

No. 5.—Adultery.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Adultery: for that the said John Doe, being a married man, in the
counti aforesaid, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, and on divers other days and times before and after that day, and previous to the finding of this bill of indictment, did then and there, (and on said other days and times,) commit divers acts of Adultery, by cohabiting and having sexual intercourse with one Mary Summer, a married woman, then and there, the wife of James Summer; contrary, &c.

No. 6.—Adultery and Fornication.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, and Betsey Claybank, of the county and State aforesaid, with the offence of Adultery and Fornication: for that the said John Doe, being a married man, and said Betsey Claybank, being an unmarried woman, in the county aforesaid, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, did commit Adultery and Fornication, by then and there cohabiting and having sexual intercourse together and with each other; contrary, &c.

No. 7.—Public Indecency.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Notorious acts of Public Indecency, tending to debauch the morals: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, being a person of a wicked, depraved, and abandoned mind, and wholly lost to a due sense of morality and decency, and intending as much as in him lay, to vitiate, corrupt and debauch the morals of the good citizens of the State aforesaid, on the day and year aforesaid, in the town of Perry, in the county aforesaid, unlawfully, wickedly, deliberately and willfully, did expose and exhibit his person naked, and in indecent postures, and then and there, in a naked condition, passed near to and in front of divers houses of the good citizens of said State, situate in said town of Perry, in the county aforesaid; and also, in the presence of divers persons, male and female, in a manner tending to debauch the morals, to the great scandal and subversion of decency, religion and good order, and to the evil example of all others; contrary, &c.

No. 8.—Keeping open Tippling House on the Lord's Day.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Keeping open a Tippling House on the Sabbath day: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, said first day of May being the Sabbath day; and on divers other Sabbath days, before and since said first mentioned Sabbath day, or first day of May, in the year aforesaid, and previous to the finding of this bill of
indictment, did unlawfully, keep open a Tippling House; said offence, then and there, tending to debase the public morals; contrary, &c.

Another Count.—And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said John Doe, with having committed the offence of keeping open a Tippling House on the Sabbath day: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, the said last mentioned day being the Sabbath day, and on divers other Sabbath days, before and since said last mentioned Sabbath day, or first day of May, in the year aforesaid, and previous to the finding of this bill of indictment, unlawfully did keep open a Tippling House, and did then and there, retail and sell by retail, to divers persons, wine, brandy, rum, gin, whiskey, and other spirituous liquors and mixtures of such liquors; said offence then and there, tending to debase the public morals; contrary, &c.

No. 9.—Lewd House.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Maintaining and Keeping a Lewd House: for that the said John Doe, being a scandalous and evil-disposed person, and devising, contriving, and intending, the morals of divers young persons, citizens of said State, to debauch and corrupt, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, did maintain and keep a lewd house, for the practice of fornication and adultery; contrary, &c.

No. 10.—Disorderly House.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Keeping and Maintaining a common ill-governed and Disorderly House: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers days and times before that day, and previous to the finding of this bill of indictment, did keep and maintain a common ill-governed and disorderly house, to the encouragement of idleness, [gaming, drinking, and other misbehavior,] to the common disturbance of the neighborhood and good and orderly citizens; contrary, &c.

No. 11.—Gaming House.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Keeping a Gaming house: for that the said John Doe, by himself, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, in the county aforesaid, unlawfully did have and maintain, a gaming house, on the day and year aforesaid, and on divers other days and times, there knowingly did permit persons to come together; to play together at a certain game of cards called whist;
and in the said gaming house, on the day and year aforesaid, in the county aforesaid, and on divers other days and times, there knowingly, unlawfully and willfully, did permit and suffer the said persons to be and remain, playing and gaming, at the said unlawful game called whist, for divers large and excessive sums of money; to the great damage and common nuisance of the citizens of said State, in said neighborhood; to the evil example of all others in like case offending; contrary, &c.

No. 12.—Gaming Table.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Keeping a Gaming Table: for that the said John Doe, by himself, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did keep and have a certain Faro Table, and did, then and there, preside and deal at said Faro Table. And the jurors aforesaid, upon their oath aforesaid, do say, that said Faro Table, so kept and had by the said John Doe, was then and there kept and used for the purpose of playing and betting at the same; contrary, &c.

No. 13.—Betting.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Playing and Betting: for that the said John Doe, being a person of ill-fame and dishonest conversation, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did keep, keep, and have a certain Faro Table, and did, then and there, play and bet for money; contrary, &c.

No. 14.—Selling Unwholesome Provisions.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Selling Unwholesome Provisions: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the town of Perry, in the county aforesaid, did sell the flesh of a diseased Hog; knowing the said Hog to be, then and there, diseased and unfit for use; contrary, &c.

No. 15.—Selling Unwholesome Bread or Drink.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Selling Unwholesome Bread: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did sell Unwholesome Bread; then and there, knowing said Bread to be unwholesome and unfit for use; contrary, &c.
No. 16.—Spreading Small-pox.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, a physician, of the county and State aforesaid, with the offence of willfully endeavoring to spread the Small-pox: for that the said John Doe, a physician, as aforesaid, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did willfully endeavor to spread the Small-pox, amongst the citizens of said county, by inoculating, then and there, several persons with matter of the Small-pox; without special commission or authority from the inferior court of said county; contrary, &c.

No. 17.—Violating Quarantine.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Violating Quarantine Regulations: for that the said John Doe, in the county aforesaid, being an evil-disposed person, and having no regard to the laws of this State, relating to Quarantine Regulations, on the first day of May, in the year of our Lord one thousand eight hundred and fifty; did come by water into the waters of this State, (in the ship Thomas, from the city of New York, in the State of New York; which city of New York was then and there infected with the small-pox.) And the Jurors aforesaid, upon their oath aforesaid, do say, that said ship Thomas, then and there, went into Quarantine Regulations, agreeably to the Quarantine laws aforesaid; and the said John Doe, as such passenger, as aforesaid, (although required by said Quarantine Regulations so to do,) did not, then and there, as such passenger, as aforesaid, observe and keep said Quarantine Regulations, and remain on board said ship Thomas, but did, then and there, unlawfully quit said ship, and go on shore in the city of Savannah, in said State and county, and before the said ship Thomas had fully performed and been discharged from such Quarantine, and in violation of said Quarantine Regulations; he, the said John Doe, not being in any manner, or in any case, permitted so to do; to the evil example of all others in like case offending; contrary, &c.

No. 18.—Vagrancy.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the State and county aforesaid, with the offence of Vagrancy: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers days and times, before and after that day, and previous to the finding of this bill of indictment; did wander and stroll about, then and there, leading an idle, immoral, profligate course of life; said John Doe, then and there, having no property to support himself; and who is able to work, or otherwise support himself, in a respectable way; contrary, &c.

No. 19.—Possessing False Keys, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of
being a Rogue and Vagabond: for that the said John Doe, being a person of ill-fame and wicked and dishonest conversation, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, was apprehended, having upon his person and in his possession, unlawfully, a certain instrument called a picklock; with the intention, then and there, with said picklock, unlawfully to break and enter into a certain ware-house, then and there situate, the property of Richard Roe, with intent to steal from said ware-house, goods then and there deposited and being; contrary, &c.

No. 20.—Nuisance.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Nuisance: for that the said John Doe, in the county aforesaid, with force and arms, near the town of Perry, in said county, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, unlawfully and injuriously, did make, erect and set up, and did cause and procure to be made, erected and set up, a certain slaughter pen, for the purpose of [slaughtering hogs and cattle;] and the said John Doe, on the day and year aforesaid, and on divers other days and times, between that day and the day of preferring this bill of indictment, at the slaughter pen aforesaid, in the county aforesaid, unlawfully and injuriously did slaughter, and cause to be slaughtered, divers large numbers of hogs and cattle; by reason of which said premises, divers noisome, offensive and unwholesome smells and stenches, during the time aforesaid, were from thence emitted and issued; so that the air, then and there, was and yet is; greatly filled and impregnated with the said smells and stenches; and was and is rendered and become, and was and is corrupted, offensive, uncomfortable and unwholesome; to the great damage and common nuisance of all the citizens of said town of Perry, there inhabiting, being and residing, and going, returning, and passing through the [streets of the said town of Perry;] contrary, &c.

No. 21.—Disinterring Dead Bodies.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Removing a dead body of a human being from the place of interment: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, at the town of Perry, in the county aforesaid, the graveyard of and belonging to the said town of Perry, there situate, unlawfully and willfully, did break and enter; and the grave there, in which the body of one Richard Roe, deceased, had lately before then, been interred and there was; with force and arms, without the knowledge and consent of the friends of the said Richard Roe, deceased, unlawfully, willfully and indecently, did then and there dig open; and then and there, the body of him, the said Richard Roe, deceased, out of the grave aforesaid, without the knowledge and consent of the friends of the said Richard Roe, deceased, unlawfully, willfully and indecently,
did take and carry away, for the purpose of selling the same; the said Richard Roe, deceased, not being a malefactor, executed under sentence of the law; contrary, &c.

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No. 22.—Purchasing a Dead Body.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Purchasing a dead body of a human being: for that on the first day of May, in the year of our Lord one thousand eight hundred and fifty, one Charles Smith, at the town of Perry, in the county aforesaid, the grave-yard of, and belonging to the said town of Perry, there situate, unlawfully and willfully did break and enter; and the grave there, in which the body of one Richard Roe, deceased, had lately before then been interred, and there was, without the knowledge or consent of the friends of the said Richard Roe, deceased, unlawfully, willfully, and indecently did, then and there, dig open; and, then and there, the body of him, the said Richard Roe, deceased, out of the grave aforesaid, unlawfully and indecently did take and carry away, for the purpose of selling the same. And the Jurors aforesaid, upon their oath aforesaid, do say, that on the day and year aforesaid, in the county aforesaid, said John Doe, knowing the body of the said Richard Roe to have been disinterred, as aforesaid, for the purpose aforesaid, did purchase and receive the body of the said Richard Roe, deceased; said Richard Roe, deceased, not having been a malefactor executed under sentence of the law; contrary, &c.

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No. 23.—Putative Father of Bastard Refusing, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, said John Doe was the putative father of a bastard child, with which Betsey Claybank, a free white woman, was, then and there, pregnant. And the Jurors aforesaid further say, that, on the day and year aforesaid, in the county aforesaid, Thomas B. Allen, Esquire, (then and there being one of the justices of the peace in and for the county aforesaid,) issued his warrant, under his hand and seal, directed to any lawful officer, to execute and return, commanding them, or either of them, to arrest the body of the said John Doe, who was accused by said Betsey Claybank, a free white woman, upon her oath, then and there, with being the father of a bastard child, with which the said Betsey was then pregnant; which bastard child, it was probable, when born, would become chargeable to said county. And the Jurors aforesaid, do further say, that, on the day and year aforesaid, in the county aforesaid, with the warrant aforesaid, the said John Doe was arrested and carried before said Thomas B. Allen, Esquire, and said Thomas B. Allen, Esquire, was required to give bond and security to the Inferior Court of said county, for the support and education of the bastard child with which the said Betsey was, then and there, pregnant, agreeably to the statute in such case made and provided. And the Jurors
aforesaid, further say, that the said *John Doe*, having been, then and there, required, by the said *Thomas B. Allen*, Esquire, to give the bond and security, as aforesaid, for the support and education of the said bastard child, with which the said *Betsey* was pregnant, as aforesaid, then and there, refused to give bond and security for the maintenance and education of said bastard child, when required so to do, (by said *Thomas B. Allen*, Esquire, in terms of the law in such case made and provided;) contrary, &c.

No. 24.—Retailing without License.

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, of the county and State aforesaid, with the offence of Misdemeanor: for that the said *John Doe*, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, without first obtaining license from the inferior court of said county, to retail spirituous liquors, in quantities less than one quart, did, then and there, sell by retail, one half pint of whiskey, in a certain booth, then and there situate; contrary, &c.

No. 25.—Marrying Persons Illegally.

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, Esquire, justice of the peace, of the county and State aforesaid, with the offence of Misdemeanor: for that the said *John Doe*, Esquire, being one of the justices of the peace, in and for said county, with force and arms, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, unlawfully and knowingly, without a license or publication of banns, as provided by law; did, then and there, join together in matrimony *Richard Roe*, a single man, and *Sarah West*, a single woman; contrary, &c.

No. 26.—Illegal Voting.

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, of the county and State aforesaid, with the offence of Misdemeanor: for that the said *John Doe*, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county of Houston, at an election held in and for said county of Houston, on the day and year aforesaid, for a member of the House of Representatives of the General Assembly of the State of Georgia, to represent the county of Houston in said General Assembly, did vote in said election, the same voting, then and there, being out of the county in which the said *John Doe* usually resided; contrary, &c.

No. 27.—Buying a Vote.

In the name and behalf of the citizens of Georgia, charge and accuse *John Doe*, of the county and State aforesaid, with the offence of Misdemeanor: for that the said *John Doe*, being twenty-one years of age, in said county, at an election for members of the General Assembly for said county; held on the first day of May, in the year of our
Lord one thousand eight hundred and fifty, did, then and there, buy the vote of one Richard Roe; said Richard Roe being, then and there, lawfully entitled to vote in said election, then and there being held, for the purpose aforesaid; contrary, &c.

CHAPTER XIV.

ELEVENTH DIVISION.

Offences Committed by Cheats and Swindlers, and Offences Against Public Trade.

Fraudulently Obtaining Credit.

244. Sec. I. If any person, by false representation of his own respectability, wealth, or mercantile correspondence and connections, shall obtain a credit, and thereby defraud any person or persons of any money, goods, chattels, or any other valuable thing; or if any person shall cause or procure others to report falsely of his honesty, respectability, wealth, or mercantile character, and by thus imposing on the credulity of any person or persons, shall obtain a credit, and thereby fraudulently get into possession of goods, wares, or merchandise, or any other valuable thing or things, such person so offending, shall be deemed a cheat and swindler, and on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court; and such person shall moreover be compelled by the order and sentence of the court, to restore to the party injured, the property so fraudulently obtained, if it can be done.—No. 1.

Cheating at Play.

245. Sec. II. If any person or persons shall, by any fraud or shift, circumvention, deceit, or unlawful trick, or device, or ill practice whatever, in playing at cards, dice, or any game, or games; or in or by bearing a share or part in the stakes, wagers, or adventures; or in or by betting on the sides or hands of such as do or shall play, obtain or acquire to him or themselves, or to any other or others, any money, or other valuable thing or things whatever; such person or persons so offending, shall be indicted, and on conviction, shall be deemed a cheat, and shall be sentenced to pay a fine of five times the value of the money, or other thing, so won as aforesaid, and shall also be imprisoned in the common jail of the county, at the discretion of the court.—No. 2.
Bakers and Others—Selling Bread Under the Assize.

246. Sec. III. Any baker or other person, selling bread under the assize established by the corporation of any city, town, or village; or the rules laid down by any law, shall be deemed a cheat, and on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 3.

False Weights and Measures.

247. Sec. IV. If any person shall sell by False Weights or Measures, he or she shall be deemed a common cheat, and on conviction, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 4.

Offences Abolished.

248. Sec. V. The offences of forestalling, regrating and engrossing, are hereby abolished.

Counterfeiting Brands or Marks.

249. Sec. VI. If any person shall fraudulently counterfeit, or be concerned in fraudulently counterfeiting, any Brand or Mark, directed by law; or shall fraudulently cause or procure the same to be done; or shall use, export, sell, exchange, barter, or expose to sale. any bale, cask, barrel, hogshead, or vessel of any kind; or any other thing, upon which a brand or mark is directed by law to be made, with such counterfeit brand or mark, knowing the same to be false and counterfeit, such person so offending, shall, on conviction, be deemed a cheat, and be punished by a fine not exceeding two hundred dollars, and imprisonment in the common jail of the county, for a term not exceeding six months.—No. 5.

Putting Dirt or Rubbish into Cotton, &c.

250. Sec. VII. Any person who shall put or cause to be put into any bale or bales of cotton; hogshead or hogsheads; barrel or barrels; cask or casks of sugar; or rice, pork, beef, or other provisions, any dirt, rubbish, or other thing, for the purpose of adding to and increasing the weight or bulk of said cotton, sugar, rice, beef, pork, or other provisions or things, shall be deemed a common cheat, and on conviction, shall be punished by a fine equal to the value of the thing thus fraudulently packed or put up, and imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than five years. The bare possession or ownership of such commodities, so fraudulently packed or put up, shall not of itself authorize a conviction, where sufficient evidence of knowledge or privity, on the part of the owner, or the person in possession, may not be produced before the court and jury.—No. 6.

Obtaining Goods, &c., by Personating.

251. Sec. VIII. If any person shall falsely personate another, and thereby fraudulently obtain any money, goods, chattels, or other thing or things of value; or with the intention of thereby fraudulently obtaining any money, goods, chattels, or other valuable thing, such person so offending, shall be deemed a cheat and swindler, and on con-
viction, shall be punished by imprisonment and labor in the peniten-
tiary, for any time not less than one year, nor longer than five years; or in trivial cases, by fine and imprisonment in the common jail, at the
discretion of the court.—No. 7.

Other Offences of Like Kind.

252. Sec. IX. Any person using any deceitful means, or artful
practice, (other than those which are mentioned and provided against in
this Code,) by which individuals or an individual, or the public, are or is
defrauded and cheated, such person so offending, shall be deemed a
common cheat and swindler, and on conviction, shall be punished by
fine or imprisonment in the common jail, or both, at the discretion of
the court.

Personating Another as Witness.

253. Sec. X. If any person shall falsely represent or personate
another, and in such assumed character, shall answer as a witness
to interrogatories, or do any other act in the course of any suit, pro-
ceeding or prosecution; or in any other way, matter or thing, where-
by the person so personated or represented, or any other person, might
suffer damage, loss or injury, such person so offending, shall, on con-
viction, be punished by confinement and labor in the penitentiary, for
any time not less than one year, nor more than five years.—No. 8.

Lying to Obtain Indorser or Other Security.

254. Sec. XI. If any person, by false representation of his or her
solvent, shall induce another to become his or her bail, indorser, or
security, upon any recognizance, bond, note, bill of exchange, or other
instrument for the payment of money, or performance of any personal
duty, knowing at the time that he or she is insolvent; and such bail,
indorser, or security, shall suffer loss or damage, in consequence of
such undertaking and liability on his part, such person so offending,
shall be guilty of a misdemeanor, and on conviction, shall be punished
by fine and imprisonment in the common jail, at the discretion of
the court.—No. 9.

Pedlers Without License.

255. Sec. XII. If any pedler or itinerant trader shall sell or vend
any goods, wares, or merchandise, except such as are excepted by
law, within this State, without a license from the proper authority for
that purpose, such pedler or itinerant trader shall be guilty of a Mis-
demeanor, and on indictment and conviction thereof, shall be fined in
a sum not less than one thousand dollars, nor more than three thou-
sand dollars, to be applied as pointed out by law; and the defendant
shall stand committed until the said fine be paid.—No. 10.

No. 1.—Cheating and Swindling.
PENAL CODE OF GEORGIA.

B. King, Tilman Downs, Robert W. Baskin, Mathew Wilson, William H. Miller, John J. Floyd, Edward O. Jenkins, Daniel Adams, Alfred Nelson, Martin Jinkins, Benjamin Bryan and John A. Hunter, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of being a Cheat and Swindler: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with intent to cheat and swindle one Richard Roe, did then and there, by false representations of his own respectability, wealth, mercantile correspondence and connections, obtain a credit and get possession of property to the amount of five hundred dollars, from said Richard Roe, (of the personal goods and private property of said Richard Roe), whereby said John Doe, did then and there, defraud, cheat, and swindle, the said Richard Roe; he, the said John Doe, being then and there, of no respectability, wealth, or mercantile correspondence and connections; to the great damage and deception of the said Richard Roe; contrary to the laws of said State, the good order, peace, and dignity thereof.

October term, 1850.

Witness, } JAMES THOMAS, Sol. Gen.
Richard Roe. } RICHARD ROE, Prosecutor.

No. 2.—Cheating at Play.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Cheating at Play: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, by fraud and ill-practice, in playing at cards, to wit: at a certain game of cards, called whist, with one Richard Roe, then and there, did win, obtain and acquire to himself, a large sum of money, to wit: the sum of fifty dollars; of the moneys of the said Richard Roe; to the great damage and deception of the said Richard Roe; contrary, &c.

No. 3.—Selling Bread under the Assize.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of said county and State, with the offence of Selling Bread under the Assize: for that the said John Doe, being a Seller of Bread, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers other days and times, from thence until the preferring this bill of indictment, did then and there, unlawfully, knowingly, deceitfully, and fraudulently, sell to the citizens of the town of Perry, in the county aforesaid, Bread under the assize established by the corporation of said town of Perry, to wit: at the weight of two ounces short of the weight required by the assize established by the corporation of said town of Perry, in said county; contrary, &c.

No. 4.—False Weights and Measures.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Selling
by false weights: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and from thence to the present time, did use and exercise the trade and business of a shop-keeper, and during that time did deal in the buying and selling by weight, of divers goods, wares, and merchandise; and that the said John Doe, being a person of wicked and depraved mind, and contriving, and fraudulently intending to cheat and defraud the citizens of the State, whilst he used and exercised his said trade and business, to wit: on the day and year aforesaid, in the county aforesaid, and on divers other days and times, between that day and the day of preferring this bill of indictment at Perry, to wit,—in the county aforesaid, did, knowingly, willfully and publicly, keep in a certain shop there, wherein the said John Doe did so as aforesaid, carry on his said trade, a certain false pair of scales for the weighing of goods, wares, and merchandise, by him sold in the way of his said trade, which said scales were then and there, by artful and deceitful ways and means, so made and constructed, as to cause the goods, wares, and merchandise weighed therein, and sold thereby, to appear of greater weight than the real and true weight, by one-eighth part of such apparent weight; and that the said John Doe, on the day and year aforesaid, at Perry aforesaid, in the county aforesaid, (he, the said John Doe, then and there knowing the said scales to be false as aforesaid,) did knowingly, wittingly, and fraudulently, sell and utter to Richard Roe, certain goods in the way of his said trade, to wit: a large quantity of flour, weighed in and by the said false scales, as and for fifty pounds of flour, whereas in truth and in fact, the weight of the said flour so sold as aforesaid, was short and deficient of the said weight of fifty pounds, at the rate of one-eighth of an hundred weight, to the great damage of the said Richard Roe; contrary, &c.

No. 5.—Counterfeiting Brands, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Counterfeiting Brands: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, being an evil-disposed person, and devising and intending to deceive and defraud the good citizens of said State, did then and there, knowingly, unlawfully and fraudulently, counterfeit the Brand directed by law, (to wit, an X,) to be placed upon all lumber, after being inspected by the proper officer; contrary, &c.

No. 6.—Putting Dirt in Cotton, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of putting Dirt in Cotton: for that the said John Doe, being an evil-disposed and vicious person, and for the purpose of deceiving and cheating the good citizens of said State, did put into a certain Bale of Cotton, (for the purpose of adding to and increasing the weight or bulk of said Bale of Cotton,) a certain quantity of dirt, to wit: fifty pounds. And the jurors
aforesaid, upon their oath aforesaid, further say, that said John Doe, on the day and year aforesaid, in the county aforesaid, did sell to Richard Roe, said Bale of Cotton, so fraudulently packed, as aforesaid, for a fair and full consideration, without informing said Richard Roe, of the dirt aforesaid, contained in said Bale of Cotton; contrary, &c.

No. 7.—Personating Another, to obtain Money, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Falsely Personating Another: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did then and there, falsely personate said Richard Roe, to one Charles Smith, in order to receive said money, then and there due and payable to the said Richard Roe, from said Charles Smith; with intent then and there, to defraud said Richard Roe; and did, then and there, thereby fraudulently obtain said sum of money; contrary, &c.

No. 8.—Personating Another as Witness.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Personating Another as a Witness: for that, heretofore, a commission to take the interrogatories of Richard Roe, issued in due form of law to Charles Smith and William Lewis, was directed, from the honorable Superior Court of the county of Twiggs, in said State; (which interrogatories were to be used as evidence in a suit pending in said court;) and on the first day of May, in the year of our Lord one thousand eight hundred and fifty in the county first aforesaid, said John Doe did falsely assume the name and character of said Richard Roe. And the jurors aforesaid, upon their oath aforesaid, do say, that said John Doe, on the day and year aforesaid, in the county aforesaid, went and appeared before said Charles Smith and William Lewis, commissioners as aforesaid, and did then and there, falsely personate said Richard Roe, the witness in said commission named, and in such assumed character did, then and there, answer said interrogatories as the witness in said commission named was required by said commission to do; to the great damage of the said Richard Roe; contrary, &c.

No. 9.—Lying to Obtain Security, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, being insolvent in his circumstances, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, by false representation of his solvency, did falsely and deceitfully induce Richard Roe to become his security, on a promissory note for the sum of one hundred dollars; knowing at the same time that he, the said John Doe, was insolvent and unable to pay the said promissory note; whereby said Richard Roe sustained damage to the amount of said promissory note, to wit: the sum of one hundred dollars; contrary, &c.
Peddling without License.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, without a license from the proper authority for that purpose, unlawfully did vend and sell merchandise as a pedler, within this State, to wit: one piece of calico, (the same not being an article excepted by law,) the said John Doe not being, then and there, a person exempt from the laws made against peddling without license; contrary, &c.

CHAPTER XV.

TWELFTH DIVISION.

Fraudulent or Malicious Mischief.

Destroying Books or Papers.

256. Sec. I. If any person shall fraudulently or maliciously tear, burn, or in any other way destroy any deed, lease, will, bond, or other writing sealed; or any bank bill or note, check, draft, or other security, for the payment of money or the delivery of goods; or any certificate, or other public security of this State, or of the United States, or any of them, for the payment of money; or any receipt, acquittance, release, discharge of any debt, suit, or other demand; or any transfer or assurance of money, stock, goods, chattels, or other property; or any letter of attorney or other power; or any day-book, or other book of accounts; or any agreement or contract whatever, with intent to defraud, prejudice, or injure any person or body politic or corporate; such person so offending shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than four years; or in trivial cases, by imprisonment in the common jail, or by fine, or both, at the discretion of the court.—No 1.

Altering or Removing Land-marks.

257. Sec. II. If any person shall knowingly, maliciously, or fraudulently, cut, fell, alter, or remove any certain boundary tree, or other allowed land-mark, to the wrong or injury of his neighbor or any other person; such person so offending shall, on conviction, be punished by a fine not exceeding five hundred dollars, and imprisonment in the
PENAL CODE OF GEORGIA. 173

common jail of the county, for any time not exceeding one year.—
No. 2.

Buoys, Beacons, &c.

258. Sec. III. If any person or persons shall maliciously or without
authority, cut down, remove, or destroy any Beacon or Beacons, Buoy
or Buoys, erected by any commissioners of pilotage, or other person
or persons duly authorized for that purpose, such person or persons so
offending shall, on conviction, be punished by confinement and labor
in the penitentiary, for any time not less than two years, nor longer
than five years.—No. 3.

Setting Fire to Stacks, &c.

259. Sec. IV. Any person or persons who shall willfully and mali-
ciously set fire to, or burn any stack or stacks of corn, fodder, grain,
straw, or hay, shall, on conviction, be punished by imprisonment and
labor in the penitentiary, for any time not less than one year, nor
longer than three years.—No. 4.

Setting Fire to Woods.

260. Sec. V. If any person shall willfully and maliciously set on
fire, or cause to be set on fire, any woods, lands, or marshes, within
this State, so as thereby to occasion loss, damage, or injury to any
other person, such person so offending shall, on conviction, be punish-
ed by imprisonment in the common jail, for any time not exceeding six
months, at the discretion of the court.—No. 5.

Setting Fire to Fences, &c.

261. Sec. VI. If any person shall willfully and maliciously set fire
to any fence or fences, or other enclosures, or cause or procure the
same to be done, or shall take from such fence or enclosure, any rail
or rails, or other material of which the same is made or composed,
for the purpose of using the same as fuel; such person so offending
shall, on conviction, be punished by fine and imprisonment in the com-
mon jail of the county, at the discretion of the court.—No. 6.

Breaking Bridges, Dams, Banks, &c.

262. Sec. VII. If any person shall unlawfully, willfully, and mali-
ciously, break down, open, cut through, injure or destroy any bridge,
river, or meadow bank, rice dam, mill dam, or any other dam or bank;
such person so offending shall, on conviction, be punished by confine-
ment and labor in the penitentiary, not less than one year, nor more
than three years, or by fine and imprisonment in the common jail, at
the discretion of the court.—No. 7.

Killing or Maiming Cattle or Hogs.

263. Sec. VIII. If any person shall maliciously maim or kill any
horse, mule, bull, steer, ox, cow, calf, heifer, or other animal, falling
under the description herein before given of horses or cattle; or shall
maliciously kill a hog or hogs, such person, so offending, shall, on con-
version, be punished by fine or imprisonment in the common jail, at the
discretion of the court.—Nos. 8 and 9.
Injuring Turnpike or Navigation Fixtures.

264. SEC. IX. If any person shall maliciously injure or destroy any turnpike gate or gates; or any post or posts; rail or rails; wall or walls; or any chain, bar, or other fence, belonging to any turnpike gate; or any house or houses erected, or to be erected, for the use of any such turnpike gate or gates; or shall willfully and maliciously injure or destroy any lock or locks, or other works, erected to protect and secure the navigation of any river or canal in this State, every such person, so offending, shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor longer than four years.—No. 10.

Firing or Sinking Vessels.

265. SEC. X. If any person shall willfully and maliciously burn, or set fire to any ship, boat, or other vessel, above the value of two hundred dollars, alongside of any wharf, or at anchor in any river, or in any waters in this State; or if any person shall willfully and maliciously make, or assist in making, any hole in the bottom, side, or any other part of any ship, boat, or other vessel, above the value aforesaid; or do any other act, tending to the loss or destruction of such ship, boat, or other vessel, within the waters of this State, as aforesaid, such person, so offending, shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than three years, nor longer than seven years. And, if the ship, boat, or other vessel, thus injured or destroyed, as aforesaid, be of the value of two hundred dollars, or under that value, then the person convicted of injuring or destroying such ship, boat, or other vessel, as aforesaid, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 11.

Cutting Down Trees.

266. SEC. XI. If any person shall willfully and maliciously cut down, injure, or destroy any tree or trees, planted or growing in any town, village, or city; or in any avenue, yard, garden, orchard, or plantation, for ornament, shelter, shade, or profit, such person, so offending, shall, on conviction, be punished by imprisonment and labor in the penitentiary, for any time not less than three years, nor longer than seven years. And, if the tree, or trees, thus injured or destroyed, as aforesaid, be of the value of two hundred dollars, or under that value, then the person convicted of injuring or destroying such tree, or trees, as aforesaid, shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 12.

Mile or Guide Posts.

267. SEC. XII. If any person shall willfully or maliciously break, deface, destroy, or remove any mile-stone or post, or any guide-board, erected upon any public road or highway; or alter any mark or inscription upon any such mile-stone or post, or guide-board, such person, so offending, shall be indicted for a Misdemeanor, and, on conviction, shall be punished by a fine not exceeding fifty dollars, or imprisonment in the common jail, not exceeding thirty days.—No. 13.

Severing Produce from the Land.

268. SEC. XIII. If any person shall commit any trespass, by willfully and maliciously severing from the land of another, any produce thereof, such person, so offending, shall be indicted for a Misdemeanor,
and, on conviction, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment in the common jail, not exceeding thirty days.—No. 14.

269. Sec. XIV. All other acts of willful and malicious mischief, in the injuring or destroying any other public or private property, not therein enumerated, shall be punished by fine, or imprisonment in the common jail, or both, at the discretion of the court before whom the same shall be tried.

An Act to make Penal and to Punish any Unlawful Intrusion upon, or Interference with, or Molestation of, Railroads in this State.

Whereas, the safety of passengers travelling on Railroads requires the strictest penal prohibitions to unauthorized persons in any manner interfering with such roads, or their appurtenances, or placing obstructions upon, or moving, touching or altering the gates, rails, switches, or other appendages of said Roads:

270. Sec. I. That if any person or persons shall intrude upon any Railroad in this State, constructed by any chartered company, or any part thereof, contrary to the will of the company owning said Road, the person or persons so intruding, shall, and may be indicted as for a Misdemeanor, and upon conviction, fined or imprisoned, or both, at the discretion of the court.—No. 15.

271. Sec. II. That if any person shall willfully and maliciously destroy, or in any manner hurt, damage, injure or obstruct, or shall willfully and maliciously cause, or aid and assist, or counsel or advise, any other person or persons to destroy, or in any manner to hurt, damage or injure, or obstruct, any such Railroad, or any branch thereof, or any bridge connected therewith, or any vehicle, or edifice, right or privilege, granted by charter, and constructed for use, under authority thereof; or if any unauthorized person or persons, shall turn, move, or in any manner interfere or meddle with, any gate, switch, sideling, or other appurtenance, to any such Railroad, such person or persons so offending, shall and may be indicted, and on conviction, shall be imprisoned at hard labor in the penitentiary, for a term of years, not less than four, nor longer than eight, and shall further be liable for all civil damages occasioned by any such act: and if death to any passenger, or other person on said Railroad, shall ensue from any such act, such act or offence shall be deemed and held to be murder, and shall be punished accordingly.—No. 18.—Act of 1837.

An Act to make Penal and to Punish, any Unlawful Interference with, or Molestation of, the Western and Atlantic Railroad.

272. Sec. I. That if any person or persons shall willfully and maliciously destroy, or in any manner damage, injure or obstruct; or shall willfully and maliciously cause, or aid and assist, counsel or advise, any person or persons, to destroy, or in any other manner to damage, or injure, or obstruct, the Western and Atlantic Railroad, or any bridge, edifice, right or privilege, constructed for the use of said Road, or if any person or persons shall, without authority, turn, move, or in any manner interfere or meddle with any gate, switch, sideling or other appurtenance to said Road, such person so offending, shall be guilty of a Misdemeanor, and on conviction thereof, shall be imprisoned at hard labor in the penitentiary, for a term of years, not less than seven, nor more than ten. And if death to any passenger, or other person, on said Road,
shall ensue from such act, such act or offence shall be held and deemed to
be murder, and shall be punished accordingly.—No. 17.—Act of 1845.

An Act to Provide for the Collection and Safe Keeping of the
Revenues of the Western and Atlantic Railroad; to Punish
those who may Attempt to Defraud the same, and for other
purposes therein contained.

273. Sec. I. That from and after the passage of this Act, the treasurer of
the Western and Atlantic Railroad, shall give a bond with good and sufficient
security, payable to the governor of this State, and his successors in office, in a
sum of not less than twenty, or more than fifty thousand dollars, for all moneys
which may come to his hands, to be approved by the governor.

274. Sec. II. That each and every person connected with the Western and
Atlantic Railroad, whose business and employment require the collection and
disbursement of money, or into whose hands money may come, shall give bond
with good and sufficient security, payable to the governor and his successors in
office, in such sum as he and the chief engineer may by order, from time to time,
specify and direct.

275. Sec. III. That any officer or other agent of the said Road, into whose
hands may come any money belonging to the State, derived from the business
or operations of said Road, who shall fail or refuse, on the written demand of
the chief engineer, to pay over or otherwise faithfully account for the same,
shall be held and deemed as guilty of embezzlement, and liable to indictment
in the superior court, and on conviction thereof shall be sentenced to hard
labor in the penitentiary, for a term of not less than two, or more than seven
years.

276. Sec. IV. That all moneys paid out by the treasurer of the Western and
Atlantic Railroad, shall be upon the warrant of the chief engineer.

277. Sec. V. That it shall be the duty of each and every locomotive engi-
neer, employed on said road, before entering upon his duty, to take and subscribe
the following oath : I, A B, do solemnly swear, (or affirm, as the case may be,)
that I will make and return to the office of chief engineer, a true appraisement
of the value of every horse, cow, hog or other domestic animal, killed by engine or
train, so far as I may know: so help me God. Which oath or affirmation shall
be filed in the office of the chief engineer, who shall cause payment thereof to
be made to the owner upon his application; and in case the owner is dissatisfied
with the said appraised value, it shall be his duty to appoint one appraiser, and
the chief engineer another, who together with the said locomotive engineer,
shall finally settle the sum to be paid for the stock so killed.

278. Sec. VI. That the governor shall not sell at any time, any part of the
right of way heretofore acquired by the State, nor any property or land, that
may be necessary now or at any other time, for the erection of depôts, wood-
yards, or water stations, or for any other improvement necessary or convenient
to said road.

279. Sec. VII. That the governor and chief engineer be, and they are here-
by authorized and empowered, to adopt such rules and regulations, for the
government and management of said road, as they may deem conducive to the
public interest, not inconsistent with the constitution and laws of this State, which
shall be recorded, from time to time, as they are adopted in one or more order
books, to be kept for that purpose.

280. Sec. VIII. That the ninth section of an act, assented to the 29th
December, 1838, entitled "An Act to authorize the sale of scrip, or certificates
of State debt, and to enlarge the duties of the commissioners of the Western and Atlantic Railroad of Georgia," be and the same is hereby repealed.

See IX. That all laws and parts of laws, militating against this act, be and the same are hereby repealed.—Act of 1850.

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No. 1.—Destroying Books, &c.

STATE OF GEORGIA, The Grand Jurors sworn, chosen, and selected for the county of Houston, to wit: Samuel Felder, Joseph M. Cooper, James Willis, John J. Forsyth, George M. Dallas, Edward O. Jenkins, John Wright, Benjamin Bryan, Creed T. Woodson, Alfred Nelson, Martin Jinkins, Daniel Adams, Daniel Webster, Zachary Taylor, John S. Jobson, Tilman Downs, Warren E. Sanders, James H. Dunham, Thomas B. Allen, George F. Cooper, Samuel B. King, John Gordon, and James K. Ash, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did, fraudulently and maliciously, burn the day-book of one Richard Roe; with intent, then and there, to defraud, prejudice, and injure said Richard Roe; contrary to the laws of said State; the good order, peace, and dignity thereof.

October term, 1850.


Richard Roe, Prosecutor.

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No. 2.—Altering Land-Marks.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did, maliciously, knowingly, and fraudulently, cut down a certain pine tree, an allowed land-mark, between lots numbers forty-eight and forty-nine, in the tenth district of the county aforesaid, to the wrong and injury of his neighbor, Richard Roe; contrary, &c.

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No. 3.—Destroying Buoys, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did maliciously destroy a certain Buoy, in the Savannah river, in said State and county, erected by the Commissioners of Pilotage of the city and port of Savannah, in said State and county, to the great injury and danger of the navigation of the said Savannah river; contrary, &c.
No. 4.—Setting Fire to Stacks, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, with force and arms, did willfully and maliciously, set fire to a certain stack of fodder, of the personal goods of one Richard Roe, then and there being, to the damage of the said Richard Roe; contrary, &c.

No. 5.—Setting Fire to Woods, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did willfully and maliciously, set on fire woods, in said county and State, so as then and there to occasion loss, damage and injury to one Richard Roe, to wit: by then and there burning twenty panels of fence, belonging to said Richard Roe; contrary, &c.

No. 6.—Setting Fire to Fences.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did willfully and maliciously, set fire to a certain Fence, around the enclosure of one Richard Roe, to the damage of the said Richard Roe; contrary, &c.

No. 7.—Breaking Bridges, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did unlawfully, willfully, and maliciously, break down a certain bridge over Big Indian Creek, in said county; contrary, &c.

No. 8.—Maiming Cattle.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, a certain dun colored cow, marked with a crop off the left ear; an under slope and slit in the right ear, of the value of ten dollars, the property of one Richard Roe, then and there being; then and there, maliciously, did maim, to the damage of the said Richard Roe; contrary, &c.
No. 9.—Killing Hog.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did maliciously kill one black Hog, marked with a crop and under bit in the right ear and an under bit in the left ear, of the value of five dollars, of the goods and chattels of one Richard Roe, to the damage of said Richard Roe; contrary, &c.

No. 10.—Injuring Turnpike Fixtures, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did maliciously injure the Turnpike Gate on the road from the town of Perry, in said county, to the city of Macon; contrary, &c.

No. 11.—Firing or Sinking Vessels.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms did willfully and maliciously burn the ship Thomas of the value of three hundred dollars, (said ship Thomas being of the goods and chattels of one Richard Roe,) as said ship Thomas lay at anchor in Savannah River, in the port of Savannah, in said county and State; contrary, &c.

No. 12.—Cutting down Trees.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Malicious Mischief: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did willfully and maliciously cut down five trees, to wit: five Sycamore Trees, planted and growing in the town of Perry, in said county, for shade, to the great injury of the inhabitants of said town of Perry; contrary, &c.

No. 13.—Mile or Guide Posts.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did willfully and maliciously deface the three mile post on the public road from the town of Perry, in said county, to the city of Macon; contrary, &c.
No. 14.—Severing Produce from Realty.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did commit a trespass upon the premises of Richard Roe, there situate, and did, then and there, willfully and maliciously sever from the land of said Richard Roe, so situate as aforesaid, one-fourth of an acre of Indian corn, the produce of said land, then and there growing on said land; to the damage of the said Richard Roe; contrary, &c.

No. 15.—Intruding upon Railroad.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did, contrary to the will of the company owning said road, intrude upon the South-western Railroad, in this, to wit: (here state the act of intrusion complained of) said Railroad having been constructed in this State by a chartered company; contrary, &c.

No. 16.—Destroying Railroad Bridge, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of willfully and maliciously destroying a bridge, connected with the South-western Railroad: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord, one thousand eight hundred and fifty, with force and arms, did willfully and maliciously destroy a bridge, (here describe the bridge particularly,) connected with the South-western Railroad, for the use of, and under the authority of said Railroad. Said John Doe not then and there being in any manner connected with said Railroad, but being an unauthorized person interfering with said bridge. Said South-western Railroad being in this State, and being constructed by a chartered company. Contrary to the will of the company owning said Road, and contrary, &c.

No. 17.—Injuring Western and Atlantic Railroad.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the said county; on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did willfully and maliciously destroy a bridge, constructed for the use of the Western and Atlantic Railroad; (said bridge being, then and there, an appurtenance of said Western and Atlantic Railroad,) without authority for so doing; contrary, &c.
CHAPTER XVI.

THIRTEENTH DIVISION.

Offences Relative to Slaves.

SEC. I, II, III, IV, V, VI, VII, and VIII, repealed by the Act of 1849.—See 303.

Harboring or Concealing Slaves.

281. SEC. IX. Any person who shall conceal, harbor, hide, or employ, in their own, or in the service of any other person or persons, any slave, to the injury of the owner thereof, shall be guilty of a High Misdemeanor; and on conviction thereof, shall be punished by imprisonment and labor in the penitentiary of this State, for a time not exceeding three years, nor less than one year, at the discretion of the court; Provided, nevertheless, that on the trial of this offence, the person charged with it shall be acquitted, if he or she had an apparent well-founded claim to the slave so harbored or concealed, and had been peaceably possessed of him twelve months next preceding the commencement of such harboring or concealing; and on every conviction for concealing or harboring a slave, the owner of such slave may recover damages in a civil suit for the loss of the labor and services of such slave, notwithstanding such conviction.—No. 1.

Carrying off Slaves, but not to Sell them.

282. SEC. X. Any person who shall remove or carry, or cause to be removed or carried away out of this State, or any county thereof, any slave, being the property of another person, without the consent of the owner, or other person having authority to give such consent, and without any intention or design, on the part of the offender, to sell or otherwise appropriate the said slave to his own use, or to deprive the owner of his property in said slave, shall be guilty of a misdemeanor, and be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 2.

Unprovoked Beating or Wounding the Slaves of Others.

283. SEC. XI. Any person except the owner, overseer, or employer of a slave, who shall beat, whip, or wound such slave; or any person who shall beat, whip, or wound a free person of color, without sufficient cause or provocation being first given by such slave or free

13
person of color; such person so offending, may be indicted for a Misdemeanor, and on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court; and the owner of such slave, or guardian of such free person of color, may, notwithstanding such conviction, recover in a civil suit, damages for the injury done to such slave or free person of color.—No. 3.

Cruel Treatment of Slaves by their Owners, &c.

284. Sec. XII. Any owner or employer of a slave or slaves, who shall cruelly treat such slave or slaves, by unnecessary and excessive whipping; by withholding proper food and sustenance; by requiring greater labor from such slave or slaves, than he, she, or they, are able to perform; or by not affording proper clothing, whereby the health of such slave or slaves may be injured and impaired; or cause or permit the same to be done; every such owner or employer shall be guilty of a Misdemeanor, and on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 4.

Purchasing from Slaves without Permit, &c.

285. Sec. XIII. If any person shall buy or receive from any slave, any amount of money exceeding one dollar; or any cotton, tobacco, wheat, rye, oats, corn, rice, or poultry of any description whatever; or any other article, commodity, or thing, (except brooms, baskets, foot and bed mats, shuck collars, and such other thing or things, article or articles, as are usually manufactured or vended by slaves, for their own use only) without written permission from the owner, overseer, or employer of such slave, or some other person authorized to give such permission, authorizing such slave to sell and dispose of said money or other article or articles; such person so offending, shall be guilty of a misdemeanor, and on conviction, be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court. If any owner, overseer, employer, shop-keeper, store-keeper, or any other person whatsoever, shall sell to or furnish any slave or slaves, or free person of color, with spirituous liquor, wines, cider, or any intoxicating liquors, for his own use, or for the purpose of sale; such person so offending shall, upon conviction thereof, pay a fine of not less than ten dollars, nor more than fifty dollars, for the first offence, and upon a second conviction, to be subject to fine and imprisonment in the common jail of the county, at the discretion of the court, not to exceed sixty days' imprisonment and five hundred dollars fine: Provided, nothing herein contained shall prevent the owner, overseer or employer, from furnishing their slaves, or those under their care, with such quantity of spirits, &c., as they may believe is for the benefit of such slave or slaves, but in no case to permit them, in any way, to furnish others therewith.—Nos. 5 and 6.

Slaves Found in Tippling-houses.

286. Sec. XIV. If any slave or slaves shall be found in any store-
house or tippling-shop, unless sent by his, her, or their owner, overseer or employer, after the hour of nine o'clock at night, or before day-break in the morning, or on the Sabbath day, it shall be taken and received as presumptive evidence against the person or persons owning, or person keeping the store or tippling-shop, of a violation of the Thirteenth Section of this Division, which presumption may be rebutted by any other circumstance in favor of the accused.

Delivering Goods to Slaves.

287. Sec. XV. If any person shall sell or deliver to any slave or slaves, any goods, wares, or merchandise, or any other thing or things, unless it be in exchange for some article or articles, which the owner, overseer, or employer, of such slave or slaves, may have authorized such slave or slaves to trade or deal in, according to the provisions of the thirteenth section of this Division, such person so offending shall be guilty of a Misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 7.

Judges to give these Laws in Charge.

288. Sec. XVI. It shall be the duty of the judges of the superior courts, at the commencement of every term, to give in charge to the grand jury, the substance and intention of the sections of this Division, in regard to trading with slaves.

Giving Ticket, &c., Unlawfully.

289. Sec. XVII. If any person shall give a ticket, pass, or license, to any slave who is the property, or under the care and control of another, without the consent of the owner, or other person having the care or control of such slave, such person so offending shall be guilty of a Misdemeanor, and, on conviction, shall be fined in a sum not exceeding fifty dollars.—No. 8.

Teaching Slaves to Read or Write.

290. Sec. XVIII. If any person shall teach any slave, negro, or free person of color, to read or write, either written or printed characters; or shall procure, suffer, or permit a slave, negro, or person of color, to transact business for him in writing, such person so offending shall be guilty of a Misdemeanor, and, on conviction, shall be punished by fine or imprisonment in the common jail of the county, or both, at the discretion of the court.—No. 9.

Certain Employments in Printing Offices Prohibited.

291. Sec. XIX. If any person, owning or having in his possession and under his control any printing press or types in this State, shall use or employ, or permit to be used or employed, any slave or free person of color, in the setting up of types, or other labor about the office, requiring in said slave or free person of color a knowledge of reading or writing, such person so offending shall be guilty of a Mis-
184 PENAL CODE OF GEORGIA.

demeanor, and, on conviction, shall be punished by a fine not exceeding one hundred dollars.—No. 10.

Pedlers Trading with Slaves without Authority.

292. Sec. XX. If any pedler or itinerant trader, whether carrying his goods, wares, and merchandise in a wagon or otherwise, shall, at any time, either buy from or sell to, or otherwise trade with any slave or slaves, unless it be with the permission and in the presence of the owner, overseer, or other person having charge of such slave or slaves; such pedler or itinerant trader shall be guilty of a Misdemeanor, and, on indictment and conviction thereof, shall be fined in a sum not exceeding one thousand dollars, one half to the use of the prosecutor, and the other half to the use of the county where the crime was committed, and the defendant shall stand committed until the fine is paid; and a copy of this section shall be annexed to all licenses granted pedlers.—No. 11.

Indefinite Imprisonment.

293. Sec. XXI. In all cases where imprisonment in the common jail of the county, by the sentence of the court, is a part, or the whole of the punishment, and the offence is such a one where, by this Code, no limitation is fixed for the discretion of the court, such imprisonment shall, in no case, exceed six months.

An Act to prohibit from sale or gift, all printed or written books, papers, pamphlets, writing paper, ink, and all other articles of stationery, of any kind whatsoever, to any slave, or free person of color, in this State, and to punish those who may violate the provisions of this Act.

294. Sec. I. That from and after the passing of this act, if any shop-keeper, store-keeper, or any other person or persons whatsoever, shall sell to, give, barter, or in any wise furnish or allow to be furnished, by any person in his, her or their employment, any slave, negro, or free person of color, any printed or written book, pamphlet, or other printed or written publication, writing-paper, ink, or other articles of stationery, for his, her or their use, or for the purpose of sale, without written or verbal permission from the owner, guardian or other person authorized: such person or persons, so offending, shall upon conviction thereof, pay a fine of not less than ten dollars, nor more than fifty dollars, for the first offence, and upon conviction for a second offence, be subject to fine and imprisonment in the common jail of the county, at the discretion of the court, not to exceed sixty days' imprisonment and five hundred dollars fine.—No. 12.

Sec. II. That all laws and parts of laws, militating against this act, be and are hereby repealed.—Act of 1841.

An Act to make Penal the Hiring of [from] Slaves their Time without a written or verbal authority from the owner or persons having the right to control such Slaves.

295. That from and after the first day of March next, if any person shall hire from any slave or slaves, his time, without a verbal or written authority
from the owner or persons having the right to control such slave or slaves, such person so hiring shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not exceeding five hundred dollars, any law or usage to the contrary notwithstanding.—No. 13.—Act of 1837.

An Act to alter and amend the several acts now in force in this State, regulating the punishment of white persons for Gambling with negroes and free persons of color, and also to regulate the evidence on the trial for said offence, and for other purposes therein mentioned.

296. Sec. 1. That from and after the passage of this act, if any white person or persons are found playing and betting, or playing or betting with a negro or negroes, or free person of color, or free persons of color, at any game with cards, dice, or any other game or games of chance or hazard, for the purpose of betting upon, or winning or losing money, or any other thing or things, article or articles of value, or otherwise; or any property or any other article or articles, thing or things of value; may be indicted, and on conviction thereof, for the first offence shall be fined in a sum not to exceed one thousand dollars, or imprisonment in the common jail of the county where the offence may be committed, not to exceed six months; or fine and imprisonment, both, at the discretion of the court; and upon the second conviction, to be subject to imprisonment at hard labor in the penitentiary, not less than one year, nor more than four years.—No. 14.

297. Sec. II. That on the trial of all indictments for said offence, the prosecution shall not be required to prove the game or games played, but shall be required to prove the playing or betting only.

Sec. III. That all laws and parts of laws militating against this act, be and the same are hereby repealed.—Act of 1847.

An Act to define and affix the punishment of a crime or misdemeanor committed by a Slave, by the counsel, persuasion, or procurement, or other means, of free white persons.

298. That if a slave shall commit a crime or misdemeanor, by the counsel, persuasion, or procurement, or other means, of a free white person, and it appearing that the offence was committed by the counsel, or procurement or other means of a free white person or persons, he, she, or they, shall be prosecuted for the offence, and if found guilty, shall incur the same punishment, as if he, she, or they, had actually committed the crime or misdemeanor with which the slave is charged: Provided, That this act shall not be construed to extend to any crime or offence, which if committed by a slave, would, under existing laws of the State, subject him or her to the punishment of death.—Act of 1838.

An Act to amend an Act passed December 29th, 1838, to define and affix the punishment of a crime or misdemeanor, committed by a Slave, by the counsel, persuasion, or procurement, or other means, of free white persons.

299. Sec. I. That if any free white person or persons shall attempt to procure a slave or slaves, to commit a crime or misdemeanor, by counsel, persuasion, bribery or force, or other means, such free white person or persons shall be prosecuted for such attempt, and if found guilty, shall incur the same punishment as if such free white person or persons had attempted to commit
the said crime or misdemeanor, which he, she or they, attempted to procure the said slave or slaves to commit.

Sec. II. That all laws and parts of laws, militating against this act, be and the same are hereby repealed.—Act of 1850.

An Act to be entitled "An Act to provide for the Trial, by the Superior Courts of this State, of any slave or slaves, or free persons of color, charged with any capital offence against the laws of this State."

300. Sec. I. That from and after the passage of this act, whenever it shall appear after investigation, to the justices of the peace, before whom any slave or free persons of color, shall be put upon trial for any offence against the laws of this State, that the said slave or free person of color has committed a capital offence, such slave or free person of color shall be immediately committed to the jail of the county wherein such offence was committed, if sufficiently secure, and if otherwise, to the nearest secure county jail. And the justices before whom such examination shall have taken place, shall reduce their opinion to writing and transmit the same, together with the report in writing of the evidence taken before them on such examination, and all other papers appertaining to said charge, to the attorney or solicitor general, being the prosecuting officer in the superior court of said county, on the first day of the next term of said court.

301. Sec. II. That upon receiving the papers in any such case, as provided in the preceding section, it shall be the duty of such attorney or solicitor-general, to frame and send before the grand jury, a bill of indictment against the person or persons so charged, as in cases of free white persons. And it shall be lawful for the grand jury in any county of this State, to present to the superior court of such county, any capital offence committed by any slave or free person of color within said county, after the passage of this act. And in any case wherein a slave or free person of color shall have been committed and a return made of the papers to the attorney or solicitor-general, as provided in the first section of this act, if there shall be no prosecutor bound, or appearing to prosecute the case, it shall be the duty of the attorney or solicitor-general, to place before the grand jury, such charge made by such justices of the peace, together with all legal testimony sustaining it, which may be accessible to him, and said grand jury may, upon such evidence, in their discretion, present such offence to the court. And all persons who may now be competent witnesses by law, upon the trial of slaves and free persons of color, shall be competent witnesses before the grand jury; and upon the trial in the superior court.

302. Sec. III. That after a bill of indictment found true on presentment made, as herein before provided, the trial shall proceed to rendition of verdict, in conformity with the provisions of the Penal Code of this State. And in case of conviction, the judge of the superior court before whom such trial shall have been had, shall pass sentence in conformity with the laws now in force, imposing penalties and providing for the passing of sentence in such cases. And all laws now of force, regulating the subject matter of this act, and not inconsistent with its provisions, nor with the said fourteenth section of the Penal Code, shall continue of full force; and that all laws and parts of laws, conflicting therewith, be and the same are hereby repealed. —Act of 1850.
AN ACT to be entitled "An Act to repeal all laws respecting the Importation of Slaves into this State, and to give certain powers to Municipal Corporations in relation to Slaves."

303. Sec. I. That from and after the passage of this act, all laws or parts of laws, civil and criminal, forbidding or in any manner restricting, the importation of slaves into this State, from any other slave-holding State of this Union, be and the same are hereby repealed.

304. Sec. II. That it shall be lawful for the corporate authorities of any city or town in this State, by ordinance to regulate the sale of slaves by traders, within their limits, (except sales at public outcry, at the place of public sales fixed by law,) and to prescribe the places within their jurisdiction in which marts for the sale of slaves and slaves for sale by traders, shall be kept, with authority to enforce such ordinances.—Act of 1849.

No. 1.—Harboring Slave, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of High Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms, did harbor a certain negro man slave, named Tom, of the value of five hundred dollars, to the injury of Richard Roe, the owner of said slave; he, the said John Doe, having, then and there, no apparently well founded claim to said slave Tom; nor having been in the peaceable possession of said slave Tom twelve months next preceding the commencement of such harboring; contrary, &c.

No. 2.—Carrying Off Slave.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord eighteen hundred and fifty, with force and arms, did remove, from said State, a certain negro fellow, named Tom, the property of Richard Roe, (without the consent of the said Richard Roe, and without any intention or design, on the part of the said John Doe, to sell or otherwise appropriate the said slave Tom to his own use, or to deprive the said Richard Roe of his property in said slave Tom,) to the great damage of the said Richard Roe; contrary, &c.

No. 3.—Wounding, &c., Slaves.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms in and upon a certain negro man slave named Ned, then and there, the property of one Richard Roe, did make an assault, and him, the said slave Ned, did then and there wound, without sufficient cause or provocation being first given by said slave Ned to the said John Doe; the said John Doe, then and
there, not being the owner, overseer, or employer of said slave Ned; contrary, &c.

Another Count.—And the jurors aforesaid, in the name and behalf of the citizens of Georgia, further charge and accuse the said John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, with force and arms in and upon a certain negro man slave named Ned, (the said slave then and there being the property of one Richard Roe,) did make an assault; and that the said John Doe, with a certain shot-gun, of the value of five dollars, then and there being loaded and charged with gunpowder and leaden squirrel shot, which said shot-gun he, the said John Doe, in both his hands then and there had and held; to, at, against, and upon said slave Ned, then and there did fire, shoot off, and discharge; and that the said John Doe, with the leaden squirrel shot aforesaid, out of the shot-gun aforesaid, then and there, by force of the gunpowder aforesaid, shot and sent forth as aforesaid, the said slave Ned in and upon the back and in and upon the right leg, and in upon the right hand and right arm, of the said slave Ned, then and there did strike, penetrate, and wound; giving to the said slave Ned, then and there, with the leaden squirrel shot aforesaid, so as aforesaid fired, shot off, discharged, and sent forth, out of the shot-gun aforesaid; so as aforesaid, had and held by the said John Doe, five wounds, to wit: two wounds in and upon the back of the said slave Ned; one wound in and upon the right hand of said slave Ned; one wound in and upon the right arm of the said slave Ned; one wound in and upon the right leg of said slave Ned, each of said wounds being of the depth of half an inch and of the breadth of one eighth of an inch; without sufficient cause or provocation being first given by said slave Ned to said John Doe; said John Doe not then and there being the owner, overseer, or employer of said slave Ned; contrary, &c.

No. 4.—Not Feeding, &c., Slaves.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers days and times, before and since that day, and previous to the finding of this bill of indictment, was the owner, and having in his possession and under his control, the following named slaves, to wit: Joe, John, &c., did then and there, during the period and at the time aforesaid, cruelly treat the afore-named slaves, by withholding proper food and sustenance, whereby the health of said slaves became injured and impaired; contrary, &c.

Note.—When the cruel treatment, for which the accused is indicted, occurs under an overseer, add another count, and say, "said John Doe, then and there, causing and permitting the same to be done," contrary, &c.
No. 5.—Trading with Slaves.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did buy from a certain negro woman slave, named Judy, then and there, the property of one Richard Roe, of said county, a certain quantity, to wit: one half bushel of Wheat, of the value of one dollar, without written permission from the owner, overseer, or employer of said slave, or from any other person authorized to give such permission, authorizing said slave to sell and dispose of said Wheat; said Wheat not, then and there, being either a broom, basket, foot-mat, bed-mat, shuck collar, or such other thing or things, article or articles, as is usually manufactured and vended by slaves, for their own use only; to the damage of said Richard Roe; contrary, &c.

No. 6.—Furnishing Slaves with Spirituous Liquors.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Furnishing a slave with Spirituous Liquors: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, being then and there a shop-keeper, did furnish a negro man-slave named Simon, (said slave being then and there the property of one Richard Roe,) with a certain quantity of rum, to wit: one half pint, for his, the said slave's own use, (without the knowledge or consent of the owner, overseer or employer of said slave;) he, the said John Doe, not then and there, being the owner, overseer, or employer, of said slave Simon, and not then and there having the said slave Simon under his care; to the damage of him, the said Richard Roe; contrary, &c.

No. 7.—Delivering Goods to Slaves.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did sell to a certain negro man slave named Tom, the property of Richard Roe, without the knowledge and consent of the said Richard Roe, twenty pounds of sugar; the same not being in exchange for any article or articles which the said Richard Roe (or any other person authorized to give such consent,) authorized said slave Tom, to deal or trade in, nor such article or articles as by law slaves are allowed to manufacture and vend for their own use; contrary, &c.

No. 8.—Giving Slave Ticket.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of
Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, (without the consent of the owner or any other person having the care or control of said slave,) did give a pass to a certain negro fellow slave, named Tom, the property of Richard Roe; contrary, &c.

No. 9.—Teaching Slaves to Read or Write.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, and on divers other days and times, between that time and the day of preferring this bill of indictment, did teach a negro boy slave, named Tom, the property of him, the said John Doe, to read printed characters; contrary, &c.

No. 10.—Employing Slave, &c., in Printing Office.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, did own and have in his possession and under his control, a printing press, in said county and State; and did then and there employ, and permit to be used and employed, a certain negro boy slave, named Tom, the property of him, the said John Doe, in setting up types, the said employment requiring in said slave a knowledge of reading; contrary, &c.

No. 11.—Pedlers trading with Slaves.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, was a pedler, carrying his goods, wares and merchandise in a wagon; and the said John Doe, being such pedler as aforesaid, then and there, (without the permission or in the presence of the owner, overseer or other person having charge of a certain negro woman slave named Dinah, the property of Richard Roe,) did sell to said negro woman slave Dinah, certain articles, to wit: twenty-five yards of calico; contrary, &c.

No. 12.—Furnishing Slave, &c., with Stationery.
In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Furnishing a slave with stationery: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord
one thousand eight hundred and fifty, did then and there, sell to a certain negro boy slave, named Tom, the property of Richard Roe, one quire of writing paper, for his, the said slave's, own use, without written or verbal permission from the owner of said slave, or other person authorized to give said slave permission to buy said writing paper; contrary, &c.

No. 13.—Unauthorized Hiring of Slave.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Misdemeanor: for that the said John Doe, in the county aforesaid, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, without verbal or written authority from the owner, or person having the right to control a certain slave named Tom, the property of Richard Roe, did then and there, hire from said slave Tom, his time, to the great injury of said Richard Roe; contrary, &c.

No. 14.—Gambling with Negro, &c.

In the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Playing with cards with a negro for the purpose of winning money: for that the said John Doe, on the first day of May, in the year of our Lord one thousand eight hundred and fifty, in the county aforesaid, did play with cards a game called seven-up, with a certain negro named Tom, the property of one Richard Roe, for the purpose of then and there winning money from said negro; contrary, &c.
STATE OF GEORGIA, | “The Grand Jurors, sworn, chosen, and select-
——— County. | ed, for the County of———, to wit:—————,
in the name and behalf of the citizens of Georgia, charge and accuse
A. B., of the County and State aforesaid, with the offence of———:
for that the said A. B., (here state the offence, and the time and
place of committing the same, with sufficient certainty,) contrary to
the laws of said State, the good order, peace, and dignity thereof.”——

If there should be more than one count, each additional count shall
commence with the following form:—“And the Jurors aforesaid, in the
name and behalf of the citizens of Georgia, further charge and accuse
the said A. B. with having committed the offence of———, (here
state the offence, as before directed;) for that,” &c.

Exceptions.

306. Sec. II. All exceptions which go merely to the form of an in-
dictment, shall be made before trial; and no motion in arrest of judg-
ment shall be sustained, for any matter not affecting the real merits
of the offence charged in such indictment.

Costs, when to be Paid by Prosecutor.

307. Sec. III. Upon every indictment the prosecutor’s name shall
be endorsed, who, upon the acquittal or discharge of the person ac-
cussed, shall be compelled to pay all costs which have accrued, if the
Grand Jury by their foreman, upon returning “no bill,” express it
as their opinion that the prosecution was unfounded, or malicious;
or, if the petit jury, upon returning a verdict of “not guilty,” shall
express a similar opinion.

Persons Acquitted and Insolvents’ Costs.

308. Sec. IV. A person against whom a bill of indictment shall be
preferred, and not found true by the grand jury; or who shall be ac-
quitted by the petit jury of the offence charged against him or her,
shall not be liable to the payment of the costs; and in all such cases,
as also where persons liable by law for the payment of costs, shall be
unable to pay the same, it shall and may be lawful for the officers,
severally, entitled to such costs, to present an account therefor to the
judge of the court in which the said prosecutions were depending,
which account being examined and allowed him, it shall and may be
lawful for said judge, by an order of said court, to authorize and direct
the sheriff or clerk to retain for his own use, and to pay to the attor-
ey or solicitor general, and other officers of the court, the amount of
their respective accounts, out of any moneys by him received for fines
inflicted by the said court, or collected on forfeited recognizances.

Solicitor General toProsecute upon Presentment.

309. Sec. V. It shall be the duty of the attorney or solicitor gene-
ral, to prosecute on all presentments of grand juries, where such pre-
sentment or presentments is, or are for offences indictable by law; and
the endorsement on the indictment by the attorney or solicitor gene-
ral, that the same is founded on the presentment of a grand jury, shall
Arraignment for Small Offences.

310. Sec. VI. No person indicted, unless it be for an offence which may, on conviction, subject him or her to death or imprisonment in the penitentiary for the term of three years or more, shall be put for his or her arraignment, in the bar-dock, or other place set apart in the court-room for the arraignment of prisoners.

Copy of Indictment and List of Witnesses.

311. Sec. VII. Every person charged with a crime or offence which may subject him or her, on conviction, to death, or imprisonment in the penitentiary, for the term of three years, or more, shall be furnished, previous to his or her arraignment, with a copy of the indictment, and a list of the witnesses who gave testimony before the grand jury.

In Small Cases a Copy on Request.

312. Sec. VIII. Every person charged with an offence, shall, at his or her request, or the request of his or her counsel, be furnished with a copy of the indictment, and a list of the witnesses who gave evidence before the grand jury.

Form of Arraignment.

313. Sec. IX. Upon the arraignment of a prisoner, the indictment shall be read to him or her, and such prisoner shall be required to answer, whether he or she is guilty or not guilty of the offence charged in the said indictment; which answer or plea shall be made orally by the prisoner, or his or her counsel, and if he or she shall plead guilty, such plea shall be immediately recorded on the minutes of the court, by the clerk, together with the arraignment; and the court shall pronounce upon such prisoner the judgment of the law, in the same manner as if such prisoner had been convicted of the offence by the verdict of a jury; but at any time before judgment is pronounced, such prisoner may withdraw the plea of "guilty," and plead "not guilty," and such former plea shall not be given in evidence against him or her, on his or her trial.

Standing Mute, or Pleading not Guilty.

314. Sec. X. If the prisoner, upon being arraigned, shall plead "not guilty," or shall stand mute, the clerk shall immediately record upon the minutes of the court, the plea of "not guilty," together with the arraignment, and such arraignment and plea shall constitute the issue, between the prisoner and the people of this State.

Demurrers or Special Pleas to be in Writing.

315. Sec. XI. If the prisoner upon being arraigned shall demur to the indictment, or plead to the jurisdiction of the court; or in abatement; or any special plea in bar, such demurrer or plea shall be made in writing; and if such demurrer or plea shall be decided against such prisoner, then such prisoner may nevertheless plead and rely on the general issue of "not guilty."
194

Penal Code of Georgia.

Issue may be Recorded Afterwards.

316. Sec. XII. If the clerk shall fail or neglect to record the arraignment, and plea of the prisoner, at the time the same is made, it may and shall be done at any time afterwards, by order of the court, and this shall cure the error or omission of the clerk.

To be Entered on the Indictment.

317. Sec. XIII. The arraignment and plea or answer of the prisoner, shall be entered on the indictment, by the Attorney or Solicitor-General, or other person acting as prosecuting officer on the part of the people of this State.

Prisoners not to be Arraigned in Fetters.

318. Sec. XIV. No prisoner shall be brought into court for arraignment or trial, tied, bound, or fettered, unless the court shall deem it necessary, during his or her arraignment, or trial: and if the health of the prisoner, or other circumstances, should render it more convenient to the prisoner and his counsel, that he or she should not be placed, for his or her arraignment, or during his or her trial, within the bar-dock, or other place assigned in the court-room for prisoners, the court may grant the indulgence of removing the prisoner to any other place in the court-room, or contiguous to it, requested by the prisoner, or his or her counsel.

Challenges.

319. Sec. XV. Every person indicted for a crime or offence which may subject him or her, on conviction, to death or four years' imprisonment, or longer, in the penitentiary, may peremptorily challenge twenty of the jurors empannelled to try him or her—and every person indicted for an offence which may subject him or her, on conviction, to imprisonment in the penitentiary, for any time less than four years, may peremptorily challenge twelve of the jurors empannelled to try him or her. And the State shall be allowed one half the number of peremptory challenges allowed the prisoner.

Jury Judges of the Law and Fact.

320. Sec. XVI. On every trial of a crime or offence contained in this Code; or for any crime or offence, the jury shall be judges of the law and the fact; and shall in every case give a general verdict of "guilty" or "not guilty;" and on the acquittal of any defendant or prisoner, no new trial shall, on any account, be granted by the court.

Indictments Triable at the Term when Found.

321. Sec. XVII. Every person against whom a bill of indictment is found, shall be tried at the term of the court the indictment is found, unless the absence of a material witness or witnesses, or the principles of justice, should require a postponement of the trial, and then the court shall allow a postponement of the trial until the next term of the court—and the court shall have power to allow the continuance of criminal causes, from term to term, as often as the principles of justice may require, upon sufficient cause shown, on oath.
Demand of Trial.

322. Sec. XVIII. Any person against whom a true bill of indictment is found, for an offence not affecting his or her life, may demand a trial at the term when the indictment is found, or at the next succeeding term thereafter; which demand shall be placed upon the minutes of the court; and if such person shall not be tried at the term when the demand is made, or at the next succeeding term thereafter: Provided, that at both terms there were juries empannelled and qualified to try such prisoner; then he or she shall be absolutely discharged and acquitted of the offence charged in the indictment.

Nolle Prosequi.

323. Sec. XIX. No nolle prosequi shall be entered on any bill of indictment, after the case has been submitted to the jury, except by the consent of the defendant.

Petit Jurors' Oath.

324. Sec. XX. In all criminal cases, the following oath shall be administered to the petit jury, to wit:—“You shall well and truly try the issue, formed upon this bill of indictment, between the State of Georgia and A B, who is charged, (here state the crime or offence;) and a true verdict give, according to evidence—so help you God.”

Witnesses’ Oath.

325. Sec. XXI. The following oath shall be administered to witnesses in criminal cases, viz.:—“The evidence you shall give to the court and jury, upon the trial of this issue, between the State of Georgia and A B, who is charged with——, (here state the crime or offence;) shall be the truth, the whole truth, and nothing but the truth—so help you God.”

Oath of Witness before the Grand Jury, &c.

326. Sec. XXII. And the following oath shall be administered to witnesses intended to be sent before the Grand Jury:—“The evidence you shall give the Grand Jury, on this bill of indictment, (or presentment,) as the case may be, (here state the case;) shall be the truth, the whole truth, and nothing but the truth—so help you God.” In every case in this Code, the person whose property has been stolen, injured, destroyed, taken away, or fraudulently converted or conveyed; or whose name hath been forged to any instrument; or who hath received a personal injury, shall be a competent witness, on the trial of the offender or offenders.

Several Imprisonments, to be in Succession.

327. Sec. XXIII. Where a person shall be prosecuted and convicted, on more than one indictment, and the sentences are imprisonment in the penitentiary, such sentences shall be severally executed, the one after the expiration of the other; and the judge shall specify in each, the time when the imprisonment shall commence, and the length of its duration.
Fines, to whom to be Paid, and for what Use.

328. Sec XXIV. All fines imposed by this act, not otherwise appropriated by this Code, shall be paid over by the clerks of the Superior Court, to the County Treasurer; or in counties where there are no treasurers, to Clerks of the Inferior Courts, for county purposes; except the county of Chatham, where the said fines shall be paid over to the corporation of the city of Savannah; and the clerks of the Inferior Courts shall keep a fair account of the fines so received, and the time when received, and the names of the persons from whom the said fines were collected.

Fines to be Paid Immediately.

329. Sec. XXV. Every fine imposed by the court under the authority, and by virtue of this act, shall be immediately paid, or within such reasonable time as the court may grant.

Penitentiary at Discretion—Recommendation of Jury.

330. Sec. XXVI. In all cases where the term of punishment in the penitentiary is discretionary, the court shall determine that punishment, paying due respect to any recommendation which the jury may think proper to make, in that regard.

Convicts Soon and Safely Sent to Penitentiary.

331. Sec. XXVII. Every person convicted in any county of this State, of any crime or offence, punishable with confinement in the penitentiary, shall, as soon as possible after conviction, together with a copy of the record of his or her conviction and sentence, be safely removed and conveyed to the said penitentiary, by a guard to be sent therefrom for that purpose, and therein be safely kept during the term specified in the judgment and sentence of the court. [That when any person shall be convicted in any court in this State, of a crime or misdemeanor hereafter to be committed, which shall subject him, her or them, to imprisonment and labor in the penitentiary of this State, the judge before whom such trial and conviction may be had, shall sentence the person so convicted, to hard labor, for such period of time as he is authorized by the Penal Code of this State, in the penitentiary of this State, or at such other place or places as the Governor of the State may thereafter direct.]

Clerks to Notify the Keeper.

332. Sec. XXVIII. In all cases where persons are convicted and sentenced to imprisonment in the penitentiary, it shall be the duty of the clerks of the superior courts, of the respective counties, where such persons may be convicted and sentenced, to inform the principal keeper of the penitentiary immediately thereafter by mail, or by private conveyance, where there is no post-office in the county, of the conviction and sentence of said convict, and that he or she is detained in the county jail, or under guard, as the case may be, subject to the order of the keeper aforesaid.
Trials for Escapes from the Penitentiary.

333. Sec. XXIX. The trial of prisoners escaping from the penitentiary, shall be had for such escape, before the superior court of Baldwin county; and prisoners so escaping shall remain in the penitentiary, and be treated as other convicts, after their apprehension, until such trial shall take place; and upon such trial, the copies of the records, transmitted to the keeper of the penitentiary, relative to the former trials of such prisoners, shall be produced and filed of record, in the superior court of Baldwin county.

Convicts to be Confined in Jail until sent for.

334. Sec. XXX. When any person may be convicted of any offence which may subject him or her to confinement in the penitentiary, it shall be the duty of the presiding judge, by his sentence, to order the convict into custody, to be safely kept in jail, or if there be no jail in the county, then in the nearest jail, or under a suitable guard, until he or she shall be demanded, by a guard to be sent from the penitentiary for the purpose of conveying such convict to the said penitentiary.

335. That when any person shall be convicted in any court in this State, of a crime or misdemeanor hereafter to be committed, which shall subject him, her, or them, to imprisonment and labor in the penitentiary of this State, the judge before whom such trial and conviction may be had, shall sentence the person so convicted to hard labor, for such period of time as he is authorized by the Penal Code of this State, in the penitentiary of this State, or at such other place or places as the Governor of the State may thereafter direct.

No Benefit of Clergy.

336. Sec. XXXI. No person convicted of a crime in this State, shall be allowed the benefit of clergy; and in all cases where the penalty of death is annexed to a crime, the convict shall suffer that punishment.

Death by Hanging.

337. Sec. XXXII. The sentence of death shall be executed by publicly hanging the offender by the neck, until he or she is dead.


338. Sec. XXXII. It shall be the duty of the judges of the Superior courts, to make a special report annually, to the Governor of this State, previous to the meeting of the General Assembly, and by him to be submitted to the legislature, of all such defects, omissions, or imperfections in this Code, as experience on their several circuits may suggest.

Crimes to be Punished under Co-existing Laws.

339. Sec. XXXIV. All crimes and offences committed shall be prosecuted and punished under the laws in force at the time of the commission of such crime or offence, notwithstanding the repeal of such laws before such trial takes place.
Limitation of Indictments, except for Murder.

340. Sec. XXXV. Indictments for murder may be found and prosecuted at any time after the death of the person killed. In all other cases, (except murder,) where the punishment is death, or perpetual imprisonment, indictments shall be filed and found in the proper court within seven years next after the commission of the offence, and at no time thereafter. In all other felonies, the indictments shall be found and filed in the proper court, within four years next after the commission of the offence, and at no time thereafter. And in all other cases, where the punishment by law is fine or imprisonment, or fine and imprisonment in the common jail of the county, indictments shall be found and filed in the proper court, within two years after the commission of the offence, and at no time thereafter: Provided, nevertheless, that if the offender shall abscond from this State, or so conceal himself that he cannot be arrested, such time during which such offender has been absent from the State, or concealed, shall not be computed or constitute any part of the said several limitations:—Provided, also, that all crimes heretofore committed, shall be governed by the like limitations, to be computed from the first day of June next.

341. That the time prescribed in the thirty-fifth section and Fourteenth Division of the Penal Code of this State, within which indictments shall be filed and found, shall not extend to those cases in which the offender, or offenders, is, or are, unknown; and all laws militating against this Act, be, and the same are hereby repealed.

Capital Convictions on Circumstantial Evidence.

342. Sec. XXXVI. When a person shall be convicted on circumstantial evidence alone, of a crime, the punishment of which is death, the judge before whom the conviction takes place, or who passes the sentence of the law on the convict, shall have the power to commute the punishment of death, for that of imprisonment, and labor in the penitentiary, during the natural life of the said convict.

Becoming Insane after Conviction.

343. Sec. XXXVII. If, after any convict shall have been sentenced to the punishment of death, he shall become insane, the sheriff of the county, with the concurrence and assistance of the inferior court thereof, shall summon a jury of twelve men, to inquire into such insanity; and if it be found by the inquisition of such jury, that such convict is insane, the sheriff shall suspend the execution of the sentence directing the death of such convict, and make report of the said inquisition and suspension of execution, to the presiding judge of the district, who shall cause the same to be entered on the minutes of the superior court of the county where the conviction was had. And at any time thereafter, when it shall appear to the said presiding judge, either by inquisition or otherwise, that the said convict is of sound mind, the said judge shall issue a new warrant, directing the sheriff to do execution of the said sentence, on the said convict, at such time and place as the said judge may appoint and direct, in the said warrant, which the sheriff shall be bound to do accordingly. And the said judge shall cause the said new warrant and other proceedings in the case, to be entered on the minutes of the said superior court.
Female Convicts Pregnant.

344. Sec. XXXVIII. If a female convict, sentenced to the punishment of death, shall be found pregnant with child, the sheriff, with the concurrence and assistance of the inferior court, shall select one or more physician or physicians, who shall make inquisition, and if upon such inquisition, it appear that such female convict is quick with child, the sheriff shall suspend the execution of the sentence, directing the death of such female, and make report of the said inquisition and suspension of execution, to the presiding judge of the district, who shall cause the same to be entered on the minutes of the superior court of the county where the conviction was had—and at any time thereafter, when it shall appear to the said presiding judge, that the said female convict is no longer quick with child, he shall issue a new warrant, directing the sheriff to do execution of the said sentence, at such time and place as the said judge may appoint and direct, in the said warrant, which the sheriff shall be bound to do accordingly. And the said judge shall cause the said new warrant and other proceedings in the case to be entered on the minutes of said superior court.

If Execution is not done at Appointed Time, &c.

345. Sec. XXXIX. Whenever, for any reason, any convict sentenced to the punishment of death, shall not have been executed pursuant to such sentence, and the same shall stand in full force, the presiding judge of the Superior Court, where the conviction was had, on the application of the attorney or solicitor general of the district, or other person prosecuting for the State, shall issue a Habeas Corpus to bring such convict before him; or if such convict be at large, said judge, or any judicial officer of this State, may issue a warrant for his apprehension, and upon the said convict being brought before the said judge, either by Habeas Corpus, or under such warrant, he shall proceed to inquire into the facts and circumstances of the case, and if no legal reason exist against the execution of such sentence, such judge shall sign and issue a warrant to the sheriff of the proper county, commanding him to do execution of such sentence, at such time and place as shall be appointed therein, which the said sheriff shall do accordingly. And the judge shall cause the proceedings, in such case, to be entered on the minutes of the Superior Court of the county.

Execution, within what Time from Sentence.

346. Sec. XL. Whenever any convict shall be sentenced to the punishment of death, the court shall specify the time and place of execution in such sentence, which time shall not be less than twenty days, nor more than sixty days from the time of the sentence, except in the case of a female convict, who is quick with child at the time, in which case the court may and shall appoint some day that will arrive after she shall have been delivered of such child.

Offences on Boundary Lines.

347. Sec. XLI. When an offence shall be committed on the boundary line of two counties, it shall be considered and adjudged to have been committed in either county, and an indictment for such offence
may be found and tried in, and conviction thereon may be had, in either of said counties.

**Death from an Act done in Another County.**

348. Sec. XLII. When any mortal wound shall be given; or any poison shall be administered; or any other means shall be employed in one county, by which a human being shall be killed, who shall die thereof in another county, the indictment shall be found, and the offender shall be tried, in the county where the act was performed or done, from which the death ensued.

**Lunacy and Insanity.**

349. Sec. XLIII. No lunatic or person afflicted with insanity, shall be tried, or put upon his trial for any offence during the time he is afflicted with such lunacy or insanity.—See 4 and 5.

**Attempt never to be Indicted instead of the Act.**

350. Sec. XLIV. No person shall be convicted of an assault with intent to commit a crime, or of any other attempt to commit any offence, when it shall appear that the crime intended, or the offence attempted, was actually perpetrated by such person at the time of such assault, or in pursuance of such attempt.—See 366.

**Jury may find the Attempt instead of the Act.**

351. Sec. XLV. Upon the trial of an indictment for any offence, the jury may find the accused not guilty of the offence charged in the indictment, but guilty of an attempt to commit such offence, without any special count in said indictment for such attempt—Provided, the evidence before them will warrant such finding.

**Two Convictions—Longest Time.**

352. Sec. XLVI. If any person who has been convicted of an offence, and sentenced to confinement and labor in the penitentiary, shall afterwards commit a crime, punishable by confinement and labor in the penitentiary, and be thereof lawfully convicted, such convict shall be sentenced to undergo and suffer the longest period of time and labor prescribed for the punishment of such offence, of which he stands convicted.

**On Trials for Escape, &c., other Convicts Competent Witnesses.**

353. Sec. XLVII. On the trial of any convict in the penitentiary, for the crimes of escape and mutiny, or either of them, any other prisoner or convict, not included in the same indictment, shall be a competent witness; and the infamy of his character and of the crime of which he has been convicted, shall be exceptions to his credit only.

**Questions on Voir Dire.**

354. Sec. XLVIII. On all trials for crimes or offences, where the punishment is death, or imprisonment and labor in the penitentiary, any juror may be put on his voir dire, and the following questions shall
be propounded to him, viz:—“Have you, from having seen the crime committed, or having heard any part of the evidence delivered on oath, formed and expressed any opinion, in regard to the guilt or innocence of the prisoner at the bar?” If the juror shall answer in the negative, the following question shall be propounded to him:—“Have you any prejudice or bias, resting on your mind, for or against the prisoner at the bar?” And if the juror shall so answer these questions as to make him a competent juror, the State or the prisoner may, nevertheless, have the right to put such juror upon his trial in the manner pointed out by law, and to prove such juror incompetent.

Penitentiary Imprisonment, Disqualification.

355. Sec. XLIX. Any person sentenced to confinement and labor in the penitentiary, is and shall be thereby rendered incapable of holding or exercising any public or private office, trust, power or authority, and any such held by him shall become and be vacant, by virtue of such sentence.

Joint Defendants may be Tried Separately.

356. Sec. L. When two or more defendants shall be jointly indicted for any offence, any one defendant may be tried separately, except such offences as require the action and concurrence of two or more to constitute the crime; and in such cases the defendants shall be tried jointly.—See 368 and 369.

Opprobrious Words may be Proved in Evidence.

357. Sec. LI. On the trial of any indictment for an Assault, or an Assault and Battery, the defendant may give in evidence to the jury, any opprobrious words, or abusive language, used by the prosecutor, or person assaulted or beaten; and such words and language may, or may not, amount to a justification, according to the nature and extent of the battery; all which shall be determined by the jury.

Oath of Inquest of Insanity.

358. Sec. LII. On the trial of the question of insanity, arising after the person shall have been condemned to die, provided for by the Thirty-seventh Section of this Code, [Division,] the following oath shall be administered to the jury, to wit: “You, and each of you, do solemnly (swear or affirm,) that you will well and truly try this issue of insanity, between the State and (A. B.) now condemned to die, and a true verdict give according to evidence—so help you God.”

Evidence to be taken down.

359. Sec. LIII. That on the trial of all cases, where the party, if found guilty, would be subjected to confinement in the penitentiary, or to any greater punishment, it shall be the duty of the presiding judge to have the testimony, given in said cases, taken down; and in the event of the jury returning a verdict of guilty, the testimony shall be entered on the minutes of the court, or a book to be kept for that purpose.
CHAPTER XVIII

FIFTEENTH DIVISION.

Of Contempts of Court, and Attempts to Commit Crimes.

Power of Courts in Punishing Contempts.

360. Sec. I. The power of the several courts of law and equity in this State, to issue attachments and inflict summary punishments, for contempts of court, shall not extend to any cases, except the misbehavior of any person or persons, in the presence of the said courts, or so near thereto as to obstruct the administration of justice; the misbehavior of any of the officers of said courts, in their official transactions, and the disobedience or resistance, by any officer of said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree or command, of the said courts.

Attempts to Commit Crimes—how Punished.

361. Sec. II. If any person shall attempt to commit an offence prohibited by law, and in such attempt shall do any act towards the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted from executing the same; such person so offending, shall be indicted for a misdemeanor, and on conviction thereof shall, in cases where no provision is otherwise made in this Code, or by law for the punishment of such attempt, be punished as follows:

362. First.—If the offence attempted to be committed be such as is punishable by law with death, the person convicted of such attempt, shall be punished by imprisonment and labor in the penitentiary, for any time not less than two years, nor more than seven years.

363. Second.—If the offence attempted to be committed, be punishable by law, by imprisonment and labor in the penitentiary, for a time not less than four years, the person convicted of such attempt, shall be punished by imprisonment and labor in the penitentiary, for any time not less than one year, nor more than four years.

364. Third.—If the offence attempted to be committed be such as is punishable by law, by imprisonment and labor in the penitentiary for a time not less than two years, the person convicted of such attempt shall be imprisoned in the penitentiary at labor for the term of one year.
365. Fourth.—If the offence attempted to be committed be punishable by law, by imprisonment and labor in the penitentiary, for a time not exceeding one year, the person convicted of such attempt shall be punished by fine not exceeding five hundred dollars, or imprisonment in the common jail, or both, at the discretion of the court.

366. Fifth.—If the offence attempted to be committed be punishable by law, by fine not exceeding five hundred dollars, or imprisonment in the common jail, or both, the person convicted of such attempt shall be punished by fine, or imprisonment in the common jail, at the discretion of the court.—See 350.

Acts Repealed.

367. Sec. III. The following acts and parts of acts, that is to say—an Act entitled "An Act declaring that to murder any free Indian in amity with this province, is equally penal with the murder of any white person, and that to rescue a prisoner committed for such offence, is felony,"—passed on the 20th day of June, 1774. An Act entitled "An Act more effectually to prevent the evil practice of Stabbing," passed on the 26th day of November, 1802. The 4th, 5th, 20th and 22d sections of an Act entitled "An Act to carry into effect the Penal Code of this State, and the penitentiary system founded thereon," passed the 19th day of December, 1816. An Act entitled "An Act to amend the Penal Code of this State," passed the 20th day of December, 1817. An Act entitled "An Act to repeal the Act passed on the 16th December, 1811; and the Act passed on the 19th December, 1816, on the subject of the Penal Code of this State; and to amend the Act passed on the 20th December, 1817, entitled An Act to amend the Penal Code of this State," passed on the 19th December, 1818, except the 7th section thereof. An Act entitled "An Act to amend an Act, entitled an Act to amend the Penal Code of this State, passed on the 20th day of December, 1817,"—passed on the 18th December, 1819. The first section of an Act entitled "An Act to alter and amend the Penal Code of this State, passed on the 20th day of December, 1817,"—passed on the 20th day of December, 1820. An Act entitled "An Act to alter and amend an Act passed on the 20th day of December, 1820, entitled an Act to alter and amend the Penal Code of this State, passed on the 20th day of December, 1817,"—passed on the 23d December, 1822. An Act entitled "An Act to amend the 12th section of the Ninth Division of the Penal Code of this State,"—passed on the 22d December, 1828. An Act entitled "An Act to alter and amend the 8th and 9th sections of the Ninth Division of the Penal Code, passed the 20th December, 1817,"—passed on the 22d day of December, 1829. An Act entitled "An Act to amend the Penal Code, passed in the year 1817,"—passed the 21st day of December, 1829. The 10th and 11th sections of an Act entitled "An Act to amend the several laws now in force in this State, regulating Quarantine in the several seaports of this State, and to prevent the circulation of written or printed papers within this State, calculated to excite disaffection among the colored people of this State, and prevent said people from being taught to read or write,
&c., &c.,” passed the 22d December, 1829. An Act entitled “An Act to prohibit the employment of slaves and free persons of color, in the setting of types in printing offices in this State,” passed the 22d December, 1829. The 1st, 4th, 6th, and 7th sections of an Act entitled “An Act to alter and amend an Act to prohibit slaves from selling certain commodities therein mentioned,” passed the 19th December, 1818. The 3d section of an Act entitled “An Act for regulating Taverns and reducing the rates of Tavern Licenses,” passed the 24th December, 1791. The 1st section of an Act entitled “An Act supplementary to an Act, entitled an Act respecting Bastardy and other immoralities,” passed the 26th November, 1802. The 5th section of an Act entitled “An Act to regulate Taverns, and to suppress Vice and Immorality,” passed the 14th August, 1786. And all other Acts and parts of Acts militating against this Act, be, and the same are hereby repealed, from and after the 31st day of May next.

Joint Defendants—How Tried.

AN ACT to amend the Penal Code now of force in this State, so far as relates to the trial of persons committing offences, where it requires the joint action and concurrence of two or more persons to commit the same.

Whereas, by the now existing Penal Code of force in this State, it is imperative on the several superior courts in this State, to try persons jointly committing offences, which require the joint action and concurrence of two or more to commit the same, in consequence of which, offenders are permitted to escape unpunished, for remedy whereof:

That from and immediately after the passage of this act, it shall be lawful for the several superior courts in this State, that when any persons shall be arraigned before any of the aforesaid courts, charged with any offence which requires the joint action and concurrence of two or more persons to commit the same, it shall be lawful for said superior courts to try any two or more of such persons so offending, and that all laws and parts of laws militating against this act, be and the same are hereby repealed.—See 356.—Act of 1836.

Small Offences—How Tried.

AN ACT to regulate the trial of any person or persons for an offence which subjects the offender to fine or imprisonment in the common jail, or both, at the discretion of the court, relative to the mode of empannelling and challenging jurors for the trial of the same.

From and after the passing of this act, that upon the trial of any person or persons, for an offence which subjects the offender to fine or imprisonment in the common jail, or both, at the discretion of the court, it shall be the duty of the court before whom he or she is tried, to have a pannel of twenty-four jurors, made up from the petit jurors in attendance, or by summoning talismen, of which pannel the defendant shall have the right to challenge seven, and the State five jurors, and the remaining twelve jurors shall try the defendants.—Act of 1836.
CHAPTER XIX.

GRAND JURY.

The grand jury are sworn to inquire only for the body of the county, *pro corpore comitatus*, and, therefore, they cannot regularly inquire of a fact done out of that county for which they are sworn, unless particularly enabled by act of parliament. And to so high a nicety was this matter anciently carried, that where a man was wounded *in one county*, and died in *another*, the offender was at common law indictable in neither, because no complete *act of felony* was done in any one of them: but by statute 2 & 3 Edw. VI., c. 24, he is now indictable in the county where the party died.—4 Blac. Com. 303.

When any mortal wound shall be given, or any poison shall be administered, or any other means shall be employed *in one county* by which a human being shall be killed, who shall die thereof in *another* county, the indictment shall be found, and the offender shall be tried in the county where the act was performed or done, from which the death ensued.—*Prin. Dig.*, 664.

This grand jury are previously instructed in the articles of their inquiry, by a charge from the judge who presides upon the bench. They then withdraw, to sit and receive indictments, which are preferred to them in the name of the king, but at the suit of any private prosecutor; and they are only to hear evidence on behalf of the prosecution: for the finding of an indictment is only in the nature of an inquiry or accusation, which is afterwards to be tried and determined; and the grand jury are only to inquire upon their oaths, whether there be sufficient cause to call upon the party to answer it. A grand jury, however, ought to be thoroughly persuaded of the truth of an indictment, so far as their evidence goes; and not to rest satisfied merely with remote probabilities: a doctrine that might be applied to very oppressive purposes.—4 Blac. Com., 303.

The grand jury ought never to be assisted by the depositions taken before the magistrate, except where these depositions could be read in evidence to the petit jury.—*Denby's case, Leach*, 580; 4 Blac. Com. *n.* 303.

When the grand jury have heard the evidence, if they think it a groundless accusation, they used formerly to endorse on the back of the bill, "*ignoramus;*" or, we know nothing of it; intimating, that though the facts might possibly be true, that truth did not appear to them: but now, they assert in English, more absolutely, "not a true bill;" or, (which is the better way,) "not found," and then the party is discharged without further answer. But a fresh bill may afterwards be preferred to a subsequent grand jury. If they are satisfied of the truth of the accusation, they then endorse upon it, "a true bill," anciently, "*billa vera.*" The indictment is then said to be found, and the party stands indicted. But to find a bill there must, at least, twelve of the jury agree: for so tender is the law of England of the lives of the subjects, that no man can be convicted at the suit of the king of any capital offence, unless by the unan-
imous voice of twenty-four of his equals and neighbors: that is, by twelve, at least, of the grand jury, in the first place, assenting to the accusation; and, afterwards, by the whole petit jury, of twelve more, finding him guilty upon his trial. But if twelve of the grand jury assent, it is a good presentment, though some of the rest disagree. And the indictment, when so found, is publicly delivered into court.—4 Blac. Com. 306; 1 Chit. Crim. Law, 267.

41. No grand jury shall consist of less than eighteen or more than twenty-three, but twelve may find a bill or make a presentment.—Act of 1799.

Any one who may be present on the occasion, is bound not to disclose what may transpire; and the jurors themselves are, by the terms of their oath, held under the same obligation; and if they transgress it they are fineable. Formerly, indeed, they became accessories to the offence, if felony, and if treason, principals. And, at this day, it is, in general, a high misprision. But where a witness, examined on the trial, swears directly the reverse of the evidence given before the grand jury, they are at liberty to state this circumstance to the judge, who may direct him to be prosecuted for perjury on the testimony of the grand inquest. And it has been held that the true object of the secrecy required, is to prevent the evidence produced before the grand jury from being counteracted by subornation of perjury on the part of the defendant.

The grand jury, in general, hear evidence only in support of the charge, and not in exculpation of the defendant, and it has been said that they ought never to hear any other than that which is produced for the crown. But it may be doubted whether, as they are sworn to present the truth which necessarily requires investigation, in case they may not be able to elicit truth from the witnesses for the prosecution, and are actually convinced of that circumstance, they may not require other testimony to assist them in forming their decision. —1 Chit. Crim. Law, 260.

After the grand jury have heard the evidence, they are to decide whether the bill shall be found or rejected. In the finding, twelve of the jurymen, at least, must concur, but if the rest of the jury dissent, the finding will still be valid.—1 Chit. Crim. Law, 264.

The names of the jurors are, in case of treason, inserted, and, although there are some precedents which do not specify them, it seems to be settled, that the schedule returned to the writ of certiorari with the indictment, will be bad without them.—1 Chit. Crim. Law, 272.

In future the oath to be administered to the foreman of all grand juries shall be as follows, viz: "You, as foreman of the grand jury of the county of ——, shall diligently inquire, and true presentments make of all such matters and things as shall be given you in charge, or shall come to your knowledge, touching the present service; the state's counsel, your fellows' and your own, you shall keep secret (unless called on to give evidence thereof in some court of law in this State:) You shall present no one for envy, hatred, or malice, nor shall you leave any one unpresented from fear, favor, affection, or reward, or the hope thereof; but you shall present all things truly and as they come to your knowledge, so help you God." And the same oath which is taken by the foreman, shall be taken by each and every member of any and all the grand juries in this State.—Act of 1812.

NOTE.—In addition to the above oath, the solicitor-general, at the same time, swears the foreman as a special juror, thus: "You shall, well and truly, try each cause submitted to you during the present term, and a true verdict give, according to equity and the opinion you entertain of the evidence produced to you, to the best of your skill and knowledge, without favor or affection to either party: Provided, you are not discharged from the consideration of the case or cases submitted; so help you God." And as a juror, to try claim appeal cases, thus: "In addition to the oaths you have al-
ready taken, you do further swear to give such damages, not less than ten per cent, as may seem reasonable and just, to the plaintiff, against the claimant, in case it shall be sufficiently shown that the claim was made for delay only; so help you God."

The clerk then calls up, four at a time, the members of the grand jury, who heard the oaths as they were administered to the foreman, and the solicitor-general swears them thus:

"The same oaths which your foreman has taken on his part, you, and each of you, do take, and shall, well and truly, observe and keep, on your part; so help you God."

If any of the members of the grand jury join the body after the foreman has been sworn, the oaths as administered to him, must be administered to them—this is called swearing them in chief.

Grand jurors shall be bound only to notice or make presentment of such offenses as may or shall come to their knowledge or observation after they shall have been sworn, but nothing in this act shall be considered as impairing their right as jurors to make presentments of any violations of the laws which they may know to have been committed at any previous time.—Act of 1829.

6. It shall be the duty of the grand juries in the several counties in this State, from term to term of the Superior Court, to inspect and examine the offices, papers and records in the Superior and Inferior courts of their counties, and if the said proceedings shall not have been copied into a book or books of record according to the true intent and meaning of this act, they shall cause the clerk or clerks who shall have failed or neglected to do his duty as required by this act, to be presented for non-performance of official duty, and the said Superior Court shall order the bond of such clerk to be prosecuted, and recovery shall be had thereon as directed in the aforesaid third section of this act, and if there be no bond, said court shall proceed against such clerk as in such case is therein directed.—Act of 1829.

NOTE. In addition to the duty required in the above statute, the grand jury must examine the books and accounts of all the fiscal officers of the county, such as the sheriff and county treasurer, treasurer of the poor school fund, and any other person who may have been intrusted with public money; the clerk’s books and papers of the court of ordinary; the clerk’s books of the inferior court, particularly the estray book; the condition of the public roads, bridges and ferries in the county; the condition of the public buildings, particularly the jail; and present any defalcation or deficiency which may appear therein.

A PRESENTMENT generally taken, is a very comprehensive term, including not only presentments properly so called, but also inquisitions of office, and indictments by a grand jury. A presentment, properly speaking, is the notice taken by a grand jury of any offence from their own knowledge or observation, without any bill of indictment laid before them at the suit of the king. As the presentment of a nuisance, a libel, and the like, upon which the officer of the court must afterwards frame an indictment before the party presented can be put to answer it.—4 Blac. Com. 301.

Special Presentment.

STATE OF GEORGIA,  A

The Grand Jurors, sworn, chosen, and selected

Houston County.  for the county of Houston, to wit: the undersigned, by presentment, in the name and behalf of the citizens of Georgia, charge and accuse John Doe, of the county and State aforesaid, with the offence of Assault and Battery: for that the said John Doe, in said county, on the first day of April, in the year of our Lord eighteen hundred and fifty, with force and arms, in the town of Perry, in said county, did, unlawfully, in and upon one Richard Roe, in the peace of God and said State, then and there being, make an Assault, and the said Richard Roe, did, then and there, beat, bruise and ill-treat, to the great damage of him, the said Richard Roe, con-
trary to the laws of said State, the good order, peace and dignity thereof.

April term, 1850.

1. James Towls, foreman.
2. George M. Skinner.
5. Giles M. Swallow.
6. Perry Williamson.
7. Willis F. Hall.
8. Harvey Ball.
15. Greene Brown.
17. Jonah Daniels.
19. Samuel Wright.
20. Roger Wall.
22. Solomon Kent.
23. Charles Thomas.

Witness—Charles Smith.

Note.—The compiler here remarks, that the names of the jurors must be written out in full, as in the form, not abbreviated, as Jas. for James, Jos. for Joseph, &c., or J. for John, S. for Samuel, &c., for if that be done it will vitiate the presentment.

The jury cannot find one part of the same charge to be true, and another false, but they must either maintain or reject the whole, and, therefore, if they endorse a bill of indictment for murder, "billa vera se defendendo," or billa vera for manslaughter and not for murder, the whole will be invalid, and may be quashed on motion. It has indeed been said, that if a grand jury find a bill for manslaughter on an indictment for murder, the words "of malice aforethought," and "did murder," may be struck out, and the indictment amended by reducing it to a mere accusation of the inferior offence in the presence of the jury. This, however, seems questionable, and it is agreed, that it is the safer course to prefer a fresh indictment for manslaughter, and so, where the bill is originally for burglary, to prefer an indictment for theft, which is, in substance, included. This rule, however, does not extend to the finding of different counts, for, as each count contains a distinct charge, the jury may return a true bill upon one of them only, and the finding will be as valid as if no other had ever been inserted. And an indictment against several may be found, against one or more, and rejected as to the rest.—1 Chit. Crim. Law, 264.

When the jury have made these endorsements on the bills, they bring them publicly into court: and the clerk of the peace at sessions, or clerk of assize on the circuit, calls all the jurymen by name, who severally answer to signify that they are present; and then the clerk of the peace, or assize, asks the jury whether they have agreed upon any bills, and bids them present them to the court, and then the foreman of the jury hands the indictments to the clerk of the peace, or clerk of assize, who asks them if they agree, the court shall amend matter of form, altering no matter of substance, to which they signify their assent. This form is necessary, in order to enable the court to alter any clerical mistake, because they have no authority to change the form of the accusation, without the consent of the accusers.—1 Chit. Crim. Law, 266.

Trading with Slaves.

If any person shall buy or receive from any slave, any amount of money exceeding one dollar, or any cotton, tobacco, wheat, rye, oats, corn, rice, or poultry of any description whatever, or any other article, commodity or thing (except brooms, baskets, foot and bed mats, shuck collars, and such other thing
or things; article or articles, as are usually manufactured or vended by slaves, for their own use only) without written permission from the owner, overseer, or employer of such slave, or some other person authorized to give such permission, authorizing such slave to sell and dispose of said money or other article or articles; such person so offending shall be guilty of a misdemeanor, and on conviction, be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court. If any owner, overseer, employer, shopkeeper, storekeeper, or any other person whatsoever, shall sell to or furnish any slave or slaves, or free person of color, with spirituous liquor, wines, cider, or any intoxicating liquors for his own use or for the purpose of sale, such person so offending shall, upon conviction thereof, pay a fine not less than ten dollars, nor more than fifty dollars, for the first offence, and upon a second conviction, to be subject to fine and imprisonment in the common jail of the county, at the discretion of the court, not to exceed sixty days imprisonment and five hundred dollars fine: Provided, nothing herein contained shall prevent the owner, overseer or employer, from furnishing their slaves or those under their care, with such quantity of spirits, &c., as they may believe is for the benefit of such slave or slaves, but in no case to permit them in any way to furnish others therewith.

If any slave or slaves shall be found in any store-house or tippling shop, unless sent by his, her, or their owner, overseer or employer, after the hour of nine o'clock at night, or before day-break in the morning or on the Sabbath day, it shall be taken and received as presumptive evidence against the person or persons owning, or person keeping the store or tippling shop, of a violation of the thirteenth section of this Division, which presumption may be rebutted by any other circumstance in favor of the accused.

If any person shall sell or deliver to any slave or slaves, any goods, wares, or merchandise, or any other thing or things, unless it be in exchange for some article or articles, which the owner, overseer, or employer of such slave or slaves, may have authorized such slave or slaves to trade or deal in, according to the provisions of the thirteenth section of this Division, such person so offending shall be guilty of a misdemeanor, and on conviction shall be punished by fine, or imprisonment in the common jail of the county, or both, at the discretion of the court.

Gambling.

If any person shall, by himself, servant or agent, keep, have, use, or maintain a gaming-house or room, or shall in any house, place, or room, occupied by him, permit persons with his knowledge to come together and play for money, or any other valuable thing, at any game of Faro, Loo, Brag, Bluff, or any other game played with cards, such person so offending shall, on conviction, be fined in a sum not exceeding $500, and imprisoned in the common jail of the county for any time not exceeding three months.

If any person shall, by himself, or servant, or any other agent, keep or employ any Faro table, E O table, or A B C table, or other table of like character, and shall, either by himself or agent, preside or deal at any Faro table, or use any E O, or A B 0 table, or other table of like character, for the purpose of playing and betting at the same, such person so offending shall, on conviction, be fined in a sum not exceeding $500, or be imprisoned in the common jail of the county, for any time not exceeding six months, or both, at the discretion of the court.

If any person shall play and bet for money, or other things of value, at any game of faro, loo, brag, bluff, three-up, poker, vingtun, euchre, or any other game or games played with cards, or shall play and bet for money or other things of value, at any E O or A B C table, or other table of like character, or
shall bet at any game of nine-pins or ten-pins, or of any other number of pins, such person so offending shall, on conviction, be fined in a sum not less than twenty dollars, nor more than one hundred dollars.

On the trial of any person for offending against the three preceding sections of this Division, any other person who may have played and betted at the same time or table, shall be a competent witness, and be compelled to give evidence, and nothing then said by such witness shall at any time be received or given in evidence against him in any prosecution against the said witness, except on an indictment for perjury, in any matter to which he may have testified.

Gambling with Negroes.

That from and after the passage of this act, if any white person or persons are found playing and betting, or playing or betting, with a negro or negroes, or free person of color, or free persons of color, at any game with cards, dice, or any other game or games of chance or hazard, for the purpose of betting upon, or winning or losing money, or any other thing or things, article or articles of value, or otherwise; or any property, or any other article or articles, thing or things of value, may be indicted, and, on conviction thereof, for the first offence, shall be fined in a sum not to exceed one thousand dollars, or imprisonment in the common jail of the county where the offence may be committed, not to exceed six months, or fine and imprisonment both, at the discretion of the court; and, upon the second conviction, to be subject to imprisonment at hard labor in the penitentiary, not less than one year, nor more than four years.

Deadly Weapons.

AN ACT to guard and protect the citizens of this State against the unwarrantable and too prevalent use of deadly weapons.

1. That from and after the passage of this act, it shall not be lawful for any merchant, or vender of wares or merchandise in this State, or any other person or persons whatsoever, to sell, or offer to sell, or to keep, or have about their person, or elsewhere, any of the hereinafter described weapons, to wit: bowie, or any other kind of knives, manufactured and sold for the purpose of wearing or carrying the same as arms of offence or defence, pistols, dirks, sword-canes, spears, &c., shall also be contemplated in this act, save such pistols as are known and used as horseman’s pistols, &c.

2. That any person or persons within the limits of this State, violating the provisions of this act, except as hereafter excepted, shall, for each and every such offence, be deemed guilty of a high misdemeanor, and, upon trial and conviction thereof, shall be fined in a sum not exceeding five hundred dollars for the first offence, nor less than one hundred dollars, at the discretion of the court; and, upon a second conviction, and every after conviction of a like offence, in a sum not to exceed one thousand dollars, nor less than five hundred dollars, at the discretion of the court.

3. That it shall be the duty of all civil officers to be vigilant in carrying the provisions of this act into full effect, as well also as grand jurors, to make presentations of each and every offence under this act, which shall come under their knowledge.

4. That all fines and forfeitures arising under this act, shall be paid into the county treasury, to be appropriated to county purposes: Provided, nevertheless, that the provisions of this act shall not extend to sheriffs, deputy sheriffs, marshals, constables, overseers, or patrols, in actual discharge of their respective
GRAND JURY.

duties, but not otherwise; Provided, also, that no person or persons shall be
found guilty of violating the before-recited act, who shall openly wear, exter-
nally, bowie-knives, dirks, tooth-picks, spears, and which shall be exposed
plainly to view; And provided, nevertheless, that the provisions of this act shall
not extend to prevent venders, or any other persons who now own and have
for sale any of the aforesaid weapons, before the first day of March next.
Sec. 5. Repeals conflicting laws.

Amendatory of the above Statute.

TO alter and amend an act to guard and protect the citizens of this State
against the unwarrantable and too prevalent use of deadly weapons passed
on the twenty-fifth day of December, eighteen hundred and thirty-seven.
That from and after the passage of this act, instead of the penalties against
the offences mentioned in said act, (Act of 1837,) and which are prescribed in
the second section, the court may, in its discretion, substitute that of imprison-
ment in the common jail of the county where the offence was committed; on
conviction for the first offence, the imprisonment to consist of a term of not less
than one month, nor more than two months; and upon a second conviction and
every after conviction for a like offence, the imprisonment to consist of a term
not less than two months, nor more than four months.
Sec. 2. That all laws and parts of laws, militating against this act, be and
the same are hereby repealed.

Change Bills.

AN ACT to repeal the second and third sections of an act, entitled an act to
repeal an act entitled an act to alter and amend an act more effectually to secure the solvency of all the banking institutions in this State,
as passed on the twenty-fourth day of December, eighteen hundred and thirty-
two, assented to twenty-first December, eighteen hundred and thirty-
three, assented to twenty-third of December, eighteen hundred and forty,
and to prescribe the pains and penalties against private banking and the issu-
ing change bills, and for other purposes therein mentioned.
1. That the second and third sections of the above-recited act be, and the
same are hereby repealed; and that all persons or corporations who may have
incurred the pains and penalties of the second and third sections of said act, be
relieved from the same.
2. That any person or persons, body corporate or politic, who may hereafter
make, issue, circulate, pay, or tender in payment, any check, order, draft, or
bill for the payment of money, or other thing having the form or similitude of
a bank note, or having the form or similitude and intended to be used and cir-
culated as money or circulating medium, except such banking institutions and
corporations as by law are authorized to issue notes or bills for circulation,
shall be liable to indictment as for a misdemeanor, and, on conviction, shall
be punished by fine or imprisonment in the common jail of said county, or both,
at the discretion of the court.
3. That the making or issuing each check, order, draft, or bill, for the pay-
ment of money or other thing having the form or similitude of money, to be
used and circulated as money or circulating medium, shall be considered and
held as a separate and new offence; and that in case of the issuing or circu-
lating of said checks, orders, drafts, or other thing having the form or simili-
tude of money, by any corporation or body politic, the officer or member of
said incorporation or body politic, or the person signing said checks, orders, or
other things having the form or similitude of money, or intended to be used as
money, shall be liable to the provisions and penalties of this act.
4. That it shall be the duty of the grand juries of the several counties of this State to notice and present both individuals and incorporations for every violation of the provisions of this act, and the solicitors-general to prosecute upon such presentments; and to insure the execution and enforcement of the provisions of this act, it shall be the duty of the judges of the superior courts of this State, at the opening of each court, to give the provisions of this act specially in charge to grand juries; and that all laws and parts of laws militating against the provisions of this act be, and the same are hereby repealed.

That from and after the passage of this act, all laws of this State, making it penal or criminal for innocent holders of change bills to pass or circulate the same, be, and the same are hereby repealed: Provided, always, that no part of this act shall be so construed as to relieve the makers of change bills from the penalties of the law.

Colored Mechanics.

AN ACT to prohibit colored mechanics and masons, being slaves or free persons of color, being mechanics or masons, from making contracts for the erection of buildings or for the repairs of buildings, and declaring the white person or persons directly or indirectly contracting with or employing them, as well as the master, employer, manager, or agent for said slave, or guardian of said free person of color, authorizing or permitting the same, guilty of a misdemeanor, and prescribing punishment for violating of this act.

1. That from and after the first day of February next, each and every white person who shall thereafter contract or bargain with any slave mechanic or mason, or free person of color, being a mechanic or mason, for the erection of any building, or for the repair of any building, whether the same be done, directly or indirectly, with said slave mechanic or mason, or free person of color, being a mechanic or mason, shall be liable to be indicted for a misdemeanor; and, on conviction, to be fined at the discretion of the court, not exceeding two hundred dollars, which fine, when collected, shall be paid over to the inferior court of the county in which the case was tried, for the uses of the county.

2. That the master of said slave mechanic or mason, or the employer, manager or agent for, or guardian of, said free person of color, being a mechanic or mason, who shall knowingly authorize or permit, directly or indirectly, in contravention of the spirit and intention of this act, such slave mechanic or mason, or such free person of color, being a mechanic or mason, to make such contracts as are contemplated in the first section of this act, shall be liable to indictment for a misdemeanor, and on conviction shall be punished by a fine, at the discretion of the court, not exceeding two hundred dollars, to be applied, when collected, to county purposes, as provided in the first section of this act.

3. That the judges of the superior courts do give this act in charge to the grand juries.

Note.—In addition to the above statutes, the sixth section of the act of 1843, (Cobb’s Anal. 522, 523, and 524,) requires “that it shall be the duty of the judges of the superior courts of this State, at the first term of the superior court of each county, in each year, to give this act, (relative to the poor school fund,) in charge to the grand juries.” And by the act of 1846, (Cobb’s Anal. 451,) the judges of the superior courts are required, “at the first sitting of the superior court in any county in this State, after a sheriff shall have been elected and qualified for such county, to examine the official bond of such sheriff” &c.
ARRAIGNMENT AND TRIAL

CHAPTER XX

ARRAIGNMENT AND TRIAL.

When the offender either appears voluntarily to an indictment, or was before in custody, or is brought in upon criminal process to answer it in the proper court, he is immediately to be arraigned thereon; which is the fifth stage of criminal prosecution.

To arraign, is nothing else but to call the prisoner to the bar of the court, to answer the matter charged upon him in the indictment. The prisoner is to be called to the bar by his name.—4 Blac. Com. 323.

No person indicted, unless it be for an offence which may on conviction subject him or her to death, or imprisonment in the penitentiary, for the term of
three years or more, shall be put for his or her arraignment in the bar-dock, or
other place set apart in the court-room for the arraignment of prisoners.

Every person charged with a crime or offence which may subject him or her
on conviction to death, or imprisonment in the penitentiary for the term of
three years or more, shall be furnished previous to his or her arraignment with
a copy of the indictment, and a list of the witnesses who gave testimony before
the grand jury.

No prisoner shall be brought into court for arraignment or trial, tied, bound,
or fettered, unless the court shall deem it necessary during his or her arraign-
ment or trial: And if the health of the prisoner, or other circumstances should
render it more convenient to the prisoner and his counsel that he or she should
not be placed for his or her arraignment, or during his or her trial, within the
bar-dock, or other place assigned in the court-room for prisoners, the court
may grant the indulgence of removing the prisoner to any other place in
the court-room, or contiguous to it, requested by the prisoner or his or her
counsel.

When he is brought to the bar, he is called upon by name to hold up
his hand: which though it may seem a trifling circumstance, yet is of this im-
portance, that by the holding up of his hand constat de persona, he owns him-
sell to be of that name by which he is called. However, it is not an indispen-
sable ceremony: for being calculated merely for the purpose of identifying the
person, any other acknowledgment will answer the purpose as well: therefore,
if the prisoner obstinately and contumaciously refuses to hold up his hand, but
confesses he is the person named, it is fully sufficient.—4 Blac. Com. 323.

The intention of reading the indictment to the prisoner, is that he may fully
understand the charge to be produced against him. This is to be done in Eng-
lish by a very ancient statute, long before the proceedings in general were in
our own language, and when all the written parts of the accusation were scrup-
ulously framed in Latin. And it seems that the indictment is to be read, al-
though the defendant has had a copy delivered to him. The mode in which it
is read is, after saying "A B, hold up your hand," to proceed, "you stand
lindicted by the name of A B, late of, &c., for that you, on," &c.—1 Chit. Crip.
Law, 338.

Bill of Indictment.

STATE OF GEORGIA, the grand jurors sworn, chosen, and selected
in the county and State aforesaid, with the offence of Murder: for that the
said John Doe, on the first day of May, in the year of our Lord, eighteen
hundred and fifty, with force and arms, in the town of Perry, in the
county aforesaid, and in upon one Richard Roe, in the peace of God
and said State, then and there being, feloniously, willfully, unlawfully,
and of his malice aforethought, did make an assault. And he, the said
John Doe, a certain pistol, of the value of fifty cents, then and there
being charged with gunpowder and one leaden bullet, which said pistol,
he, the said John Doe, in his right hand, then and there, had and held,
at, against, and upon him, the said Richard Roe, then and there, feloniously, willfully, unlawfully, and of his malice aforethought, did discharge and shoot off; and that he, the said John Doe, with the leaden bullet aforesaid, by force of the gunpowder aforesaid, out of the said pistol, by him, the said John Doe, so as aforesaid discharged and shot off, him, the said Richard Roe, in and upon the left side of the said Richard Roe, a little under the lowest rib of the said Richard Roe, then and there feloniously, willfully, unlawfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said Richard Roe, then and there, with the leaden bullet aforesaid, out of the said pistol, so as aforesaid discharged and shot off, in and upon said left side, a little under the lowest rib of the said Richard Roe, one mortal wound, of the breadth of one inch, and depth of four inches, of which said mortal wound, the said Richard Roe, on and from the said first day of May, in the year of our Lord eighteen hundred and fifty, aforesaid, until the second day of May, in the year of our Lord eighteen hundred and fifty, aforesaid, did languish, and languishing did live, on which said second day of May, the year of our Lord, eighteen hundred and fifty, at Perry aforesaid, in the county aforesaid, of the mortal wound aforesaid, died; [or, then and there instantly died.] And so, the jurors aforesaid, upon their oath aforesaid, do say, that the said John Doe, him, the said Richard Roe, in the manner and by the means, (or, "in manner and form,") aforesaid, feloniously, willfully, unlawfully, and of his malice aforethought, did kill and murder, contrary to the laws of said State, the good order, peace, and dignity thereof.

October term, 1850.

WITNESSES.

JAMES WILLIAMS, Sol. Gen.

REUBEN TIMS, sworn.

CHARLES ROE, Prosecutor.

NOTE.—The Bill of Indictment, or Presentment, is usually made out by the Solicitor-General, with blanks left for the names of the jurors; these blanks are filled up by the Clerk of the Jury, before the Bill, &c., is returned to the Court. This duty should not be omitted.

Upon every indictment the prosecutor's name shall be endorsed, who, upon the acquittal or discharge of the person accused, shall be compelled to pay all costs which have accrued, if the grand jury, by their foreman, upon returning "no bill," express it as their opinion that the prosecution was unfounded or malicious; or if the petit jury, upon returning a verdict of "not guilty," shall express a similar opinion.

After this is concluded, the clerk of the arraigns proceeds to the third part of this branch of the proceedings, by adding, "how say you, A B, are you guilty or not guilty?" Upon this, if the prisoner confesses the charge, the confession is recorded, and nothing is done till judgment. But if he denies it, he answers "not guilty," which was abbreviated upon the minutes "non cul." or "nient cul." for non culpabilis, or nient culpable; upon which the clerk of assize, or clerk of arraigns, on behalf of the crown, replies that the prisoner is guilty, and that he is ready to prove the accusation.—1 Chit. Crim. Law, 339.

The proper mode of arraignment on the record is in this form, "and being brought to the bar here in his own proper person, he is committed to the marshal," &c. And being asked how he will acquit himself of the premises, (in case of felony, and "of the high treasons," in case of treason,) above laid to
ARRAIGNMENT AND TRIAL.

his charge, saith, &c. If this statement be omitted, it seems the record will be erroneous.—1 Chit. Crim. Law, 341.

Upon the arraignment of a prisoner, the indictment shall be read to him or her, and such prisoner shall be required to answer whether he or she is guilty, or not guilty, of the offence charged in the said indictment, which answer or plea shall be made orally by the prisoner, or his or her counsel. And if he or she shall plead guilty, such plea shall be immediately recorded on the minutes of the court by the clerk, together with the arraignment, and the court shall pronounce upon such prisoner the judgment of the law, in the same manner as if such prisoner had been convicted of the offence by the verdict of a jury; but at any time before judgment is pronounced, such prisoner may withdraw the plea of "guilty," and plead not guilty, and such former plea shall not be given in evidence against him or her, on his or her trial.

If the prisoner, upon being arraigned, shall plead "not guilty," or shall stand mute, the clerk shall immediately record upon the minutes of the court the plea of not guilty, together with the arraignment, and such arraignment and plea shall constitute the issue between the prisoner and the people of this State.

If the prisoner, upon being arraigned, shall demur to the indictment, or plead to the jurisdiction of the court, or in abatement, or any special plea in bar, such demurrer or plea shall be made in writing; and if such demurrer or plea shall be decided against such prisoner, then such prisoner may, nevertheless, plead and rely on the general issue of not guilty.

If the clerk shall fail or neglect to record the arraignment and plea of the prisoner at the time the same is made, it may and shall be done at any time afterwards by order of the court, and this shall cure the error or omission of the clerk.

The arraignment and plea or answer of the prisoner shall be entered on the indictment by the attorney or solicitor-general, or other person acting as prosecuting officer on the part of the people of this State.

After issue is thus joined, the clerk proceeds to ask the prisoner, "how will you be tried?" which anciently referred to the alternative of trial by battle or by jury. But, at the present day, as since the abolition of ordeal, there can be no mode of trial but by the country, the prisoner replies, "by God and my country," to which the clerk, in the humane presumption of the party's innocence, rejoins, "God send you a good deliverance." This being done, he writes on the indictment, "po. se," for ponit se, meaning that the defendant puts himself upon the country, and thus the form of the arraignment concludes.—1 Chit. Crim. Law, 339.

The sheriff having returned into court the pannel of the jury, and the time for the trial having arrived, the clerk calls the petit jury on their pannel by saying, "you good men that are empannelled to try the issue joined between our sovereign lord the king, and the prisoner (or "prisoners") at the bar, answer to your names upon pain and peril that shall fall thereon." When this is done, and a full jury appears, the clerk of arraigns calls to the prisoner at the bar and says to him, "These good men that you shall now hear called, are those which are to pass between our sovereign lord the king and you, ("upon your several lives and deaths," if it be a capital offence,) if, therefore, you (or any of you,) will challenge them, or any of them, you must challenge them as they come to the book to be sworn, before they are sworn, and you shall be heard."—1 Chit. Crim. Law, 433.

Every person indicted for a crime or offence which may subject him or her, on conviction, to death, or four years' imprisonment, or longer, in the peniten-
ARRAIGNMENT AND TRIAL.

When the trial is called on, the jurors are to be sworn, as they appear to the number of twelve, unless they are challenged by the party. — 4 Black. Com. 352.

From the words of the clerk’s address to the prisoner, it is evident, that this is the proper time to exercise the right of challenging, and therefore, before we proceed to the swearing of the jury, and the subsequent proceedings, we will consider the law relative to challenges, and the mode in which the right is to be claimed.

The term challenge is used in law for an exception to jurors who are returned to pass on a trial, and it is either to the array, or to the polls. 1 Chit. Grim. Law, 434.

Note.—“The practice in England upon the construction of the act of 33d Edward I, of passing jurorsmen in criminal cases until a whole panel is exhausted and a jury not made, before the crown can be called upon to show cause, is not authorized in this State, since the adoption of the penal code. As the jurors are called, the State must put them upon the prisoner, or otherwise challenge them, either peremptorily, to the number allowed by law, or for cause.” —Sealy vs. The State of Georgia, 1 Kel. 215, and Reynolds vs. The State of Georgia, 1 Kel. 228.

“After a juror has answered in the negative, the questions propounded under the act of 1843,” (48th section of the 14th division of the penal code,) “it is competent for the prisoner,” (or the State,) “to put him upon triors, for the purpose of showing that he is not indifferent; and the formation and expression of a decided opinion, as to the guilt or innocence of the prisoner, is a disqualification, notwithstanding it be founded on rumor or hearsay; and it is not necessary to prove personal prejudice or ill-will to the accused, it will be inferred from a deliberate opinion of guilt, once declared.” —Boon vs. The State of Georgia, 1 Kel. 619.

“The triors, in case the first man called is challenged, are two indifferent persons, named by the court,” (who should be citizens of the county,) “and when they try one man and find him indifferent, he shall be sworn, and then he and the two triors shall try the next; and when another is found indifferent and sworn, the two triors shall be superseded, and the two first sworn on the jury, shall try the next.” —1 Kel. 921.

Oath of Triors.—The following is the form of the oath to be administered to the triors: “You shall well and truly try whether John Doe, (the juror challenged,) stands indifferent to try the prisoner at the bar, and a true verdict give, according to the evidence, so help you God.”
In all criminal cases, the following oath shall be administered to the petit jury, to wit: “You shall well and truly try the issue formed upon this bill of indictment, between the State of Georgia and A B, who is charged (here state the crime or offence) and a true verdict give according to evidence—so help you God.”

As soon as each juror is sworn, he is set apart on the jury box; and when a full jury of twelve are thus sworn, the clerk of the arraigns, or clerk of the peace at the sessions, directs the crier, (“countes, or count these,”) to count the jury, who does so, and then says to the jury, “Twelve good men and true, stand together and hear your evidence;” and then the judge declares that the rest of the jury who have appeared are discharged; and the clerk of the arraigns directs the crier to make proclamation, which is made accordingly in the following form: “If any one can inform our lord the king’s justices, the king’s sergeant, or the king’s attorney, or this inquest to be taken between our sovereign lord the king and the prisoners at the bar, of any treason, murder, felony, or other misdemeanor committed or done by them, or any of them, let them come forth and they shall be heard; the prisoners stand at the bar upon their deliverance, and all others that are bound by recognizance to give evidence against the prisoners at the bar, let them come forth and give evidence, or else they forfeit their recognizance.”—1 Chit. Crim. Law, 450.

When the jury have thus been assembled in the jury box, and sworn, the clerk, in case of felony, calls to the prisoner at the bar, and bids him hold up his hand, by saying, “C D, hold up thy hand,” and then addresses the jury in these words:—“Look upon the prisoner, you that are sworn, and hearken to his cause.—A B, stands indicted by the name of A B, &c. (reading the indictment as was done upon the arraignment, and then proceeding,) upon this indictment he hath been arraigned; upon this arraignment he pleaded not guilty, and for his trial hath put himself upon God and the country, which country you are, so that your charge is to inquire whether he be guilty of the high treason (or “felony”) whereof he stands indicted, or not guilty, and no more. Hear your evidence.”—1 Chit. Crim. Law, 555.

The following oath shall be administered to witnesses in criminal cases, viz: “The evidence you shall give to the court and jury upon the trial of this issue, between the State of Georgia and A B, who is charged with ———, (here state the crime or offence,) shall be the truth, the whole truth, and nothing but the truth—so help you God.”

On every trial of a crime or offence contained in this code, or for any crime or offence, the jury shall be judges of the law and the fact, and shall in every case give a general verdict of “guilty,” or “not guilty,” and on the acquittal of any defendant or prisoner, no new trial shall on any account be granted by the court.

When the jury have come to a unanimous determination with respect to their verdict, they return to the box to deliver it. The clerk then calls them over by their names, and asks them whether they are agreed on their verdict, to which they reply in the affirmative. He then demands who shall say for them, to which they answer, their foreman. This being done, he desires the prisoner to hold up his hand, and addresses them, “look upon the prisoner you that are sworn, how say you, is he guilty of the felony (or treason, &c.) whereof he stands indicted, or not guilty?” The officer then writes the word,
"guilty," or "not guilty," as the verdict is, after the words "po. se." on
the record, and again addresses the jury, "Hearken to your verdict as the
court hath recorded it, you say that A B, is guilty (or "not guilty") of the
felony whereof he stands indicted, and so say you all."—1 Chit. Crim. Law, 518.

The verdict, whatever may be its effect, must, in all cases of felony and
treason, be delivered in the presence of the defendant, in open court, and can-
not be either privily given, or promulgated while he is absent.—1 Chit. Crim.

When the prisoner is convicted by the jury, he is put aside from the bar to
avoid the delivery of his sentence. If there is then reason to apprehend that
the indictment is defective, and that a motion to arrest the judgment may
succeed, another indictment may be preferred to the grand jury, for the crime
of which he has been convicted.—1 Chit. Crim. Law, 259.

If the jury, therefore, find the prisoner not guilty, he is then forever quit
and discharged of the accusation, except he be appealed of felony within the
time limited by law. And upon such his acquittal or discharge for want of
prosecution, he shall be immediately set at large, without payment of any fee
to the jailor. But if the jury find him guilty, he is then said to be convicted
of the crime whereof he stands indicted; which conviction may accrue two
ways, either by his confessing the offence and pleading guilty, or by his being
found so by the verdict of his country.—4 Blac. Com. 361.

If they find the prisoner generally guilty, judgment may be given against
him, provided any one count in the indictment be sufficient to support the
charge, though the rest of the indictment be faulty—for being guilty gen-
erally, he is severally guilty of each offence separately charged, and therefore
is found guilty upon that charge which is sufficient to warrant the judgment.—

The prisoner cannot be convicted of treason or felony unless he be present
in court, but he may be found guilty of a misdemeanor in his absence.—Stark.
Crim. Plead. 397.

If the defendant be in custody, or the crime be capital, he will of course be
remanded to prison in the interval between the conviction and sentence, if any
be allowed to transpire.—1 Chit. Crim. Law, 542.

Sentence.

Before judgment is pronounced upon the defendant, the crier makes procla-
mation, commanding "all manner of persons to keep silence whilst sentence of
death is passed upon the prisoner at the bar, (or other judgment is given against
him,) upon pain of imprisonment." But it is not necessary that this form
should appear on the record, and its omission will not be material. It is now
indispensably necessary, even in clergyable felonies, that the defendant should
be asked by the clerk if he has anything to say why judgment of death should
not be pronounced on him; and it is material that this appear upon the record
to have been done; and its omission after judgment in high treason will be a
sufficient ground for the reversal of the attainder. On this occasion, he may
allege any ground in arrest of judgment, or may plead a pardon, if he has ob-
tained one, for it will still have the same consequences which it would have
produced before conviction, the stopping of the attainder. If he has nothing
to urge in bar, he frequently addresses the court in mitigation of his conduct,
and desires their intercession with the king, or casts himself upon their mercy.
After this nothing more is done, but the proper judge pronounces the sentence.
—1 Chit. Crim. Law, 570.

The judge usually precedes the judgment by an address to the prisoner, espe-
cially if his crime be capital, in which he states that he has been convicted on
satisfactory evidence, and informs him when there is little hope that mercy will be extended to him. Sometimes, also, he takes an opportunity of impressing the circumstances of the prisoner's guilt on the minds of the spectators, and traces out the remote but important causes which have led him to this unhappy condition. Even in case of an acquittal, he may often usefully warn the defendant against the circumstances which might again place him in an equivocal situation, especially if there seems reasonable ground to suppose him guilty.—1 Chit. Crim. Law, 571.

The sentence of death shall be executed by publicly hanging the offender by the neck, until he or she is dead.

When a person shall be convicted on circumstantial evidence alone of a crime the punishment of which is death, the judge before whom the conviction takes place, or who passes the sentence of the law on the convict, shall have the power to commute the punishment of death for that of imprisonment and labor in the penitentiary during the natural life of the said convict.

Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the same shall stand in full force, the presiding judge of the Superior Court where the conviction was had, on the application of the attorney or solicitor-general of the district, or other person prosecuting for the State, shall issue a habeas corpus to bring such convict before him; or if such convict be at large, said judge, or any judicial officer of this State, may issue a warrant for his apprehension; and upon the said convict being brought before the said judge, either by habeas corpus, or under such warrant, he shall proceed to inquire into the facts and circumstances of the case, and if no legal reason exist against the execution of such sentence, such judge shall sign and issue a warrant to the sheriff of the proper county, commanding him to do execution of such sentence at such time and place as shall be appointed therein, which the said sheriff shall do accordingly. And the judge shall cause the proceedings in such case to be entered on the minutes of the Superior Court of the county.

Whenever any convict shall be sentenced to the punishment of death, the court shall specify the time and place of execution in such sentence, which time shall not be less than twenty days, nor more than sixty days from the time of the sentence, except in the case of a female convict who is quick with child at the time, in which case the court may and shall appoint some day that will arrive after she shall have been delivered of such child.

When the judgment is pronounced, it ought, with all the preceding matter, to be entered on the record. This record, in case of felony, states that the session of Oyer and Terminer—the commission of the judges—the presentment by the oath of the grand jurymen by name—the indictment—the award of the capias or process to bring in the offender—the delivery of the indictment into court—the arraignment—the plea—the issue—the award of the jury process—the verdict—the asking the prisoner why sentence should not be passed on him—and the judgment of death passed by the judges. In this record all the acts of the court ought to be stated in the present tense, as præceptum est, not præceptum fuit; but the acts of the parties themselves may be properly stated as past. And therefore, if it state that the sheriff was commanded, instead of is commanded, the error will be fatal. It is not necessary, however, to set forth at large the commission on which the judges proceeded to the trial, and if done, minute accuracy will not be requisite. Nor is it essential that any issue should be stated as having been joined between the crown and the defendant. So the judges need not be shown expressly to have been "assigned by the king," if it sufficiently appears that they are the king's justices; for their authority could be derived from no other source than his pleasure.—1 Chit. Crim. Law, 587.
ARRAIGNMENT AND TRIAL.

And now the usage is for the judge to sign the calendar, or list of all the prisoners' names, with their separate judgments in the margin, which is left with the sheriff. As for a capital-felony, it is written opposite to the prisoner's name, "let him be hanged by the neck;" formerly, in the days of Latin and abbreviation, "susc: per col." for "suscipatur per collum." And this is the only warrant that the sheriff has for so material an act as the taking away the life of another. — 4 Blac. Com. 403.

From and after the passing of this act, that upon the trial of any person or persons for an offence which subjects the offender to fine or imprisonment in the common jail, or both, at the discretion of the court, it shall be the duty of the court before whom he or she is tried, to have a pannel of twenty-four jurors made up from the petit jurors in attendance, or by summoning talismen, of which pannel the defendant shall have the right to challenge seven, and the State five jurors, and the remaining twelve jurors shall try the defendants.
CHAPTER XXI.

PENITENTIARY.

An Act to carry into effect the Penal Code of this State, and the penitentiary system founded thereon.

Sec. 8. Any person convicted in this State, and sentenced to the penitentiary, under the authority of the United States, shall be received in the aforesaid penitentiary, in such manner and under such conditions, as may be directed by the board of inspectors.

Sec. 21st of the Rules.—Where any convict confined in the penitentiary, is a witness in any civil cause, depending in any court of this State, and his testimony required, the same shall be taken by commission, and read at the trial of such civil cause; and in no civil case shall such convict be removed from the penitentiary to give personal attendance at court. But before such commission issues, the party, or his or her attorney, requiring such commission, shall file an affidavit, with the record of the proceedings, that the convict to be examined, is a material witness in the cause.—Act of 1816.

An Act to carry into effect the Penal Code of this State, and the penitentiary system founded thereon.

Sec. 10. If the work to be performed is of such a nature as may require previous instruction, proper persons for that purpose, to whom a suitable allowance shall be made, shall be provided by order of any two of the inspectors.

Rule 11. The keeper shall cause the yard of the penitentiary house to be kept free from horses, cows, goats, hogs and fowls, and the necessary to be kept offensive.—Act of 1816.

An Act to provide for the payment of expenses on trials for escape from the penitentiary.

From and after the passing of this act, all escapes from the penitentiary shall be tried at the expense of the State, and his excellency the governor, on the reception of a certified statement from the clerk of the Superior Court of the amount of the expense chargeable to the county of Baldwin, on any such trial or trials, (which have heretofore happened, and may hereafter take place,) shall issue his warrant for the amount, to be paid out of the penitentiary fund. All laws and parts of laws, militating against this act, are hereby repealed.—Act of 1823.

An Act to change the manner of appointing officers and agents for the penitentiary.

Sec. 4. It shall be the duty of his excellency the governor to recommend,
from time to time, to the inspectors of the penitentiary, such changes in the regimen and police of the penitentiary, as may seem to him expedient.

Sec. 5. His excellency the governor, in the examination of said quarterly reports, or in the discharge of any other function assigned to him by this act, shall have power to command the assistance and services of the Secretary of State, or of any other of the state-house officers, at his discretion.—Act of 1828.

An Act to improve the penitentiary edifice, and to regulate the manner of its concerns, and for the erecting of cells, &c., and to appropriate money for its support, and to provide a road and river fund, and for the compensation of persons appointed to survey and mark out certain roads, and for other purposes.

Sec. 4. The inspectors shall have power to direct the manner in which materials to be used in this institution, shall be purchased; but it shall in no case be lawful for any inspector, or other officer of the institution, to furnish supplies of any kind themselves, or in any manner to be interested therein.

Sec. 6. The principal keeper be authorized to make out an account against the State, for all work hereafter to be done by the convicts for the State, and other improvements done in the penitentiary.

Sec. 12. The ration of the guard of the penitentiary shall consist of twenty ounces of sifted corn meal; and eight ounces of bacon, twelve ounces of pork, or twenty ounces of beef; and one gill of molasses, each per day.

Sec. 13. The said guard shall receive for every one hundred rations, as specified in the 12th section of this act, four quarts of vinegar; four pounds of hard soap; two pounds of tallow candles, and four quarts of salt.

Sec. 19. From and immediately after the passage of this act, the inspectors of the penitentiary be, and they are hereby required to let the contract for supplying rations for the guard and convicts for each year, to the lowest bidder, and that they give twenty days notice of the time and place of receiving sealed proposals from persons who may wish to bid for said contract, in all the public gazettes of Milledgeville.

Sec. 22. It shall be the duty of said inspectors to take a bond with good and sufficient security, in the sum of three thousand dollars, payable to his excellency the governor, and his successors in office, conditioned for the faithful performance of the contract, from the person who may become the lowest bidder, for supplying the rations of the guard and convicts, as pointed out in the preceding sections of this act.—Act of 1833.

An Act to revise, amend and consolidate the rules for the Police of the Penitentiary.

Rule 26. The inspectors shall not allow a commission to the principal keeper on purchases made by him.—Act of 1833.

Rule 8. Prisoners of different sexes shall at all times be kept separate and apart.

Rule 23. The inspectors shall have authority to make contracts for supplying the penitentiary with stock and materials, working tools and implements, and clothing and food for the prisoners and guard; and for the sale of articles fabricated in the penitentiary; and this power they may delegate to the principal keeper; but no inspector or other officer of the institution shall take a contract for furnishing any of the foregoing articles, or be security for any person contracting to furnish the same.
RULE 28. In any suit instituted for the recovery of money due to the penitentiary, a correct transcript from the first book of entries kept in the office of the book-keeper, containing a copy of the account, and certified by him to be a correct transcript from said book, shall be sufficient evidence to establish such account; but the defendant shall, nevertheless, be allowed to controvert the same.

RULE 29. Whenever the public service shall require articles ready manufactured, or to be manufactured in the penitentiary, such articles shall be furnished on the requisition of the governor in writing, communicated to the principal keeper.

RULE 35. The principal and assistant keepers, before they enter on the discharge of their respective duties, shall each give bond, with security, in such sum as the inspectors may require, conditioned for the faithful discharge of their several duties.

RULE 39. It shall be the duty of the physician to visit the prisoners and guards, once every day, at or before nine o’clock, A.M., and oftener, when he shall believe that the condition of any of the foregoing persons shall make it proper, or the principal keeper shall request the same, to inspect the institution generally in relation to whatever may affect its healthfulness, once in every week; and to make a succinct weekly report to the inspectors, showing the number and names of the sick, and their diseases, and embracing such other matters, in relation to his department, as he shall think it useful to communicate, or they may require.

RULE 41. Any clergyman, under the direction of the keeper, may preach to the prisoners on the Sabbath, and pray with them daily, at the close of the hours of labor, and visit them in his discretion, at other times, under such regulations as the inspectors may establish.

RULE 42. The principal keeper shall have power to permit the wives of convicts to visit their husbands, at such times, and on such occasions, during their confinement, as he shall deem safe and proper; except those convicts who are sentenced to solitary confinement.

RULE 48. The inspectors shall examine every thing appertaining to the police, government, good order, and safety of the penitentiary.

RULE 49. Every prisoner, at the time of his discharge, shall be furnished with a suit of clothes, not exceeding ten dollars in value, and with a sum of money not exceeding that amount: and the principal keeper shall be authorized to make a discrimination in the value of the clothing, and the amount of the money then furnished, according to the conduct of the prisoner during his confinement.

RULE 51. The salary of the principal keeper shall be two thousand dollars per annum. [Reduced twenty per cent. by the act of 1841.]—Act of 1833.

An Act to be entitled an Act to alter and amend the 47th and 51st Rules Established for the Government of the Penitentiary.

From and after the passage of this act, the following shall be taken in lieu of the said rules:

In lieu of the 47th rule, the following, viz.: Those prisoners that conduct themselves, so as to merit favor, shall be permitted to work for themselves during the time allotted to their meals and rest, provided the principal keeper and inspectors deem the same expedient, on such articles as the principal keeper
shall deem it expedient; but they shall not be permitted to perform any work in their cells that may occasion the smallest noise. The principal keeper may furnish them with materials, from the stock belonging to the penitentiary, to be paid for out of the price of the articles wrought by them. And the assistant keepers shall take an account of all articles wrought by them for their own benefit. These articles shall be sold only by the principal keeper, or by a guard designated by him for that purpose; no prisoner shall receive the money thus earned by him, but it shall remain in the hands of the principal keeper or guard aforesaid.

Purchases for prisoners shall be made only by the principal keeper, or by a guard designated by him for that purpose, and of such articles only as he may approve.—**Act of 1835.**

**An Act to authorize the Governor to employ a Chaplain for the Penitentiary, and to appropriate Money to purchase Bibles and Hymn-books.**

Whereas, there are in the penitentiary of this State a large number of convicts, and many of them confined for a considerable number of years, and some confined for life; and by their confinement within the walls of the penitentiary, necessarily precluded the privilege of attending religious instructions, (a privilege invaluable to every moral being.) And whereas, the convicts of the State prison are equally dependant upon the State for moral and religious instruction, as for the common comforts of life, received from the State; therefore,

**Sec. 1.** That from and after the passage of this Act, his excellency the Governor be, and he is hereby authorized, to procure the services of a preacher of the Gospel, as Chaplain for the penitentiary, whose duty it shall be to preach to the convicts, at least once every Sabbath, and afford them such other instruction as said Chaplain, and the other officers of the penitentiary, shall deem consistent with the best interests of the State.

**Sec. 2.** That said Chaplain shall have free access to the penitentiary, the same as other officers thereof; and for his services shall receive the sum of one hundred and fifty dollars per annum, as Chaplain's salary; and the Governor is hereby authorized to pay the same quarterly out of any funds in the treasury, not otherwise appropriated.

**Sec. 3.** That his excellency the Governor be, and he is hereby authorized to purchase, for the use of the convicts in the penitentiary, a Bible and Hymn-book for each convict, and to be paid for out of any monies in the treasury, not otherwise appropriated.

**Sec. 4.** That all laws, and parts of laws militating against this Act, be, and the same are hereby repealed.—**Act of 1837.**

**An Act to make it the duty of the Treasury Committee to investigate and report the condition of the penitentiary, during those years when there shall be no Session of the Legislature; and to require his excellency the Governor to appoint three persons to examine the raw materials and the assets of the Book-keeper, and report upon the same to his excellency.**

**Sec. 1.** That it shall be the duty of the Committee, which may be selected to examine into the condition of the treasure, in those years when there shall be no Session of the Legislature, to investigate fully the affairs of the penitentiary, and report the condition of said institution to his excellency the Governor, on or before the first day of November, and that he cause the same to be published and distributed, in like manner with the report on the treasury, as now provided for by law.

**Sec. 2.** That his excellency the Governor be, and he is hereby required, to appoint three fit and proper persons to examine the raw materials in the hands of the principal keeper of the penitentiary, and affix to them severally their
value, and also the assets of the book-keeper, and report their value; and that his excellency cause the same to be done annually in time for said reports to be laid before the Treasury Committee, in those years when there shall be no Session of the Legislature, and before the Joint Standing Committee during the Session of the Legislature, to the end, that perfect reports of the condition of the institution may be made.—Act of 1847.

An Act for the Better Government of the Penitentiary.

Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same, That it shall be the duty of the assistant keeper of the penitentiary, in addition to his other duties, to open a set of books on the system of double entry, in which shall be kept a full and correct account of all purchases made, a proper record of all the raw material consumed in the various workshops, as well as of all the manufactured articles, cash and job work turned over to the salesman. It shall also be his duty to take charge of the store-house containing the materials, and issue the same to the different overseers of the workshops, taking care to charge the shop, for which the issue is made, with every item so issued.

Sec. 2. And be it further enacted, that the book-keeper shall be the collecting officer of the penitentiary, and shall from time to time, and within one year after any debt shall be contracted, place the same in suit, and press the collection thereof, and shall receive for all the duties required of him, the sum of one thousand dollars annually, to be paid as the other salaries of the officers of the institution are.

Sec. 3. And be it further enacted, that the principal keeper shall be allowed to use his discretion in relation to the time the convicts shall be confined in their cells on the Sabbath day.

Sec. 4. And be it further enacted, that the principal keeper and inspector shall make their returns to the Governor once a year only.

Sec. 5. And be it further enacted, that the Governor shall appoint biennially, instead of annually, three commissioners, to take an inventory of the stock of the penitentiary;—the first appointment to be made in the year one thousand eight hundred and fifty.

Sec. 6. And be it further enacted, that the principal keeper be, and he is hereby authorized to sell and dispose of all old and useless materials on hand, and that he be allowed a proper credit for the same in his accounts.—Act of 1849.

The following Rules shall be Established for the Government of the Penitentiary.

An Act to revise, amend, and consolidate the rules for the Government and Police of the Penitentiary of the State of Georgia.

Sec. 1. Be it enacted by the Senate and House of Representatives of the State of Georgia, in General Assembly met, and it is hereby enacted by the authority of the same, That from and after the passing of this act, the following rules shall be established for the government of the Penitentiary of the State of Georgia.

Rule 1.—The officers for the management of the Penitentiary, shall be one Inspector, one Principal Keeper, one Book-keeper, and a Physician.

Rule 2.—The Inspector, Principal Keeper, Book-keeper, and Physician, shall be appointed by the Governor, and their term of office shall be one year.
The Governor shall have the power of removing all or either of said officers, and filling their vacancies.

RULE 3.—There shall be one Assistant Keeper and as many Overseers, not to exceed four, as the Principal Keeper may think necessary, who shall be appointed by the Principal Keeper, and their term of office shall be one year; and the Principal Keeper is hereby empowered to remove either the Assistant Keeper and any or all of the Overseers, and to fill the vacancy or vacancies by appointment. The salary of the Assistant Keeper shall be eight hundred dollars per annum, and that of the Overseers shall be four hundred dollars each per annum.—Act of 1843.

RULE 4.—It shall be the duty of the Principal Keeper to cause the clothes of each prisoner, when received into the Penitentiary, to be cleansed and put away, labelled with his name, to be returned to him on his discharge; or if the prisoner should desire his clothes to be sold, the Principal Keeper shall sell them, and deposit the money arising from such sale in the Clerk's office, to be paid over to the prisoner on his discharge—or in case of his death while in prison, then to his legal representatives.

RULE 5.—The description of every prisoner, when he is received into the Penitentiary, shall be entered in a book to be kept for that purpose by the Principal Keeper, in which shall be entered the name, age, height, color of the eyes and hair, complexion, place of nativity, time of conviction, county where convicted, nature of the crime, and period of confinement.

RULE 6.—Every prisoner, when he is received into the Penitentiary, shall be carefully searched and deprived of any article by which an escape might be effected, and also, of all monies in his possession, to be returned to him on his discharge; or in case of his death while in prison, then to his legal representatives.

RULE 7.—On the receipt of every prisoner into the Penitentiary, such parts of the laws of the State as impose penalties for escapes, and such rules as relate to the conduct of the prisoners, shall be read to him; and on his discharge, such parts of laws as impose additional penalties for a repetition of like offences shall be read to him.

RULE 8.—The clothing annually furnished to the prisoners, shall consist of one round jacket, one vest and one pair of trousers of kerseys, two pair of shoes, two pair of coarse yarn socks, two shirts, and two pair of trousers made of cotton cloth, and one round jacket of the same. The round jacket and trousers to be made, one half of each of various colors; and an additional suit of clothing to each of the convicts who may labor at the blacksmith's work. And for each male, of two frocks and two petticoats, made of grey kerseys; two petticoats and two shifts, made of oznaburgs or cotton cloth; two pair of shoes, two pair of stockings, and two blue linen or cotton neckerchiefs.—Act of 1833. And they shall not be allowed to wear any other kind of clothes in the Penitentiary. And each prisoner shall be furnished with a cheap matrass and such number of blankets as the Principal Keeper believes shall be needed.

RULE 9.—The prisoners, except on Sundays and when confined in their cells, shall be kept at hard labor, as far as may be consistent with their age, health and ability; and they shall be so arranged at labor as to be under the constant inspection of the Assistant Keeper or one of the Overseers, as far as may be practicable, whose duty it shall be to prevent intercourse between the convicts, except so far as may be required by any work in which they may be jointly employed.

RULE 10.—The hours of labor shall be as many as the length of the days will
permit, with the exception of not more than forty minutes each, for breakfast and dinner.

Rule 11.—It shall be the duty of the assistant keeper and overseers to see that each prisoner, in their several departments, shall keep his tools in safety and good order; and each prisoner shall be responsible for his own tools.

Rule 12.—A garden shall be attached to the penitentiary, for the purpose of raising vegetables for the prisoners, to be worked by them, under such precautions as the principal keeper shall believe will prevent the danger of escape.

Rule 13.—The walls of the cells, and other apartments of the prison building, shall be whitewashed at least once a year; the floors shall be kept neat and clean, and the building fumigated and purified with chloride of lime, as often as the physician or principal keeper shall believe conducive to the health of the prisoners.

Rule 14.—An apartment or apartments shall be prepared as a hospital, in which the sick shall remain, unless otherwise directed by the physician. And if any prisoner, at the expiration of his confinement, shall be dangerously ill, such prisoner shall not be discharged while sick, unless at his request.

Rule 15.—If any prisoner shall be guilty of any violation of any rule herein prescribed, or of any order of the principal keeper, not contrary to the laws of this State, he shall be punished at the discretion of the principal keeper. In no case whatever shall the principal keeper, or any other officer of the institution, be allowed to inflict corporal punishment with the lash on any convict, without the express direction of the inspector.

Rule 16.—No letter or other communication in writing shall be carried in or out of the penitentiary, without being first examined, and permitted by the principal keeper; nor shall any article be carried into or out of the penitentiary, for the use or benefit of the prisoners, without his consent.

Rule 17.—No person, except those authorized by law, shall go within the penitentiary, as a visitor, unless by the permission of the principal keeper; and such visitor, while within the penitentiary, shall, in every instance, be attended by one of the keepers, or one of the guard.

Rule 18.—The prisoners shall not be allowed to use any spirituous or fermented liquors, except it is prescribed by the physician for the sick.

Rule 19.—No light shall be permitted in the cells of the prisoners after they are locked up for the night, during any season of the year.

Rule 20.—The prisoners shall be kept separated in the cells, which shall be numbered, and divided into as many wards as there are overseers, one ward being assigned to each, whose duty it shall be always to examine said cells before the prisoners are turned into them, and to search each prisoner before he enters the cell, and take from him whatever might be used in effecting his escape, bedding and clothing excepted.

Rule 21.—The Inspector shall purchase all materials that may be required by the principal keeper for the use of the penitentiary; and when delivered, shall take the principal keeper’s receipt for the same. And in all instances he shall have the authority, and he is hereby required, at stated times, to advertise in two of the public gazettes in Milledgeville, for sealed proposals to furnish supplies of such wood, stock, and coal, as may be required for the use of the penitentiary; and to purchase such provision and stores as may be required for the prisoners and guard; but in no case is he authorized to purchase any article, except upon the requisition of the principal keeper in writing.

Rule 22.—It shall be the duty of the principal keeper to give duplicate receipts for all materials delivered to him by the inspector, (if in good order and condition) for the use of the penitentiary; and to deliver all articles which are
manufactured and ready for sale, to the book-keeper, who shall give duplicate receipts for the same, in which shall be specified the price or value of each article, as placed by the inspector and principal keeper.

Rule 23. It shall be the duty of the book-keeper to sell all articles manufactured in the penitentiary, at the several prices designated by the inspector and principal keeper.

Rule 24. It shall be the duty of the principal keeper, and he is hereby authorized, to draw his warrant on the book-keeper in favor of the inspector, for all sums of money that may be necessary for the payment of the debts contracted by him for materials and provisions purchased and delivered to the principal keeper, for the use of the penitentiary; and the book-keeper shall charge the same to the inspector. The book-keeper shall pay quarterly to the inspector, the principal keeper, the physician, the assistant keeper, the overseers, and the guard, all monies which may be due them for their services in that quarter, upon the pay-rolls being made out and certified by the principal keeper to be correct and just; he shall also retain the amount due him each quarter as it becomes due.

Rule 25. The Book-keeper shall also pay all incidental and contingent expenses which may be created by and for the use of the penitentiary, upon the accounts being properly made out and certified by the principal keeper (in duplicate) to be correct and just; but in all cases where a payment is made, a receipt shall be taken from the individual to whom the payment was made; and if the payee should not be able to write his name, the payment must be witnessed.

Rule 26. The Principal Keeper is also authorized and empowered to draw his warrant on the book-keeper for any sum or sums of money as he may need, for the purpose of defraying the expense of bringing convicts from the place of conviction to the penitentiary.

Rule 27. It shall be the duty of the Book-keeper, on the first Monday in January, eighteen hundred and forty-one, to give duplicate receipts to the principal keeper for all monies then on hand, and for all notes and accounts then due and owing to the penitentiary, specifying the maker, date, and amount of the note, and when due and payable; also the several accounts by whom owing, and the amount of each, which several notes and accounts he is authorized and required to collect and account for in the same manner as all other sums of money received by him from the sale of articles made in the penitentiary. And he shall also pay all sums of money due and owing by the penitentiary, upon the same being properly authenticated by the certificate of the principal keeper. And said book-keeper is also authorized and required, should it be necessary, to institute a suit or suits in his official character for the recovery of all monies now due, or which may hereafter become due, to the penitentiary.

Rule 28. The Inspector, Principal Keeper, and Book-keeper, shall each make a consolidated or annual return to the Governor of Georgia, on the first Monday in October, in each and every year, showing the quantity, kind, and cost of all materials purchased and paid for; also, the quantity, kind, and cost of all materials purchased and not paid for, in that political year; also, the number, kind and value, of all articles manufactured in the penitentiary, in that political year; and the quantity, kind and value, of all materials remaining on hand; also, the quantity, kind and value, of all articles sold for cash; also, the quantity, kind and value, of all articles sold on credit, and to whom sold, and the quantity, kind and marked value, of all articles remaining on hand at that time.

Rule 29. It shall be the duty of the Assistant Keeper and the Overseers
alternately, to remain within the penitentiary during the night, to superintend the guard in such manner as the principal keeper shall direct; to remain each in the department assigned to him by the principal keeper during the hours of labor, unless absent therefrom on business connected with his department or attending on visitors; to superintend the labor of the prisoners, to lock them up, and turn them out of their cells at the appointed hours; to search their cells and the prisoners before they are locked up; to enforce industry and good conduct among the prisoners; to watch over the safe keeping of the prisoners and the preservation of the buildings and other property of the Institution; and at least one of them to be at all times present and superintend the conduct of the prisoners at breakfast and dinner, in the discharge of which duties they shall be under the direction of the principal keeper.

Rule 30.—The Principal and Assistant Keeper, Inspector, and Book-keeper, before they enter upon the discharge of their respective duties, shall each give bond and good security [in such sum as the inspectors may require, conditioned for the faithful discharge of their several duties.—Act of 1833] payable to the Governor for the time being, and his successors in office, which bonds shall be filed in the Executive Office, where said bonds shall remain subject to the order of the Governor, and to be sued on by the Solicitor General, to be designated by the Governor, for all defalcation or neglect of duty of any of said officers.

Rule 31.—The Inspector, Principal Keeper, Book-keeper, and Assistant Keeper, before they enter on the discharge of their respective duties, shall likewise take and subscribe the following oath, namely: I, A. B., do solemnly swear that I will faithfully and diligently execute all the duties lawfully required of me as keeper of the penitentiary (or whatever his designation may be,) and will carry into execution the laws and regulations for the government of the same, so far as concerns the duties of my said office, to the best of my knowledge and ability; (and I will on no occasion ill-treat or abuse any prisoner under my care, beyond the punishment accorded by law or the rules and regulations of the penitentiary :) so help me God.

Rule 32.—The Principal Keeper shall enlist his own guard, and so organize it as not to have exceeding three officers, with as many privates as he may deem necessary, at such pay as may be stipulated by the parties, not to exceed the pay now allowed, [lieutenant, thirty-six dollars per month; sergeant, twenty-six dollars per month; privates, twenty dollars per month.—Act of 1840,) and the rations of all the members of the guard shall be the same as that of private soldiers in the army of the United States.—Act of 1843.

Rule 33.—Whenever the principal keeper shall go out of office, he shall deliver to his successor, all the materials on hand, all articles in progress of making, though not completed, and all tools and other articles belonging to the Institution; and shall take his successor's receipts for the same, in which shall be specified such tools as are worn or used, from those which are not.

Rule 34.—The Book-keeper shall, at the time he goes out of office, deliver to his successor all monies, notes and manufactured articles on hand, and shall take receipts for the same, in which shall be specified whose note, date, amount and when due; also the quantity and marked value of the different articles on hand.

Rule 35.—The Principal Keeper shall carefully inspect and note the moral conduct of the prisoners, and furnish them with such moral books as he may think proper.

Rule 36.—The Inspector, Principal Keeper, Assistant Keeper, the Book-keeper, Physician, Overseers and Guard, shall be exempted from militia duty in
time of peace, and from Road and Corporation duty, and from obligation to serve as jurors or patrols.

RULE 37. — The food of the prisoners shall consist of a ration, if of bacon, of eight ounces, if of pork, of twelve ounces, if of the hind-quarter of beef, of sixteen ounces, if of the fore-quarter of beef, of twenty ounces; of bread made of Indian meal, and of peas, potatoes, and other vegetables, at the discretion of the principal keeper, who also may permit them to purchase, in the manner hereinafter described, molasses, and other articles of similar character, as a reward for good conduct. — Act of 1833.

RULE 38. — It shall not be lawful for any officer of the penitentiary to sell, loan, or otherwise dispose of, any of the materials provided for the use of the penitentiary in the course of its business, or any of the tools thereof, or anything raised in the garden for the use of the prisoners, and for the violation of this section, the officer or officers guilty thereof, shall be forthwith discharged from the same. — Act of 1841.

RULE 39. — That all laws prohibiting job work to be done in said penitentiary, be and the same are hereby repealed. — Act of 1843.

RULE 40. — The Principal Keeper shall be authorized to make such arrangements as he shall deem economical and safe, for conveying convicts to the penitentiary; and for this service he may employ a portion of the guard. — Act of 1833.

RULE 41. — The Principal Keeper shall have a general superintending power over the institution, and shall be responsible for the conduct of all the officers under his command. — Act of 1833.

RULE 42. — The Guard, the Assistant Keepers, and all other persons attached to the institution, except the inspector and physician, shall be subject to the authority of the principal keeper, who shall have the power of suspending and reporting to the governor, any of the persons aforesaid who shall violate the regulations of the penitentiary. He shall have authority to discharge any member of the guard for disorderly conduct; he shall also have authority to fine any member of the guard who shall be guilty of a violation of orders or neglect of duty. — Act of 1833.

RULE 43. — A committee of both branches of the Legislature shall, at each session, be appointed to visit the penitentiary, and strictly examine the concerns of the said institution, and investigate the conduct of the officers, and the rules and regulations of the penitentiary, and specially report thereon. — Act of 1816.

Sec. III. — And be it further enacted, &c., That all laws, and parts of laws, militating against this act, be and the same are hereby repealed. — Act of 1840.

GEORGIA PENITENTIARY,
Office of Principal Keeper,
April 4th, 1850.

I certify that the above and foregoing Rules, as laid down, is a true and correct transcript of the laws now in force, regulating and governing the affairs and police of this Institution.

Wm. W. Williamson, P. K. P. G.
APPENDIX.

RULES OF THE SUPREME COURT.

RULE I.—All attorneys who have been admitted to practice in the Superior Courts of this State, may be admitted to practice in the Supreme Court, on application: provided they shall exhibit to the Court satisfactory proof of good private and professional character, and pay to the Clerk of the Supreme Court the usual fee of five dollars, who shall issue to each applicant a license under the seal of the Court, upon each applicant taking and subscribing the following oath: I, , do solemnly swear (or affirm, as the case may be,) that I will demean myself as attorney or counsellor of this Court uprightly and according to law; and that I will support the Constitution of the State of Georgia and the Constitution of the United States.

RULE II.—The written recommendation of any one or more respectable members of the bar, certifying to the good private and professional character of an applicant for admission, shall be sufficient evidence of character, and will in all cases be required.

RULE III.—Any attorney from other States or Territories shall be admitted to plead and practice in this Court, who will produce satisfactory proof that he has been regularly licensed in the highest judicial tribunal of such State or Territory, and is at the date of his application a practicing attorney of the same.

RULE IV.—A brief of the oral, and a copy of the written evidence adduced in the Court below, shall be embodied in the Bill of Exceptions, and shall constitute a part of the same.

RULE V.—Every motion for any rule, order or judgment, shall be submitted to the Court in writing by the counsel who makes it, and if granted, shall be handed to the Clerk.

RULE VI.—No paper belonging to the Clerk's office shall be taken therefrom without leave of the Court; and when such leave is granted, the party receiving papers shall receipt to the Clerk for the same.

RULE VII.—All cases returned to this Court shall be entered on the Bench docket and numbered, on or before the Court meets, on the first day of the term to which they are respectively returned, and the cases first received by the Clerk shall be first entered.

RULE VIII.—The Clerk shall furnish a transcript of the Bench docket for the use of the bar; and the bench docket shall not be subject to inspection during the sessions of the Court.

RULE IX.—All cases entered on the Bench docket shall be called and tried in the order in which they are there entered. It shall, however, be competent for the Court, upon special cause shown, to set down a case for hearing out of its regular order.
APPENDIX.

RULE X.—The attorney who makes out and tenders the Bill of Exceptions, shall sign his name to the same; and shall be, with the counsel representing the case before this Court, bound for costs.

RULE XI.—When cases are called for hearing, and there is no appearance by the plaintiff in error, the defendant may have the plaintiff called, and move the Court to dismiss the writ, or may open the record and pray for affirmance of the judgment; and in case the writ is dismissed, or the judgment affirmed, the plaintiff in error shall pay the cost; and should the defendant fail to appear, then the plaintiff shall be entitled to have him called, and open the record, and pray for a reversal of the judgment.

RULE XII.—Upon the reversal of any judgment, order or decree of the Superior Courts, the party in whose favor the reversal is had, shall be entitled to collect in the Court below all the costs which have accrued in the cause.

RULE XIII.—Upon the Clerk of this Court producing satisfactory evidence by affidavit, or the acknowledgment of the parties, their sureties or attorneys, of having served a copy of the bill of costs due by them in this Court, on such parties, sureties, or attorneys, an attachment may issue against such parties, sureties, and attorneys, to compel payment of costs.

RULE XIV.—The counsel for the plaintiff in error shall furnish each of the Judges and the Reporter with a copy of the Bill of Exceptions and a note of the points or questions intended to be made, and a statement of the facts in the cause, which shall be submitted to each of the Judges and a Reporter, at or before the first day of the term to which the cause is returned, with a list of the authorities expected to be relied on. No agreement or admission between the parties or their attorneys shall be binding, unless the evidence thereof be in writing, subscribed by the party or his attorney, against whom the same shall be alleged.

RULE XV.—Only two counsel shall be permitted to argue for each party, plaintiff and defendant, in a cause; and the counsel for plaintiff in error shall begin and conclude, reading all the authorities upon which he expects to rely, in his opening argument; and in all special matters springing out of a cause at issue, or otherwise, the actor or party submitting a point to the Court shall begin and conclude; and no cause shall be argued by brief alone.

RULE XVI.—The remitter shall contain a copy of the judgment of the Court annexed to the Bill of Exceptions, and a transcript of the record of the proceedings below as brought into this Court under the seal of this Court, and signed by the Clerk, and the same shall be delivered to the party in whose favor the decision shall be made, on the payment of fees, by whom it shall, together with the bill of costs, be transmitted to the Court below.

RULE XVII.—Whenever, pending a cause in this Court, either party shall die, the proper representatives of such party may voluntarily come in and be admitted parties to the suit upon motion; and thereupon the cause shall be heard and determined as in other cases; and if, on or before the first term succeeding the decease of a party dying, there shall be no representation of his estate, or if represented, parties shall not be thus voluntarily made, then, and in either of said events, the other party may at that term suggest the death on the record, and thereupon, on motion, obtain an order that unless such representation be had, and parties made thus voluntarily, as herein before authorized, on or before the second day of the term then next succeeding, the party moving such order, if defendant, shall be entitled to have the writ of error dismissed, and if the plaintiff, he shall be entitled to open the record, and proceed to a hearing: provided, that a copy of every such order shall be published in one of the gazettes at the seat of government, three successive weeks, at least sixty days before the said last named term of the Court, or served on the adverse party thirty days before the first day of said term.
APPENDIX.

RULE XVIII.—No cause shall be heard until a complete record shall be filed, containing in itself, without references alio in loco, all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in this Court; and all objections to the completeness of the record shall be made in writing, and verified by affidavit, on or before the third day of the term to which the cause is returned; and in all cases where such exceptions are filed, the cause shall be considered as returned to the next succeeding term, and the Court shall on motion award a writ of Certiorari, directed to the Court below, for the purpose of causing to be sent up the entire record, which writ shall be served by the party or his attorney moving the same, and shall be returned to the next term after it is awarded; provided, that nothing herein contained shall prevent this Court from awarding a process of contempt against any officer, in any case, where he may be considered as in default.

RULE XIX.—In all cases where a Bill of Exceptions has been certified and signed, a writ of error shall be made out by the counsel for the plaintiff in error to this Court, which shall be directed to the judge of the Superior Court so certifying and signing, together with a citation to the defendant in error to appear and answer.

RULE XX.—Such writs of error shall issue in the name of the Governor of the State, shall bear test in the name of the Judges of this Court, shall be signed by the Clerk, and sealed with the seal of this Court, and shall be returnable to the next succeeding term, and the citation shall bear test in the name of the Judges of this Court, shall be signed by the Clerk, and sealed with its seal.

RULE XXI.—The writs of error, with the citations thereto annexed, shall be filed with the Clerk of the Superior Court, at the time of tendering the Bill of Exceptions, copies of which, made out by counsel of the plaintiff in error, shall be served on the defendant in error, or his counsel, by the Sheriff of the county, or by counsel for plaintiff in error, within ten days from the signing and certifying of the Bill of Exceptions; and an entry of the same shall be made on the original writ by the counsel or sheriff, who makes it, officially; and it shall be the duty of the Clerk of the Court wherein such bill is signed and certified, to send up to this Court, with the record of the cause, such original writ and citation, duly by him certified to be the originals filed in his office.

RULE XXII.—It shall be the duty of the Clerk of this Court to keep on hand for the use of the bar, blank writs of error and citations, according to the form adopted by this Court, duly by him signed and sealed, to be furnished to the bar, on application therefor.

RULE XXIII.—The plaintiff in error shall, on or before the first day of the term to which the writ of error is returned, or immediately upon the filing of the record thereafter, file in the Clerk's office of this Court an assignment of errors; and the defendant in error shall, on or before the second day of the term, or within twenty-four hours after the assignment is filed, make out and file in office a traverse of such assignment; and upon failure of plaintiff to file his assignment as herein required, the defendant shall, upon motion, be entitled to have the writ dismissed; and should the defendant, as herein required, fail to file his traverse, then the plaintiff shall be entitled to proceed ex parte with his cause; provided, that no error shall be assigned, except such as is expressed in the Bill of Exceptions.

RULE XXIV.—The following shall be the form of Writs of Error:

The Governor of the State of Georgia,

To Judge of the Superior Courts of

Circuit,

GREETING:

Because in the Records and Proceedings, as also in the rendition of a Judgment in a cause in the Superior Court of County, before you, between and a manifest error is charged to have
been committed to the damage of the said as by complaint and Bill of Exceptions by you signed and certified appears, and we being willing that the Error complained of, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment in said cause as complained of be given, that then under your seal distinctly and openly you cause to be sent the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the State of Georgia, together with this writ, so that you have the same at the day of next in the said Court, to be then and there held, that the records and proceedings aforesaid being inspected, the said Court may cause further to be done therein to correct that Error, what of right and according to law, should be done.

WITNESS, The Honorable Joseph H. Lumpkin, Hiram Warner, and Eugenius A. Nisbet, Judges of the Supreme Court of the State of Georgia, this day of 184.

R. E. Martin, Clerk.

RULE XXV.—The following shall be the form of Writs of Citation:

State of Georgia:

To

You are hereby cited and admonished to be and appear at a Supreme Court to be held at the day of next, pursuant to a Writ of Error filed in the Clerk's office of the Superior Court of the county of in said State, wherein is Plaintiff, and you are Defendant in Error, to show cause, if any there be, why the Judgment in the said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in this behalf.

WITNESS, The Honorable Joseph H. Lumpkin, Hiram Warner, and Eugenius A. Nisbet, Judges of the Supreme Court of the State of Georgia, this day of 184.

R. E. Martin, Clerk.

RULE XXVI. All opinions delivered by the Judges of this Court shall, immediately upon delivery thereof, be handed to the Clerk, whose duty it shall be to record the same, and then to deliver the originals, with a transcript of the judgment or decree of the Court thereon, to the Reporter.

RULE XXVII. The papers belonging to the causes brought before this Court shall be handed to the Clerk in person, or transmitted to him at Milledgeville.

RULE XXVIII. It shall be the duty of the Clerk to note the time of filing assignments of Error, and of traverses of such assignments, and no cause shall be considered as ready for a hearing until entry is made on the Docket of "Issue joined," which entry shall be made only in cases where Errors have been assigned and traversed, as provided in these Rules.

RULE XXIX. No argument or brief of counsel shall be received by the Reporter, after the opinion of the Court has been delivered.

RULE XXX. The counsel for the defendant in error, at or before the opening of the cause, shall submit to each of the Judges and the Reporter, a statement of the points to be made, together with a list of the authorities intended to be relied on.

RULE XXXI. After this year (1846), no cause (except such as are provided for in the sixth section of the Act creating this Court) shall be considered as properly brought up, so as to authorize this Court to hear and determine the same, unless the Clerk shall certify and send up a complete transcript of the entire record below, together with the Bill of Exceptions, within ten days after the filing of the original notice of the signing of the Bill of Exceptions, with the return of service thereon.
APPENDIX.

Rule XXXII.—All applications for Writs of Mandamus against defaulting officers, under the sixth section of the act creating this Court, shall be made at its first term, wherever holden, and on or before the third day of the term, after the alleged default occurs, unless prevented by providential cause; and the party seeking said writ against the Clerk, for failing or refusing to send up the transcript of the whole record, and Bill of Exceptions, as required by law, shall state on oath, that he applied personally, or by attorney, to said officer, for said record and Bill of Exceptions, on or before the last day of the time allowed by law for certifying and sending up the same.

Rule XXXIII.—In all cases brought before this Court, the Bill of Exceptions must distinctly specify the points of error in the judgment of the Court below, upon which the plaintiff in error expects to rely upon the hearing, and that this rule take effect from and after the 1st day of January next (1847).

COMMON LAW RULES.

Manner of Pleading.

1. The order of Pleading shall correspond with that laid down by Judge Blackstone; and in no case shall more than one counsel be heard in conclusion.

Appeals.

2. No appeal shall be entered unless good security is given: exceptions to the security on the appeal must be taken on or before the last day of the first term of the Appeal; and if such exceptions are sustained, other and good security shall be given, or the Appeal will be dismissed. If the security, good at first, becomes insolvent pending the Appeal, the party appealing shall give other good security, in the discretion of the court, or the Appeal shall be dismissed.—Cobb's Anal. 93.

3. Appeals must be entered by the appellant in person, or by his attorney at law, or by an attorney in fact duly authorized by warrant for that purpose; which warrant shall be filed in the clerk’s office at the time of entering the same. Upon cause shown, the court will allow time to file such warrant; but such Appeal shall be, of course, dismissed, and execution issue without further order, if such warrant be not filed within the time allowed.—Cobb's Anal. 94.

4. Appeals shall be tried at the first term after the Appeal has been entered, unless good cause be shown for a continuance; among which good causes of a continuance, a motion, on oath to make a substantial amendment to either Declaration or Answer, shall be considered sufficient, unless the opposite party shall permit the amendment to be made instanter. No Appeal case shall be continued more than twice by the same party, but for unavoidable providential cause.—Cobb's Anal. 94.

5. When an Appeal is entered, either of the parties litigant, may make any amendment of the Declaration or Answer, they may deem necessary. The party amending shall give notice thereof in writing, accompanied by a copy of the amendment, to the adverse party, three months previous to the next term after the Appeal; and if the party amending fail to give such notice, and the adverse party will state, on oath, or the attorney at law, state in his place, that
he is taken by surprise, and is less prepared for trial in consequence of the 
amendment, the cause shall be continued at the instance of the amending party. 
—Cobb's Anal. 94.

6. The following shall be the form of the recognizance upon an Appeal, to 
be taken by the several clerks of the Superior and Inferior Courts, in all cases of 
Appeal, which recognizance shall be entered on the minutes of the court, and 
attested by the clerk:—Cobb's Anal. 94.

A. B. and verdict for the 

C. D. The 

being dissatisfied with the verdict of the 

jury rendered in the above cause, and having paid all costs and demanded an 
Appeal, brings E. F., and tenders him as his security, and they, the said 

and E. F. acknowledge themselves, jointly and 

severally, bound to 

for 

the payment of the eventual condemnation money, in said cause. 

In testimony whereof, they have hereunto set their hands and seals, this 

day of 

18 . [L. S.]

Answers.

7. In all cases, the Answer of the defendant to a plaintiff's declaration 
shall plainly, fully, and distinctly, set forth the causes and points of defence, 
and the evidence on trial shall be confined to the same.—Cobb's Anal. 82.

Attorneys.

8. Every person making application for admission to the bar, must apply to 
some Superior Court in this State, and produce satisfactory evidence to the court 
of his being twenty-one years of age; of good moral character, and of his hav- 
ing read law. A certificate of good moral character, and of the applicant's 
being of full age, signed by any judge of the Superior Court in this State, or any 
reputable practicing attorney thereof, will be deemed sufficient; but from all 
other persons a written affidavit will be required; and shall undergo the whole 
examination touching his qualifications in open court. All applicants for ad- 
mission shall be examined on the principles of the common and statute law of 
England, in force in this State; the principles of equity; the Constitution of the 
United States, and of the State of Georgia; the statute laws of this State, and 
the rules of court. And in no case shall any person be admitted who shall not 
be considered by the court to be qualified for the practice of the law. And the 
following oath shall be administered to every applicant, upon his admission, 
viz:—

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will- 
justly and uprightly demean myself, according to the laws, as an attorney, coun- 
selor, and solicitor, and that I will support and defend the Constitution of the 
United States, and the Constitution of the State of Georgia: so help me God."

—Cobb's Anal. 48.

After which, the following commission shall be issued by the clerk:

STATE OF GEORGIA:

At a Superior Court, holden in and for the county of 
at term, 18 .

Know all men by these presents, that at the present sitting of the court, A. 
B. made his application, for leave to plead and practice in the several courts of 
law and equity in this State: Whereupon, the said A. B., having given satis- 
factory evidence of good moral character, and having been examined in open 
court, and being found well acquainted and skilled in the laws, he was admit-
ted by the court to all the privileges of an attorney, solicitor, and counsellor, in the several courts of law and equity in this State.

In testimony whereof, the presiding judge has hereunto set his hand, with the seal of the court annexed, this day of

[238]  

[L. S.] in the year 18

C. D., Judge Superior Court, District, Ga. E. F., Clerk.

9. No attorney shall ever attempt to argue or explain a case, after having been fully heard, and the opinion of the court has been fully pronounced, on pain of being considered in contempt.

10. In all cases, where payment or satisfaction shall be made, on any judgment or execution, either in whole or in part, it shall be the duty of the attorney receiving the same, forthwith to enter an acknowledgment thereof, and affile the same of record in the office of the clerk of the court, where such judgment was rendered; and such clerk is required to record such acknowledgment, among the other proceedings in the case, and also to make a note thereof, on the docket of judgment, opposite the place where such judgment is entered. And any attorney failing to comply with this rule, on or before the last day of the term, next succeeding the making of such payment or satisfaction, shall be considered in contempt, and shall pay a fine not exceeding twenty-five dollars, which it shall be the duty of the court to impose, and he shall thereupon moreover, direct the recording and noting of such payment or satisfaction.

11. Writs and other proceedings, may be signed by professional firms; when there is no firm, the Christian name of the attorney shall be added; but the usual abbreviations and initials, of all Christian names, shall be sufficient.

12. No attorney or other officer of court, shall be taken as bail, in any suit or action, depending or undetermined therein; or as security on any appeal, or other proceeding; and for a violation of this rule, the attorney or officer in court so offending, shall be punished as for a contempt, and the party shall be compelled to give other bail or security.

13. If any case where a defendant, who has given bail, and has final judgment obtained against him, is confined in any jail in this State, other than that of the county from whence the first process issued, the capias ad satisfaciendum against such defendant, shall be considered as executed so far as to release the bail, when placed in the hands of the sheriff of the county where the said defendant is confined; and when the plaintiff or his attorney, is notified of such confinement, and neglects to charge him with the said capias ad satisfaciendum, within a reasonable time, the same shall be considered as executed, so far as to release the bail, and the bail, on motion and proof thereof, shall be discharged.

—Cobb’s Anal. 111.

14. No certiorari will be sanctioned unless the alleged error be distinctly set forth in the petition; and no other errors shall be insisted upon, at the hearing, than are stated in the petition.—Cobb’s Anal. 33.

15. All writs of certiorari shall, after having been docketed by the clerk, be delivered to the magistrate, whose proceedings are the subject of complaint, and written notice shall be given to the opposite party in interest, at least ten days before the hearing of the cause; unless the certiorari shall be applied for and sanctioned, within twenty days after the decision complained of.—Cobb’s Anal. 37.
Claims.

16. In all cases of claims, as the burthen of proof rests with the plaintiff in execution, he is entitled to the conclusion; but if the claimant introduces no evidence, he shall have the conclusion; and the plaintiff in execution shall in every case, pay the jury fee. And in cases of illegality, the plaintiff in execution shall in like manner, pay the jury fee and conclude.—Cobb's Anal. 121.

17. In cases of claims, when either the plaintiff in execution, or the claimant dies, pending the claim, their representatives may be made parties, on motion, and on producing letters testamentary or of administration.—Cobb's Anal. 121.

18. When a claim case is called in its order for trial, an issue must be tendered within five minutes, or the levy will be dismissed, and no exceptions will be allowed to the bond or affidavit, in cases of claims or attachments, after issue joined, except such as are taken in writing, at or before the joining such issue.—Cobb's Anal. 121.

Clerks and Sheriffs.

19. When a criminal or civil process shall have been delivered to the sheriff, or his deputy, if no levy of service has been made in conformity with the exigency thereof, he shall state, specially, in his return, the cause why such levy or service has not been made. If property which hath been levied on, remains unsold, it shall be his duty, to state the cause of its so remaining unsold, and to give a particular description of the same.

20. The sheriff shall make a return to the clerk of the court, at the opening thereof, of the names of the coroner and constables of the county; four of which constables, the sheriff shall notify to attend each term, until the whole shall have served in turn; and the sheriff shall be bound always to have at least four staves for the constables.

21. Every clerk and sheriff who cannot produce all the rules of court when required, shall be fined not exceeding ten dollars.

22. The clerks shall keep a separate book in which they shall register the names of all persons who may be fined by the court; the time when; the offence for which they are fined; the amount received and disbursed.

23. No clerk shall suffer any original paper of file to be taken, from his office in vacation, without an order from the judge, for that purpose.

24. The sheriff of each county shall keep a bench warrant docket, on which he shall enter all bench warrants delivered to him, and the time when executed, if executed; the time when they may be delivered to him; and if not, the reason why they were not executed.

25. The sheriff shall in all cases put the purchaser of real property, at sheriffs' sales, into possession of the premises, without further order or proceeding, when the defendant in execution was in possession of the same, at the time of the levy or sale.—Cobb's Anal. 484.

Collateral Issues.

26. No appeal shall be allowed in collateral issues, ordered by the court; but the court will, in its discretion, grant a new trial, upon such terms as shall appear just and reasonable. But where such collateral issue is tried in the inferior court, and said court is dissatisfied with the verdict, they may permit an appeal to the superior court, at their discretion.
27. The following shall be the form of a commission, to take testimony by interrogatories:—Cobb’s Anal. 150.

STATE OF GEORGIA, } By his honor, one of the judges
 — County. } of the court, for the county and State afore-
said: to Esqrs., greeting.

Whereas, there is a certain matter of controversy, now depending in the court, for said county, between and whereas, is a material witness in said suit, and cannot attend our said court in person, without manifest inconvenience:

Now know ye, that we, reposing special trust and confidence in your prudence and fidelity, have appointed you, and you, or any two or more of you, are hereby authorized and required, to cause the said personally to come before you, and after being duly sworn, to examine concerning the said suit, agreeably to the interrogatories hereunto annexed; and the answers to the same being plainly and distinctly written, you are to send the same closed up, under your hands and seals, to our said court, to be held on the day of next, together with this writ.

Witness, the honorable one of the judges of said court, this day of

Note.—The act of 1850, pamp. p. 115, provides, “that all commissions which have heretofore been, or may hereafter be issued in blank, for the purpose of taking testimony in any case pending, or arising in the courts of law and equity in this State, shall be valid and as effectual as if the names of the commissioners had been inserted by the officer issuing the same.” And the act of 1860, pamp. p. 276, provides, “that in all cases in the superior and inferior courts of this State, where it may become necessary to take testimony by interrogatories as heretofore practiced, commissions may issue in blank, in so far as relates to the names of the commissioners; but the names of witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission.”

28. Commissions may issue in blank, in so far as relates to the names of the commissioners, but the names of the witnesses intended to be examined, shall be distinctly specified in the notice served upon the adverse party, preparatory to issuing the commission.—Cobb’s Anal. 150 and 152.

29. The time to be allowed for the return of commissions from any part of the United States of North America, if less than one hundred miles distant from the place of trial, shall be one month; if a greater distance, and less than five hundred miles, two months; if at a greater distance, three months; to any part of the West Indies, or South America, four months; to any part of Europe, eight months.—Cobb’s Anal. 152.

30. When a commission is returned, it shall remain with the clerk, for the benefit of either party, and may be opened by consent of both parties, such consent being written on the cover of the commission; or by an order of the judge, either in term time, or in vacation; but such order, if applied for in the vacation, must be upon five days’ notice to the adverse party, or his attorney; and in cases of commission returned not executed, or directed according to rule, either party in the cause shall, upon five days’ notice to the adverse party, or his attorney, be permitted to return the commission and its contents, to the commissioners, to be properly executed and directed.—Cobb’s Anal. 152.

31. Commissions may be sent and returned by mail—to entitle the party to open the commission, the post-master, his deputy or assistant, must receipt on the back, “Received from A B, one of the commissioners.” The names of the commissioners must be written across the seals of the envelope, and the commission have such direction as will enable the court to know that it was intended for that court, and the usual abbreviations or initials of Christian names of com-
missioners, witnesses, attorneys, clerks, magistrates and post-masters, shall be sufficient.—Cobb's Anal. 153.

32. When a commission issues to examine a witness, its not having been returned shall be no cause of continuance, unless the party seeking the continuance will make the same affidavit of the materiality of the testimony, as in the case of an absent witness.—Cobb's Anal. 153.

Consent.

33. No consent between attorneys or parties, will be enforced by the court, unless it be in writing, and signed by the parties to the consent.

34. No consent to dispense with pleading, will in any case, be allowed; nor will any evidence be received of the contents of any written agreement between attorneys, alleged to be lost, other than a sworn copy of said agreement.

Continuance.

35. In all applications for continuances, upon the ground of the absence of a witness, it must be shown to the court, that the witness is absent; that he has been subpoenaed; that he resides in the county where the case is pending; that his or her testimony is material; that such witness is not absent by the permission, directly or indirectly, of such applicant; that he or she expects and believes, that he or she will be able to procure the testimony of such witness at the next term of said court; and that such affidavit or application is made, not for delay, but to enable the party to procure the testimony of such absent witness or witnesses, and must state the facts expected to be proved by such witness.

36. When, on application for a continuance, the party makes an affidavit of the facts which he expects to prove by the absent witness, the opposite party shall not be allowed to force a trial by an admission of the facts stated in such affidavit.

Default.

37. Upon opening a judgment by default, the defendant shall plead instanter, to the merits of the action; and no default shall be opened but upon payment of all costs which may have accrued, including two dollars of the attorney's fee. The entry of default, upon the bench docket, shall be sufficient evidence of the judgment. If the plaintiff allege himself to be surprised by the plea, the cause shall be continued at the instance of the defendant.—Cobb's Anal. 83.

Dockets.

38. After the court is opened, and until it adjourns, each day, the judge's dockets shall not be subject to the inspection of the bar, or their clients.

39. A criminal docket, a docket of original writs and processes; claims and special writs, as also a docket of appeals, shall be made out by the clerk for the use of the court, copies of each of which shall be furnished the bar, and shall be delivered at the first opening of the term; and all causes shall be called and tried in the order in which they are docketed, without any preference or delay, unless it shall appear to the court that it shall be injurious to press a cause to trial, when regularly called. A different order in calling the docket may be pursued by the court, in its discretion, for the purpose of giving facility and expedition to its proceedings. The dockets shall be called but once, but if parties by consent, under permission of the court, continue their cases from day to day, said cases shall not stand for trial, until all the other business of the court is finished, and then they may be tried in their order, at the discretion of the court.

40. The clerk of each court shall keep a motion docket, on which shall be entered all motions originating in said court, or transferred for argument, from
other counties. A party applying to have a motion docketed, shall certify in writing to the clerk, the delivery of a brief of such motion, to the judge, and shall pay to the clerk one dollar, at the time of docketing the same. All motions shall be called and heard in the order in which they are docketed; nor shall any motion be heard until the same shall have been docketed, in conformity to this rule.

**Exceptions.**

41. All matters appearing on the face of the declaration, or process, that would not be good in arrest of judgment, shall be taken advantage of at the first term, and will be immediately determined on by the court, unless where the court may entertain a doubt as to the law on the point; if so, the cause will be suspended, giving the defendant leave to plead his exceptions specially, together with any other matter which he intends to rely on in his defence. The exceptions thus pleaded shall be argued at a subsequent term, and if not sustained, the plaintiff shall have his election to try then, or to continue without a showing. —Cobb's Anal. 82.

**Executors and Administrators.**

42. An executor or administrator shall not be permitted in answer, to deny any deed, bond, bill, note, or other written instrument of his testator or intestate, being the foundation of the plaintiff's action, without an oath or affirmation endorsed on such plea or answer, that he has reason to believe, and does verily believe, that such plea or answer is true.

**Illegality.**

43. When an affidavit of illegality is made, on account of partial payment made on the execution, the defendant, at the time of making such affidavit, must pay up the amount he admits to be due, or the sheriff shall proceed to raise that amount, and accept the affidavit for the balance.

44. No second affidavit of illegality shall be received, by any sheriff or other officer.—Cobb's Anal. 118.

**Imparlance.**

45. No imparlance shall be allowed on writs of *scire facias,* issued to enforce recognizances, either on the civil or criminal side of the court, to make executors or administrators parties to a cause pending therein; or for the revival of judgments, unless upon special cause shown to the court.

**Interrogatories.**

46. When a cause is proceeding *ex parte* to a jury, interrogatories may be served by depositing a copy with the clerk, and posting a notice to that effect in his office, addressed to the party in default, ten days before issuing out a commission. No exception to a written interrogatory, on the ground that it is a leading question, shall prevail, unless it be filed with the interrogatories, before the issuing of the commission.—Cobb's Anal. 145.

47. All objections to the execution and return of interrogatories on appeal trials, the form of the commission, or service of notice, must be made by the party seeking to avail himself of them, before the cause has been submitted to the jury, or they will not be heard by the court; provided that the said interrogatories have been twenty-four hours in the clerk's office; and if they have remained in the possession of the party intending to use them, they shall be communicated to the adverse party before the cause is called for trial.—Cobb's Anal. 152.
APPENDIX.

Justices of the Peace.

48. The justices of the peace shall return all examinations and recognizances by them taken, or other papers that may be necessary to be acted upon by the superior courts of their respective counties, on or before the first day of the term of each court, except in the counties of Richmond and Chatham, where they shall make said return ten days before said courts, if taken that length of time before the sitting of the court.—Cobb’s Anal. 389.

Lost Papers.

49. Upon the loss of any original declaration, plea, bill of indictment, or other office paper, a copy of the same shall be established instanter.

50. Whenever a party wishes to introduce the copy of a deed or other instrument, between the parties litigant, in evidence, the oath of the party, stating his belief of the loss or destruction of the original, and that it is not in his possession, power, or custody, shall be a sufficient foundation for the introduction of such secondary evidence.

51. Whenever a party wishes to introduce the copy of a grant in evidence, the oath of the party, stating that the original is not in his power or possession, and that he knows not where it is, shall be sufficient foundation for the introduction of such copy.

52. When any person shall seek to establish lost papers, under the 6th section of the judiciary act of 1799, he shall present a petition to the superior court, together with a copy in substance, of the paper lost, as nearly as he can recollect, which copy shall be sworn to by the party, or proved by other evidence: whereupon a rule nisi may be obtained, calling upon the opposite party to show cause, (if any he have) why the copy should not be established in lieu of the original so lost; which rule shall be personally served on the party, if to be found within the State, and if he cannot be found, then the said rule nisi shall be published in some public gazette in the State, for the space of three months.—Cobb’s Anal. 26, 31 and 32.

Motions.

53. All grounds of motion for non-suit, in arrest of judgment, and for continuance; all objections to testimony, and all exceptions to declarations, must be urged and insisted upon at once. And after a decision upon one or more grounds, no others afterwards urged, will be heard by the court.

54. All motions for amendment of the declaration, shall be made at the first term, or after the case is continued, at any subsequent term; and all motions for amendment of the answer, shall likewise be made, after the continuance of the case; and a copy of the amendment, in either case, shall be served on the opposite party. Exceptions to the declaration or answer, shall be taken before the case is submitted to the jury, either at common law or on the appeal; and in no case shall the declaration or answer be amended, in matters of substance, after the case has gone to the jury, at common law; nor on the appeal, except at the discretion of the court, and upon payment of costs; and provided, that in all cases when an amendment of the declaration or answer is made, after the case has gone to the jury on the appeal, the party so amending shall be charged with a continuance, at the pleasure of the court, or the opposite party.—Cobb’s Anal. 78.

55. On all the rules to show cause, the party called on shall begin and end his cause; and on all special matters, springing out of a cause at issue, the actor or party submitting a point to the court, shall in like manner begin and
close; and in all cases arising ex delicto, if the defendant pleads justification, and takes upon himself the burthen of proof, he shall have the like privilege.

56. Every motion, for any rule or order, shall be submitted to the court in writing, by the counsel who makes it, and if granted by the court, shall be delivered to the clerk.

Notice.

57. No notices under the 6th section of the judiciary act of 1799, hereafter to be served, shall be available, unless the party for whose benefit they shall be served, or his agent, shall previously have made affidavit, (or his attorney stated in his place,) that the deponent, or attorney, has reason to believe the books or papers, required to be produced, are or have been in existence; that he believes they are within the possession, power, or control of the person notified; and that they are material to the issue, (which affidavit shall be filed in office, before the notice shall be available;) nor unless the court shall be of opinion that the books or papers, sought to be obtained, are material to the issue. And it shall be deemed a sufficient compliance with the notice, (whether served heretofore, or hereafter,) if the party notified, being a resident of any other county of the State than that wherein the case is pending, shall make an affidavit in writing, before some judicial officer of the State, that the books or papers required and not produced, are not, nor have been, in his possession, power or control, since the service of such notice. And if the person notified be, or reside without the State, at the time of receiving such notice, an affidavit to the foregoing effect, taken before some judge of the superior or county court, of the State or kingdom, in which he may be, shall be deemed sufficient.—Cobb's Anal. 26.

58. In actions of assumpsit, for the recovery of unliquidated demands, a bill of particulars shall be annexed to the copy served on the defendant; and in every case where the plea of set-off shall be filed, a copy of the set-off shall be filed, at the time of filing the answer; and when the bill of particulars is not annexed to the declaration, the plaintiff shall lose a term; and if service of said bill of particulars is not effected upon the defendant, by the succeeding term, a non-suit shall be awarded.

59. When a merchant or tradesman, being a party to a suit, in any of the courts of this State, shall be notified to produce his books of accounts, or any of them, to be used as testimony on the trial, if the party so notified shall transmit to the court in which the case is pending, a transcript from his books, of all his accounts and dealings with the opposite party, together with an affidavit, (taken pursuant to the fifty-ninth (fifty-seventh) common law rule of court,) that the same is a fair and perfect transcript as aforesaid; and that he cannot produce the book or books required, without suffering a material injury in his trade, this shall be deemed a compliance with the notice: provided, if the adverse party will swear that he verily believes that the books contain entries material to him, which do not appear in the transcript, the court will grant him a commission, to be directed to certain persons, named by the parties and approved by the court, to cause the adverse party to produce the book or books required, (he being first sworn that the book or books produced, is or are all that he has, that answer to the description in the notice,) and to examine said books, and to transmit to the court, a fair statement of the accounts between the parties, under their hands, sealed and transmitted, as on other commissions; which statement, when received, shall be deemed a sufficient compliance with the notice.—Cobb's Anal. 26.

60. All notices, required to be given to any officer of the court, must be in writing.
New Trials.

61. A motion for a new trial shall not operate as a supersedeas, unless an order to that effect be entered on the minutes; and in every application for a new trial, a brief of the testimony in the cause, shall be filed by the party applying for such new trial, under the revision and approval of the court.—Cobb's Anal. 25, 40 and 41.

Prochein Ami.

62. No prochein ami shall be permitted to institute any personal action, in the name and behalf of an infant, until such prochein ami shall have entered into sufficient bond to the governor of the State, for the use of the infant and his representatives, conditioned well and faithfully to account of and concerning his said trust; which bond may be sued by order of the court, in the name of the governor, and for the use of such infant, and such bond shall be filed in the office of the clerk of the court in which the suit may be commenced.—Cobb's Anal. 280.

Recognizances.

63. All recognizances taken by the clerk, for the appearance of either parties or witnesses, shall be written in a book [kept] for that purpose, separate and distinct from the minutes, to which he shall affix an alphabetical index.—Cobb's Anal. title, "Justice of the Peace."

Scire Facias.

64. Writs of Scire Facias, issued to revive judgments, shall be returnable to the next superior court of the county where the defendant or defendants reside, under the following regulations, viz: The party suing out such writs, shall procure a full exemplification of the record of the judgment, which shall be sent to the clerk of the superior court of the county where the scire facias is made returnable, and filed with the same; whereupon, judgment may be revived, on such exemplification, in like manner as if the original judgment had been recovered in the county where the scire facias is made returnable.—Cobb's Anal. 90.

65. A suggestion of the death of either party, for the purpose of enabling the survivor, or the representatives of such deceased party, to issue scire facias to revive, may be made either in term time or in vacation; in either case the order for issuing the scire facias, shall be of course, and be granted by the clerk; and such suggestion, and the order thereon, shall be filed among the proceedings in the cause.

Signing Judgments.

66. In all and every case, when a verdict has been obtained at common law, and an appeal entered without judgment signed upon the said verdict, judgment shall not afterwards be signed further back than the time of disposing [of] said appeal.—Cobb's Anal. 89.

Subpoena.

67. Subpœnas ducet tecum, may issue against third persons without order, at any time, upon application to the clerk.—Cobb's Anal. 144.
APPENDIX.

Surveys.

68. County surveyors are required to deliver copies of re-surveys, by them made, to each of the parties concerned, upon their application, and at their own proper costs, within ten days after such application is made; and the surveyor, executing a survey, shall be bound to attend court, to prove the same, and shall be allowed the per diem pay of a witness, attending upon subpoena.

69. Surveys of lands, in any quantity of two hundred acres, or less, shall be laid down by a scale of ten chains to the inch; and over that quantity, by a scale of twenty chains to an inch.

70. No survey made under the rule of court, shall be received in evidence, unless it appears that at least ten days' notice of the time of commencing such survey, was given to the opposite party, by the one who offers it in evidence.

71. Every surveyor shall represent on his plat, as nearly as he can, the different enclosures of the parties, and the extent or boundaries within which each party may have exercised acts of ownership.

72. After a cause has gone to the jury, and any evidence been heard in it, neither party shall be allowed to make any objection to a rule of survey, made in the case; or the manner in which it may have been obtained, or the survey executed.

73. Either party, in actions of ejectment, shall be entitled, as matter of right, to a rule of survey, upon application to the clerk in vacation.—Cobb's Anal. 649.

Witnesses.

74. Witnesses shall first be examined by the party introducing them, then cross-examined by the adverse party; further examination shall not be had but by leave of the court first obtained, and then only upon the declaration of the attorney or witness, that a material fact has not been stated, to which all further inquiries shall be directed; and in all cases in which more than one attorney is retained on either side, the examination and cross-examination shall be conducted by one of the counsel only; and at the opening of the case, both parties shall state to the court, to which attorney the examination and cross-examination of witnesses is confined.—Cobb's Anal. 143.

Points to be given in Charge.

75. Ordered, That counsel shall propound, in writing, the points of law on which they may wish the instructions of the court to the jury, before the judge shall commence his charge.

EQUITY RULES.

Defendant Failing to Answer.

1. When a Bill has been sanctioned and filed, and the usual process taken out and served, or advertised according to the rules of court, and no answer shall be filed within the time allowed; if the defendant or defendants still remain in contempt at the next term thereafter, so as to entitle the complainant to have his bill taken pro confesso, the order shall be made by the court, on application of the complainant; but, such order shall only operate as an interlocutory decree, which shall entitle the complainant to have his cause submitted ex parte to a jury; provided, always, that if the complainant or complainants, shall swear or affirm, that the answer of the defendant or defendants, to the
whole or part of the charges contained in the said bill, is absolutely necessary, and that without such answer, he, she or they, cannot support the truth of his, her or their allegations, the court may permit such complainant or complainants, to make a special oath or affirmation, (as the case may be,) of what he, she or they, know or believe, the said defendant or defendants, could or ought to Answer, and such oath or affirmation may be given to the jury, together with the Bill and other proof.

**Defendant out of the County or State.**

2. When a defendant, or defendants, reside out of the county in which a Bill originates, and is sanctioned, which fact must be verified by affidavit, the court, or judge at chambers, shall pass such order for appearance and Answer, as the distance of the defendant's residence shall warrant; service or publication of which order, according to the exigency thereof, shall be deemed a sufficient service to compel an appearance; and subsequent proceedings shall be the same as if the defendant or defendants had been served with process by the sheriff of the county, where the subpoena is made returnable. And if it shall appear by affidavit, that a defendant is absent from this State, or cannot be found therein, service may be effected by publication in a public newspaper, upon the order of the court, requiring him to appear and Answer the complainant's Bill, in such time as the court may direct.

**Plea and Demurrer, when filed and argued.**

3. A Plea or Demurrer, in part or to the whole of a Bill, shall be filed at the return term, and shall be argued during the term, or upon motion and cause shown, at such other time as the court may direct. The court will, however, in its discretion, upon sufficient cause shown, grant further time for filing such Plea or Demurrer; and such order shall express the time within which the same shall be filed, and the further time thereafter, within which it shall be argued, or be considered as dismissed. And notice in writing, of the filing of such Plea or Demurrer, shall be given to the adverse party, or his counsel, at the time of filing thereof. The defendant or defendants, in any Bill in Equity, may demur, plead and answer, at the same time, at the first term; the Demurrer, Plea and Answer, may be separately disposed of, in their order, but the filing of the Plea or Answer, shall, in no case, operate to overrule the Demurrer.—Cobb's Anal. 135.

**Filing Answer, Exceptions thereto, &c.**

4. All Answers shall be filed within four months after the adjournment of the court to which the subpoena is returnable, unless further time be granted. Exceptions to Answers, must be filed before the hour for jury business, on the second day of the term thereafter, or said Answers will be deemed sufficient; and if such Exceptions shall be sustained by the court, the defendant shall perfect his Answer, within such further time as the court may order. But if said amended Answer be defective, the defendant may be punished as for contempt, and shall pay all costs that have accrued, up to the time of filing such defective Answer. Nothing in this rule shall be construed to prevent the respondent from filing his Answer at any time after the filing a bill, for injunction against him, and moving the judge at chambers, who granted the bill, for the dissolution of the injunction, if the equity of the bill shall be sworn off by the Answer: but in such cases, a rule nisi, stating the grounds of the application, and fixing the time and place of hearing the motion, shall be served upon the complainant, at least ten days before the hearing of any such motion; and the
judge shall have power to order such amendments as are usually made in open
court, and to hear and determine Exceptions to Answers.

Filing Replication, its Effect.

5. A general Replication to the Answer shall be filed, and what is admitted
in the Answer, shall remain admitted, notwithstanding such general Replication.
No special Replication shall be received, but the complainant may, by his Rep-
lication, controvert any part of the facts stated in the defendant's Answer, if
he will admit the rest to be true; and such Replication shall be confined to the
particular matter controverted, and the defendant shall only be obliged to pro-
duce proof of such controverted matter. In either case, the cause shall be at
issue after Replication filed, without Rejoinder.—Cobb's Anal. 136.

Jury, how selected.

6. In trials in equity, the jury shall be taken from the pannel of the grand
inquest, in the manner prescribed by law for the selection of special jurors.—
Cobb's Anal. 95.

Paying Costs and Giving Security.

7. When a bill praying an injunction is presented to the judge for his sanc-
tion, there shall be annexed to it the clerk's certificate of payment of costs, and
security being given, as required by law; and on application to the judge, ad-
ditional security may be ordered, if circumstances require it. All injunctions
shall be granted until further order had thereon.—Cobb's Anal. 127 and 128.

Injunction Granted upon Terms.

8. That an injunction shall not issue to stay proceedings at law, in any action
in which a verdict shall have been given for money, unless a sum of money
equal to the amount which the party applying for the injunction acknowledges
to be due, is deposited with the clerk of the court, to be paid to the adverse
party; and a certificate of such payment shall accompany the bill.—Cobb's
Anal. 137.

Equitable Interposition to be by Bill.

9. When either party in a suit at law, shall be desirous of obtaining the
interposition of the court, in the exercise of its equitable jurisdiction, in the
prosecution or defence of said suit, the application therefor shall be by bill,
which may be sanctioned by the judge, upon such terms as shall seem just and
reasonable; and no bill to enjoin an action at law shall be sanctioned by the
judge, unless the same shall be presented in time to be made returnable to the
regular trial term of the case, next after the sanction of the bill, unless good
cause to the contrary, to be judged by the chancellor, shall be shown in the
application for the bill, and be sworn to by the party.

Commissions, Interrogatories, and Continuance.

10. Commissions shall be issued, returned and published, and notice of in-
terrogatories given, in like manner as in cases of common law; and the like
rules shall be observed, on application for continuance.
Oath of Defendant to his Answer.

11. The oath or affirmation of a defendant, to his or her answer, shall be in the following form: "You, A B, do swear, or solemnly, sincerely and truly, declare and affirm, (as the case may be,) that what is contained in your answer, as far as concerns your own act and deed, is true of your own knowledge; and that what relates to the act or deed of any other persons, you believe to be true."—Cobb's Anal. 136.

Revival of Bills.

12. Bills may be revived by petition to the judge at chambers, or at a term time; and upon the presentment of a petition for that purpose, an order for the revival of the bill nisi causa, on the first day of the term next thereafter, shall be passed; a copy of the petition and order shall be served by the sheriff on the defendant, at least twenty days before the meeting of the said court. No bill or subpoena will be required.

Issuing Execution Under Decree.

13. When a case in equity shall be tried by a jury, who shall render a verdict for a specific sum, a decree shall be entered for such sum, and such execution may be issued thereon, as if the cause had been decided at common law. Where the finding of a jury is special, and requires the payment of money, and some duty to be performed, the sum so found may be recovered in the manner hereinbefore provided; and such duty shall be enforced by the court by attachment for contempt or otherwise, according to the course of proceedings in equity.

Equity Docket to be Kept by the Clerk.

14. The clerk shall keep a docket for equity cases, distinct and separate from the causes at common law; in which shall be registered the names of the parties, and titles of all bills, and the time of filing the same, with notices of the pleadings and orders in the cause, up to the final decree.

Going to Trial on Bill and Answer.

15. In all cases where the parties go to trial upon the bill and answer alone, the complainant's solicitor shall have the conclusion.

Rule may be Served on Solicitor.

16. After appearance by the party defendant, to any bill in equity, by any solicitor of this court, the service of any subpoena, to make better answer; or any rule or order of the court, on such defendant or solicitor, shall be sufficient. Service upon complainant, or his solicitor, shall in like manner be deemed sufficient service.

Exhibits, how Filed.

17. Copies of all deeds, writings and other exhibits, shall be filed with the bill or answer, and no other exhibits shall be admitted, unless by order of the court, for some special and good cause shown. The production of the original, if not admitted by the answer, may be required on the hearing: and upon application to the court, or to the judge in vacation, and cause shown, the original of any exhibit will be ordered to be deposited in the clerk's office, for the inspection of the adverse party.
Applications for Writs of Non Exeat.

18. Applications for writs of Non Exeat, other than such as are provided for by the Act of December 6th, 1813, shall be upon bill filed and sworn to, or affirmed, by complainant, or his attorney in fact; and such oath or affirmation, shall particularly state the amount of the debt claimed, and that the sum mentioned is due, and that there is reason to apprehend the loss of the whole, or a part of said sum, if the defendant should depart without the jurisdiction of the court. The sheriff shall discharge the defendant from custody under such writ, upon his giving bond, with two good securities, (who shall be liable to be excepted to, in like manner as in case of bail at common law,) conditioned for the payment to the complainant, his executors and administrators, of such sum as shall be decreed, with interest and costs; and further in all respects to do, conform to, and perform the decree of the court, in the premises.—Cobb's Anal. 129 and 137.

Auditor’s Report.

19. When auditors have made up their report, the same shall be returned into the clerk’s office without delay, and shall remain open to the inspection of both parties.

Docket of Decrees and Executions.

20. A docket of decrees, and also a docket of executions, or other process for the enforcement of decrees, shall be kept by the clerk, in cases in equity, in like manner as the dockets of judgments and executions at law: and the acknowledgments of satisfaction on decrees in equity, may be enforced in the same manner, and under like penalties, as judgments at law.

Prochein Ami.

21. The rule at common law which requires a Prochein Ami of an infant to give bond to account, &c., shall also be observed in equity.—Cobb’s Anal. 280.
**INDEX.**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abducting, &amp;c.</td>
<td></td>
</tr>
<tr>
<td>Seamen</td>
<td>69</td>
</tr>
<tr>
<td>Invigling</td>
<td>69</td>
</tr>
<tr>
<td>Assisting to escape</td>
<td>69</td>
</tr>
<tr>
<td>Entertaining</td>
<td>69</td>
</tr>
<tr>
<td>Indictment</td>
<td>72</td>
</tr>
<tr>
<td>Accessories</td>
<td></td>
</tr>
<tr>
<td>Principal in second degree</td>
<td>75</td>
</tr>
<tr>
<td>What constitutes</td>
<td>75</td>
</tr>
<tr>
<td>Before the fact</td>
<td>75</td>
</tr>
<tr>
<td>After the fact</td>
<td>76</td>
</tr>
<tr>
<td>How punished</td>
<td>76</td>
</tr>
<tr>
<td>Indictments against</td>
<td>76-77</td>
</tr>
<tr>
<td>Receiving guilty person</td>
<td>118</td>
</tr>
<tr>
<td>Adultery and Fornication</td>
<td></td>
</tr>
<tr>
<td>How punished</td>
<td>152</td>
</tr>
<tr>
<td>Indictment</td>
<td>158-159</td>
</tr>
<tr>
<td>Affray</td>
<td></td>
</tr>
<tr>
<td>What is an</td>
<td>17</td>
</tr>
<tr>
<td>How they may be suppressed</td>
<td>17</td>
</tr>
<tr>
<td>Form of warrant for</td>
<td>18</td>
</tr>
<tr>
<td>Defined</td>
<td>137</td>
</tr>
<tr>
<td>Indictment</td>
<td>146</td>
</tr>
<tr>
<td>Arraignment, Trial, &amp;c.,</td>
<td></td>
</tr>
<tr>
<td>For small offences</td>
<td>193</td>
</tr>
<tr>
<td>Form of arraignment</td>
<td>193</td>
</tr>
<tr>
<td>To be entered</td>
<td>194</td>
</tr>
<tr>
<td>Prisoner, not in fetters</td>
<td>194</td>
</tr>
<tr>
<td>Law relative to</td>
<td>213-214-215</td>
</tr>
<tr>
<td>Arrest</td>
<td></td>
</tr>
<tr>
<td>What it is</td>
<td>8</td>
</tr>
<tr>
<td>Who liable to</td>
<td>8</td>
</tr>
<tr>
<td>different modes of making</td>
<td>8</td>
</tr>
<tr>
<td>who may arrest an offender</td>
<td>8</td>
</tr>
<tr>
<td>Arson</td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>92</td>
</tr>
<tr>
<td>In town or city</td>
<td>92</td>
</tr>
<tr>
<td>On farm or plantation</td>
<td>92</td>
</tr>
<tr>
<td>Of out-house</td>
<td>93</td>
</tr>
<tr>
<td>When complete</td>
<td>93</td>
</tr>
<tr>
<td>In day-time, &amp;c.</td>
<td>93</td>
</tr>
<tr>
<td>When death produced</td>
<td>93</td>
</tr>
<tr>
<td>Indictment for, in city, &amp;c.</td>
<td>93</td>
</tr>
<tr>
<td>Indictment for, not in city, &amp;c.</td>
<td>94</td>
</tr>
<tr>
<td>Barn, stable, &amp;c.</td>
<td>94</td>
</tr>
<tr>
<td>Assault</td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>85</td>
</tr>
<tr>
<td>With intent to murder</td>
<td>85-90</td>
</tr>
<tr>
<td>With intent to rob</td>
<td>85-90</td>
</tr>
<tr>
<td>With intent to spoil clothes</td>
<td>86-90</td>
</tr>
<tr>
<td>Under color of process</td>
<td>116</td>
</tr>
<tr>
<td>Under color of office</td>
<td>128</td>
</tr>
<tr>
<td>Assault and Battery</td>
<td></td>
</tr>
<tr>
<td>How assault defined</td>
<td>10-86</td>
</tr>
<tr>
<td>Party may be found guilty of</td>
<td></td>
</tr>
<tr>
<td>either</td>
<td>10-11</td>
</tr>
<tr>
<td>Words cannot amount to an</td>
<td></td>
</tr>
<tr>
<td>assault</td>
<td>10</td>
</tr>
<tr>
<td>Battery defined</td>
<td>10</td>
</tr>
<tr>
<td>Opprobrious words may justify</td>
<td>10-11</td>
</tr>
<tr>
<td>Indictment</td>
<td>91</td>
</tr>
<tr>
<td>Bail</td>
<td></td>
</tr>
<tr>
<td>Cannot be given but once</td>
<td>13</td>
</tr>
<tr>
<td>Personating in</td>
<td>115</td>
</tr>
<tr>
<td>Indictment</td>
<td>126</td>
</tr>
</tbody>
</table>
### INDEX

**Banks,**
- officer violating charter, 101
- insolvery of, 101
- transferring stock, 102
- purchasing bills, &c., 102
- declaring fraudulent dividends, 102
- purchasing its own shares, 102
- proviso, 102
- indictment, 107

**Barratry,**
- defined, 118
- punishment, 118
- indictment, 133

**Bastard,**
- putative father, 156
- must give security, 156
- how punished, 156
- indictment, 164

**Bestiality,**
- defined, 88
- punishment, 85
- attempt to commit, 85
- indictment, 89

**Bribery,**
- defined, 114
- punishment, 114
- indictment, 124

**Burglary,**
- definition, 26-93
- burglar may be killed, 26
- what considered dwelling-house, 26
- punishment of, 26
- form of warrant for, 27
- commitment for, 27
- day or night, 93
- punishment, 93
- indictment, 94

**Cattle Stealing,**
- how denounced, 96
- what indictment must contain, 96
- punishment, 96
- indictment, 104

**Challenges,**
- how allowed, 194
- triors, &c., 217
- oath of triors, 217

<table>
<thead>
<tr>
<th>Cheating and Swindling,</th>
<th>28-29</th>
</tr>
</thead>
<tbody>
<tr>
<td>what it is,</td>
<td>28-29</td>
</tr>
<tr>
<td>miller changing corn,</td>
<td>29</td>
</tr>
<tr>
<td>false representations,</td>
<td>29</td>
</tr>
<tr>
<td>how punished,</td>
<td>29</td>
</tr>
<tr>
<td>playing at cards, &amp;c.,</td>
<td>29</td>
</tr>
<tr>
<td>baker,</td>
<td>29</td>
</tr>
<tr>
<td>false weights, &amp;c.,</td>
<td>29</td>
</tr>
<tr>
<td>warrant for,</td>
<td>29</td>
</tr>
<tr>
<td>commitment for,</td>
<td>30</td>
</tr>
<tr>
<td>obtaining credit,</td>
<td>166</td>
</tr>
<tr>
<td>at play,</td>
<td>166</td>
</tr>
<tr>
<td>baker, &amp;c.,</td>
<td>167</td>
</tr>
<tr>
<td>false weights, &amp;c.,</td>
<td>167</td>
</tr>
<tr>
<td>dirt, &amp;c., in cotton,</td>
<td>167</td>
</tr>
<tr>
<td>obtaining goods,</td>
<td>167</td>
</tr>
<tr>
<td>indictments,</td>
<td>168-169-170</td>
</tr>
</tbody>
</table>

**Commitment,**
- what it is, and when issued, 13
- during, party treated with humanity, 14
- requisites of, and how directed, &c., 14-15
- must contain name of prisoner, &c., 14
- must specify place of imprison-
  ment, 15
- for assault and battery, 15
- for afford, 18
- keeping the peace, 24
- for burglary, 27
- for cheating, 30
- for want of security, 40
- persons from other counties, 40-41

**Conspiracy,**
- punishment, 118
- indictment, 131

**Constable,**
- may suppress afford, 17
- how to act with disorderly persons, 17
- may apprehend breakers of the peace, 20
- when may break open doors, &c., 37
- when justifiable, 37
- must return proceedings, 44

**Contempts,**
- power of courts, 202
- how punished, 202
<table>
<thead>
<tr>
<th>Convicts and Convictions,</th>
<th>INDEX.</th>
</tr>
</thead>
<tbody>
<tr>
<td>when sent to penitentiary,</td>
<td>196</td>
</tr>
<tr>
<td>how to be conveyed,</td>
<td>196</td>
</tr>
<tr>
<td>clerks to notify keeper,</td>
<td>196</td>
</tr>
<tr>
<td>how sent to penitentiary,</td>
<td>197</td>
</tr>
<tr>
<td>on circumstantial evidence,</td>
<td>198</td>
</tr>
<tr>
<td>becoming insane,</td>
<td>198–200</td>
</tr>
<tr>
<td>female becoming pregnant,</td>
<td>199</td>
</tr>
<tr>
<td>two convictions, how punished,</td>
<td>200</td>
</tr>
<tr>
<td>Costs,</td>
<td></td>
</tr>
<tr>
<td>party discharged may pay,</td>
<td>10</td>
</tr>
<tr>
<td>in cases of nuisance,</td>
<td>156</td>
</tr>
<tr>
<td>when paid by prosecutor,</td>
<td>192</td>
</tr>
<tr>
<td>insolvents,</td>
<td>192</td>
</tr>
<tr>
<td>County Treasurer,</td>
<td></td>
</tr>
<tr>
<td>defaulting, how punished,</td>
<td>108</td>
</tr>
<tr>
<td>indictment,</td>
<td>108</td>
</tr>
<tr>
<td>Crimes, Penalties, and Offences,</td>
<td></td>
</tr>
<tr>
<td>what constitutes,</td>
<td>73</td>
</tr>
<tr>
<td>intention,</td>
<td>73</td>
</tr>
<tr>
<td>sound mind,</td>
<td>73</td>
</tr>
<tr>
<td>infant,</td>
<td>73</td>
</tr>
<tr>
<td>lunatic,</td>
<td>74</td>
</tr>
<tr>
<td>idiot,</td>
<td>74</td>
</tr>
<tr>
<td>encouraging infant, &amp;c., to commit,</td>
<td>74</td>
</tr>
<tr>
<td>married women coerced,</td>
<td>74</td>
</tr>
<tr>
<td>drunkenness,</td>
<td>74</td>
</tr>
<tr>
<td>misfortune or accident,</td>
<td>74</td>
</tr>
<tr>
<td>coercing slave to commit,</td>
<td>74</td>
</tr>
<tr>
<td>under threats, &amp;c.,</td>
<td>75</td>
</tr>
<tr>
<td>compounding,</td>
<td>118</td>
</tr>
<tr>
<td>abolished,</td>
<td>187</td>
</tr>
<tr>
<td>under existing laws,</td>
<td>197</td>
</tr>
<tr>
<td>on boundary lines,</td>
<td>199</td>
</tr>
<tr>
<td>death, in another county,</td>
<td>200</td>
</tr>
<tr>
<td>attempt, how indicted,</td>
<td>200</td>
</tr>
<tr>
<td>joint, how tried,</td>
<td>204</td>
</tr>
<tr>
<td>attempts, how punished,</td>
<td>202</td>
</tr>
<tr>
<td>small, how tried,</td>
<td>204</td>
</tr>
<tr>
<td>Dead Bodies,</td>
<td></td>
</tr>
<tr>
<td>disinterring,</td>
<td>156</td>
</tr>
<tr>
<td>how punished,</td>
<td>156</td>
</tr>
<tr>
<td>indictments,</td>
<td>163–164</td>
</tr>
<tr>
<td>Defence,</td>
<td></td>
</tr>
<tr>
<td>against charge of assault and battery,</td>
<td>11</td>
</tr>
<tr>
<td>who may justify,</td>
<td>11</td>
</tr>
<tr>
<td>beating another,</td>
<td>12</td>
</tr>
<tr>
<td>time given to produce witnesses,</td>
<td>12</td>
</tr>
<tr>
<td>against peace warrants,</td>
<td>22</td>
</tr>
<tr>
<td>opprobrious words,</td>
<td>201</td>
</tr>
<tr>
<td>Disorderly Houses,</td>
<td></td>
</tr>
<tr>
<td>persons keeping,</td>
<td>152</td>
</tr>
<tr>
<td>how punished,</td>
<td>152</td>
</tr>
<tr>
<td>indictment,</td>
<td>180</td>
</tr>
<tr>
<td>Duelling,</td>
<td></td>
</tr>
<tr>
<td>principals,</td>
<td>137</td>
</tr>
<tr>
<td>seconds,</td>
<td>138</td>
</tr>
<tr>
<td>requisites of indictment,</td>
<td>138</td>
</tr>
<tr>
<td>fighting, what,</td>
<td>138</td>
</tr>
<tr>
<td>officers not preventing,</td>
<td>138</td>
</tr>
<tr>
<td>proclaiming as coward,</td>
<td>138</td>
</tr>
<tr>
<td>indictments,</td>
<td>147–148</td>
</tr>
<tr>
<td>Costs,</td>
<td></td>
</tr>
<tr>
<td>party discharged may pay,</td>
<td>10</td>
</tr>
<tr>
<td>in cases of nuisance,</td>
<td>156</td>
</tr>
<tr>
<td>when paid by prosecutor,</td>
<td>192</td>
</tr>
<tr>
<td>insolvents,</td>
<td>192</td>
</tr>
<tr>
<td>County Treasurer,</td>
<td></td>
</tr>
<tr>
<td>defaulting, how punished,</td>
<td>108</td>
</tr>
<tr>
<td>indictment,</td>
<td>108</td>
</tr>
<tr>
<td>Crimes, Penalties, and Offences,</td>
<td></td>
</tr>
<tr>
<td>what constitutes,</td>
<td>73</td>
</tr>
<tr>
<td>intention,</td>
<td>73</td>
</tr>
<tr>
<td>sound mind,</td>
<td>73</td>
</tr>
<tr>
<td>infant,</td>
<td>73</td>
</tr>
<tr>
<td>lunatic,</td>
<td>73</td>
</tr>
<tr>
<td>idiot,</td>
<td>74</td>
</tr>
<tr>
<td>encouraging infant, &amp;c., to commit,</td>
<td>74</td>
</tr>
<tr>
<td>married women coerced,</td>
<td>74</td>
</tr>
<tr>
<td>drunkenness,</td>
<td>74</td>
</tr>
<tr>
<td>misfortune or accident,</td>
<td>74</td>
</tr>
<tr>
<td>coercing slave to commit,</td>
<td>74</td>
</tr>
<tr>
<td>under threats, &amp;c.,</td>
<td>75</td>
</tr>
<tr>
<td>compounding,</td>
<td>118</td>
</tr>
<tr>
<td>abolished,</td>
<td>187</td>
</tr>
<tr>
<td>under existing laws,</td>
<td>197</td>
</tr>
<tr>
<td>on boundary lines,</td>
<td>199</td>
</tr>
<tr>
<td>death, in another county,</td>
<td>200</td>
</tr>
<tr>
<td>attempt, how indicted,</td>
<td>200</td>
</tr>
<tr>
<td>joint, how tried,</td>
<td>204</td>
</tr>
<tr>
<td>attempts, how punished,</td>
<td>202</td>
</tr>
<tr>
<td>small, how tried,</td>
<td>204</td>
</tr>
<tr>
<td>Evidence,</td>
<td></td>
</tr>
<tr>
<td>to be taken down,</td>
<td>201</td>
</tr>
<tr>
<td>Extortion,</td>
<td></td>
</tr>
<tr>
<td>defined,</td>
<td>119</td>
</tr>
<tr>
<td>punishment,</td>
<td>119</td>
</tr>
<tr>
<td>indictment,</td>
<td>133</td>
</tr>
<tr>
<td>Escape,</td>
<td></td>
</tr>
<tr>
<td>from penitentiary,</td>
<td>117</td>
</tr>
<tr>
<td>voluntary,</td>
<td>117</td>
</tr>
<tr>
<td>indictment,</td>
<td>129–130</td>
</tr>
<tr>
<td>False Imprisonment,</td>
<td></td>
</tr>
<tr>
<td>defined,</td>
<td>86</td>
</tr>
<tr>
<td>punishment,</td>
<td>86</td>
</tr>
<tr>
<td>by magistrate, &amp;c.,</td>
<td>86</td>
</tr>
<tr>
<td>indictment,</td>
<td>91</td>
</tr>
<tr>
<td>False Keys, Picklocks, &amp;c.,</td>
<td></td>
</tr>
<tr>
<td>persons apprehended with,</td>
<td>154</td>
</tr>
<tr>
<td>how punished,</td>
<td>155</td>
</tr>
<tr>
<td>indictment,</td>
<td>162</td>
</tr>
<tr>
<td>Felony,</td>
<td></td>
</tr>
<tr>
<td>definition and construction,</td>
<td>8–33–75</td>
</tr>
<tr>
<td>warrant for,</td>
<td>33</td>
</tr>
<tr>
<td>in house,</td>
<td>33</td>
</tr>
<tr>
<td>public officer,</td>
<td>33</td>
</tr>
<tr>
<td>factor, merchant, &amp;c.,</td>
<td>34</td>
</tr>
<tr>
<td>Clerk, agent, &amp;c.</td>
<td>34</td>
</tr>
<tr>
<td>Person intrusted</td>
<td>34</td>
</tr>
<tr>
<td>How punished</td>
<td>34</td>
</tr>
<tr>
<td>Indictment for compounding</td>
<td>181</td>
</tr>
<tr>
<td>Fines,</td>
<td></td>
</tr>
<tr>
<td>To whom paid</td>
<td>196</td>
</tr>
<tr>
<td>When to be paid</td>
<td>196</td>
</tr>
<tr>
<td>Fire-hunting,</td>
<td></td>
</tr>
<tr>
<td>Hunting deer at night</td>
<td>68</td>
</tr>
<tr>
<td>Punishment</td>
<td>68</td>
</tr>
<tr>
<td>Form of indictment</td>
<td>72</td>
</tr>
<tr>
<td>Forcible Entry and Detainer,</td>
<td></td>
</tr>
<tr>
<td>Defined</td>
<td>139</td>
</tr>
<tr>
<td>Justices may try</td>
<td>140</td>
</tr>
<tr>
<td>How tried</td>
<td>140</td>
</tr>
<tr>
<td>Indictment</td>
<td>149–150</td>
</tr>
<tr>
<td>Forgery and Counterfeiting,</td>
<td></td>
</tr>
<tr>
<td>Public documents</td>
<td>108</td>
</tr>
<tr>
<td>Counterfeiting coin, &amp;c.</td>
<td>109</td>
</tr>
<tr>
<td>Bank notes</td>
<td>109</td>
</tr>
<tr>
<td>Altering bank note</td>
<td>110</td>
</tr>
<tr>
<td>Possessing forged notes</td>
<td>110</td>
</tr>
<tr>
<td>Forging, &amp;c., bills</td>
<td>110</td>
</tr>
<tr>
<td>Forging other writings</td>
<td>110</td>
</tr>
<tr>
<td>Public seals</td>
<td>111</td>
</tr>
<tr>
<td>Fictitious name</td>
<td>111</td>
</tr>
<tr>
<td>Personating another</td>
<td>111</td>
</tr>
<tr>
<td>False writings</td>
<td>111</td>
</tr>
<tr>
<td>Indictment</td>
<td>111</td>
</tr>
<tr>
<td>Gaming Houses and Tables,</td>
<td></td>
</tr>
<tr>
<td>Persons keeping</td>
<td>152</td>
</tr>
<tr>
<td>How punished</td>
<td>152</td>
</tr>
<tr>
<td>Keeping tables</td>
<td>153</td>
</tr>
<tr>
<td>Betting at</td>
<td>153</td>
</tr>
<tr>
<td>Players witnesses</td>
<td>153</td>
</tr>
<tr>
<td>Judges to charge grand jury</td>
<td>153</td>
</tr>
<tr>
<td>Houses may be broken open</td>
<td>153</td>
</tr>
<tr>
<td>Indictments</td>
<td>160–161</td>
</tr>
<tr>
<td>Good behavior and security of the peace,</td>
<td></td>
</tr>
<tr>
<td>Persons may be bound for</td>
<td>20–21</td>
</tr>
<tr>
<td>Who may take recognizance</td>
<td>20</td>
</tr>
<tr>
<td>Who may demand</td>
<td>20</td>
</tr>
<tr>
<td>Wives may demand</td>
<td>20</td>
</tr>
<tr>
<td>And husbands too</td>
<td>20</td>
</tr>
<tr>
<td>How married women give security</td>
<td>20</td>
</tr>
<tr>
<td>How minors give security</td>
<td>20</td>
</tr>
<tr>
<td>How discharged</td>
<td>21</td>
</tr>
<tr>
<td>Form of warrant for</td>
<td>21</td>
</tr>
</tbody>
</table>

| Gunpowder, |  |
| How to be marked | 68 |
| Forfeited | 69 |
| Hog Stealing, |  |
| How denominated | 96 |
| Punishment | 96 |
| Indictment | 105 |
| Homicide, |  |
| Murder | 81 |
| Express malice | 81 |
| Implied malice | 81 |
| Manslaughter | 81 |
| Voluntary manslaughter | 81 |
| Involuntary manslaughter | 82 |
| Justifiable | 82 |
| Killing slave or free person | 83 |
| Infanticide | 83 |
| Indictment for murder | 87 |
| Indictment for manslaughter | 88 |
| Indictment against mother | 88 |
| Horse Stealing, |  |
| How denominated | 95 |
| Offence, how charged | 95 |
| Horse, mule, or ass | 96 |
| Punishment | 96 |
| Indictment | 104 |
| Incest, |  |
| How punished | 152 |
| Indictment | 158 |
| Indecency, Public, |  |
| How punished | 152 |
| Indictment | 159 |
| Indictment, Bill of, |  |
| Definition | 44 |
| Parts | 44 |
| Commencement | 45 |
| Venue | 45 |
| The statement | 45 |
| Description of offence | 46 |
| Unnecessary averments | 46 |
| Intention | 46 |
| Certainty | 46 |
| Deodand | 46 |
| Disjunctive | 47 |
| Charge, how expressed | 47 |
| Different meanings | 47 |
| Surplusage | 47 |
INDEX.

errors, 47

certainty, 47

technical statements, 47

force and arms, 47

term "unlawfully," 47

term "knowingly," 48

certain terms must be used, 48

term "wickedly," &c., 49

conclusion, 49

several counts, 49

joinder of offences, 50

joinder of principals, 51

joinder of accessories, 52

unnecessary length, 53

when variance fatal, 53

amendments, 54

when quashed, 54

when sufficiently technical, 191

form of, 192

if several counts, 192

exceptions to, 192

copy furnished accused, 193

when triable, 194

demand of trial, 195

nolle prosequi, 195

limitation, 198

Jailer and Jail,
cruelty in, 115

assisting to escape from, 116

refusing to receive prisoner, 117

indictment, 125

Jury, Grand and Petit,
presentment must be prosecuted, 192

judges of law and fact, 194

oath of petit, 195

recommendation of, 196

may find attempt, 200

general duties of grand, 205

verdict of, in criminal cases, 218

Justice of the Peace,
conservator of the peace, 5

indulgence shown, 5

malicious abuse of their office, 5

double costs against, 5

liable to indictment for malpractice, 5

removal from office, 5

must be served with a copy of

the indictment, 5

right to appear before the grand

jury, 5

extent of punishment, 6

record made by, 6

not to be gainsaid, 6

cannot make a substitute in office, 6

J. of the S. and J. I. C. authori-

ty in keeping peace, 6

may command the help of oth-

ers, 6-7

neglecting to see the peace kept, 6

breaking peace in presence of, 6

issuing warrants, 6

power in arresting parties, 6

persons refusing to obey, punished, 7

when best to appear as a witness, 7

authorized to bail offenders, 7

J. of the S. and J. I. C. may

commit offenders, 7

for what crimes one justice may

commit, 7

for what crimes two must preside

and concur, 7-8

in what crimes they may exercise
discretion, 7

for what crimes they must bail, 8

in what cases they may discharge

the accused, 8

may commit or bail for crimes

probably committed, 8

not to exercise the functions of a

jury, 8

may bail committed offenders, 8

must not require excessive bail, 8

discretion as to cost, 10

must hear evidence on both sides, 12

time given to produce witnesses, 12

may not compound recognizances, 16

when cannot issue search-war-

rant, 37

when may issue search-warrant, 37

restoration of stolen goods, 37

must bail or commit on bench-

warrant, 42

must examine prisoner, 43

must examine witness, 43

must back warrants, 43

must certify proceedings, 44

form of certificate, 44

fees in criminal cases, 44

malpractice, 119

indictment, 134

Keep the Peace,
in what cases justice may bind, 22

in what cases individuals may

crave, 22

party may defend himself, 22
INDEX

256  

severing produce from land,  174  
indictments,  177-178-179  

Mark or Brand,  96  
marking or branding,  95  
altering,  96  
counterfeiting,  167  

Marrying without License,  157  
mARRYING PERSONS,  157  
indictment,  165  

Mayhem,  83  
what constitutes,  84  
cutting out tongue, &c.,  84  
putting out eye, &c.,  84  
slitting nose, &c.,  84  
castrating another,  84  
wounding private parts,  84  
 disabling any member,  84  
indictment,  89  

Mining,  103  
unlawful,  103  
punishment,  103  
erecting machinery,  103  
indictments,  107  

Mutiny,  120  
in the penitentiary,  120  
person exciting,  120  
indictment,  138  

Nuisances,  155  
defined,  155  
how abated,  155  
costs how paid  156  
indictment,  163  

Oaths,  195  
of petit juror,  195  
Witness before petit jury,  195  
Witness before grand jury,  201  
on inquests of insanity,  201  
of grand jury,  206  
must examine books, &c.,  207  
special presentment,  207  
bailiff to grand jury,  213  
of bailiff to special jury,  213  
of triors,  217  

Officers,  115  
detaining books, &c.,  115  
indictment,  126  

Kidnapping,  86  
defined,  86  
punishment,  87  
of child,  87  
indictment,  91  

Larceny,  95  
defined,  95  
different sorts of,  95  
simple,  95  
of documents,  97  
of fixtures,  97  
from vessels,  97  
of slave,  97  
punishment,  97  
from the person,  98  
from the house,  98  
after a trust, &c.,  99  
by merchant, factor, &c.,  99  
clerk, agent, &c.,  100  
by person intrusted, &c.,  100  
indictments,  105-106  

Legal Process,  115  
obstructing,  115  
indictment,  127  

Lewdness,  152  
how punished,  152  
keeping houses,  152  
indictment,  160  

Libel,  139  
defined,  139  
printer, witness,  139  
truth in evidence,  139  
indictment,  149  

Malicious Mischief,  172  
destroying books and papers,  172  
removing land-marks,  172  
destroying buoy, &c.,  173  
 firing stacks,  173  
 firing woods, fences,  173  
killing cattle and hogs,  173  
destroying navigation fixtures,  174  
sinking vessels,  174  
cutting down trees,  174  
destroying mile posts,  174  
how recognizance to, forfeited,  137  
disturbing the peace,  137  
offences against the peace,  140  
indictment,  146  

| Pedlers, | 168 |
| without license, | 172 |
| indictment, | |

| Penitentiary, | 197 |
| escapes, how tried, | 201 |
| imprisonment, disqualification, | 222 |
| laws relative to, | 227 |
| rules relative to, | |

| Perjury, and False Swearing, | 113 |
| definition, | 113 |
| subornation, | 114 |
| disqualification, | 114 |
| verdict obtained by, | 120 |
| witness causing death by, | 122 |
| indictment, perjury, | 122 |
| indictment, false swearing, | 122 |
| subornation of perjury, | |

| Physicians, | 60 |
| must be licensed, | 69 |
| liable to indictment, | 69 |
| what defendant must show, | 70 |
| notes, &c., made void, | 70 |
| board of, must meet, | 70 |
| licentiate's fee, | 70 |
| apothecary must have license, | 70 |
| single member may license, | 70 |
| board may elect officers, | 71 |
| books to be kept, | 71 |
| body corporate, | 71 |
| who constitute the board, | 71 |
| where the board must meet, | 71 |
| must show license, | 154 |
| spreading small-pox, | 154 |
| indictment, | 162 |

| Rape, | 35 |
| what constitutes, | 35 |
| how punished, | 35 |
| assault with intent to commit, | 35 |
| warrant for, | 35 |
| defined, | 85 |
| punishment, | 85 |
| attempt to commit, | 85 |
| indictment, | 89 |

| Polygamy, or Bigamy, | 151 |
| defined, | 151 |
| punishment, | 151 |
| indictment, | 157-158 |

| Profaneness—Immorality—Lord's Day, | 144 |
| no public sports, | 144 |
| no work, | 144 |
| justices must protect, | 144 |
| no civil process, | 145 |

| Quarantine Regulations, | 152 |
| persons violating, | 154 |
| how punished, | 162 |

| Railroads, | 175 |
| to prevent interference with, | 175 |
| persons destroying, | 175 |
| Western and Atlantic, | 175 |
| indictments, | 180 |

| Recogiscance and Bond, | 12 |
| form of, for assault and battery, | 12 |
| how forfeited, | 12-17-21 |
| mode of forfeiting, | 12 |
| judgment nisi, | 12-13 |
| form of, to prosecute, | 16 |
| what a recognizance is, | 16 |
| when reduced to writing, is a record, | 16 |
| need not be signed by a party, | 17 |
| how given by married women and minors, | 17 |
| securities dying—party dying,17-20 |
| form of, for appearance, | 17 |
| affray, recognizance to appear, | 18 |
| during the term, | 19 |
| to appear and give evidence, | 19 |
| condition of, for good behavior, | 20 |
| must be certified and sent up, | 20 |
| to keep the peace, how forfeited, | 22 |
| for security of peace, proceedings on, | 24-25 |
| of witness for the State, | 31 |
INDEX.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>to prosecute and give evidence</td>
<td>31</td>
</tr>
<tr>
<td>with security</td>
<td>35</td>
</tr>
<tr>
<td>without security</td>
<td>35</td>
</tr>
<tr>
<td>for appearance of indicted person</td>
<td>42</td>
</tr>
<tr>
<td>Religious Societies and Worship</td>
<td></td>
</tr>
<tr>
<td>deeds for church lots</td>
<td>141</td>
</tr>
<tr>
<td>trustees subject to church</td>
<td>141</td>
</tr>
<tr>
<td>worship protected</td>
<td>141</td>
</tr>
<tr>
<td>things which may not be sold</td>
<td>142</td>
</tr>
<tr>
<td>misdemeanor</td>
<td>142</td>
</tr>
<tr>
<td>warrant against disturber</td>
<td>142</td>
</tr>
<tr>
<td>Rescue</td>
<td></td>
</tr>
<tr>
<td>defined</td>
<td>116</td>
</tr>
<tr>
<td>punishment</td>
<td>116</td>
</tr>
<tr>
<td>on civil process</td>
<td>116</td>
</tr>
<tr>
<td>on criminal process</td>
<td>116</td>
</tr>
<tr>
<td>indictment</td>
<td>128</td>
</tr>
<tr>
<td>Retailing without License</td>
<td></td>
</tr>
<tr>
<td>how punished</td>
<td>156</td>
</tr>
<tr>
<td>indictment</td>
<td>165</td>
</tr>
<tr>
<td>Riot</td>
<td></td>
</tr>
<tr>
<td>defined</td>
<td>187</td>
</tr>
<tr>
<td>indictment</td>
<td>146</td>
</tr>
<tr>
<td>Robbery</td>
<td></td>
</tr>
<tr>
<td>defined</td>
<td>95</td>
</tr>
<tr>
<td>by open force, &amp;c.</td>
<td>95</td>
</tr>
<tr>
<td>by intimidation</td>
<td>95</td>
</tr>
<tr>
<td>indictment</td>
<td>104</td>
</tr>
<tr>
<td>Scire Facias</td>
<td></td>
</tr>
<tr>
<td>when clerk must issue</td>
<td>13</td>
</tr>
<tr>
<td>how directed and returned &amp;c.</td>
<td>13</td>
</tr>
<tr>
<td>how issued upon rec. for good behavior, &amp;c.</td>
<td>20</td>
</tr>
<tr>
<td>Search</td>
<td></td>
</tr>
<tr>
<td>people secure against</td>
<td>36</td>
</tr>
<tr>
<td>house may be broken open</td>
<td>36</td>
</tr>
<tr>
<td>officer excused</td>
<td>36</td>
</tr>
<tr>
<td>officer culpable</td>
<td>36</td>
</tr>
<tr>
<td>maliciously procuring</td>
<td>36</td>
</tr>
<tr>
<td>warrant, when illegal</td>
<td>36</td>
</tr>
<tr>
<td>when to be executed</td>
<td>37</td>
</tr>
<tr>
<td>form of warrant</td>
<td>37</td>
</tr>
<tr>
<td>Sentence</td>
<td></td>
</tr>
<tr>
<td>how pronounced</td>
<td>197</td>
</tr>
<tr>
<td>how executed</td>
<td>197</td>
</tr>
<tr>
<td>not executed</td>
<td>199</td>
</tr>
<tr>
<td>why not pronounced</td>
<td>219</td>
</tr>
<tr>
<td>must be recorded</td>
<td>200</td>
</tr>
<tr>
<td>Slaves, &amp;c.</td>
<td></td>
</tr>
<tr>
<td>exciting to insurrection</td>
<td>78</td>
</tr>
<tr>
<td>indictment</td>
<td>80</td>
</tr>
<tr>
<td>larceny of</td>
<td>97</td>
</tr>
<tr>
<td>inducing to run away, &amp;c.</td>
<td>97</td>
</tr>
<tr>
<td>receiving stolen goods from</td>
<td>120</td>
</tr>
<tr>
<td>harboring or concealing</td>
<td>181</td>
</tr>
<tr>
<td>carrying off</td>
<td>181</td>
</tr>
<tr>
<td>beating, wounding, &amp;c.</td>
<td>181</td>
</tr>
<tr>
<td>cruel treatment of</td>
<td>182</td>
</tr>
<tr>
<td>purchasing from</td>
<td>182</td>
</tr>
<tr>
<td>in tippling houses</td>
<td>182</td>
</tr>
<tr>
<td>delivering them goods</td>
<td>183</td>
</tr>
<tr>
<td>judges to give laws in charge</td>
<td>183</td>
</tr>
<tr>
<td>giving ticket to</td>
<td>183</td>
</tr>
<tr>
<td>teaching to read, &amp;c.</td>
<td>189</td>
</tr>
<tr>
<td>in printing offices</td>
<td>188</td>
</tr>
<tr>
<td>pedlers trading with</td>
<td>184</td>
</tr>
<tr>
<td>not to have stationery</td>
<td>184</td>
</tr>
<tr>
<td>not to hire own time</td>
<td>184</td>
</tr>
<tr>
<td>gambling with</td>
<td>185</td>
</tr>
<tr>
<td>induced to commit crime</td>
<td>185</td>
</tr>
<tr>
<td>how to be tried</td>
<td>186</td>
</tr>
<tr>
<td>indictments, 187-188-189-190-191</td>
<td></td>
</tr>
<tr>
<td>Sodomy</td>
<td></td>
</tr>
<tr>
<td>defined</td>
<td>85</td>
</tr>
<tr>
<td>punishment</td>
<td>85</td>
</tr>
<tr>
<td>attempt to commit</td>
<td>85</td>
</tr>
<tr>
<td>indictment</td>
<td>89</td>
</tr>
<tr>
<td>Stabbing</td>
<td></td>
</tr>
<tr>
<td>punishment</td>
<td>87</td>
</tr>
<tr>
<td>in own defence</td>
<td>87</td>
</tr>
<tr>
<td>indictment</td>
<td>92</td>
</tr>
<tr>
<td>Stealing</td>
<td></td>
</tr>
<tr>
<td>public documents</td>
<td>114</td>
</tr>
<tr>
<td>indictment</td>
<td>125</td>
</tr>
<tr>
<td>Stolen Goods</td>
<td></td>
</tr>
<tr>
<td>receiving</td>
<td>117</td>
</tr>
<tr>
<td>persons purchasing</td>
<td>117</td>
</tr>
<tr>
<td>from negro</td>
<td>120</td>
</tr>
<tr>
<td>Supersedes</td>
<td></td>
</tr>
<tr>
<td>when and how issued</td>
<td>25</td>
</tr>
<tr>
<td>form of</td>
<td>25</td>
</tr>
<tr>
<td>Threatening Letter</td>
<td></td>
</tr>
<tr>
<td>punishment</td>
<td>119</td>
</tr>
</tbody>
</table>
TIPPLING HOUSES,
keeping open on Sunday, 152
indictment, 159

TREASON,
in the first degree, 78
in the second degree, 78
indictment, 79

UNWHOLESOme PROVISIONS,
butcher selling, 153
baker or brewer selling, 154
indictments, 161

VAGRANT AND VAGRANCY,
what constitutes, 21-38
how indicted and punished, 21
may be discharged upon giving bond, 21
person having implements, 38
from other States, 38
form of warrant, 39
who declared to be, 154
how indicted, 154
indictment, 162

VOTING ILLEGALLY, &c.,
illegal voting, 157
more than once, 157
buying or selling vote, 157
indictments, 165

WARRANT,
who may issue, 8

parties applying for must make oath, 9
requisites of a, 9
general, illegal, 9
officer must execute it, 9
must be backed, 9
how styled and tested, 10
must contain the cause upon which it issued, 10
excepted cases, 10
as to the form of it, 10
must not be left in blank, 10
form of for assault and battery, 11
return of constable, 11
form of for affray, 18
for good behavior, 21
keeping the peace, 28
for burglary, 27
for cheating, 29
for a witness, 31
for escape, 32
for felony, 33
for rape, 35
form of search warrant, 37
form of for vagrancy, 39
form of bench, 41
must be backed, 43
form of backing, 48
against disturber of worship, 142

WITNESS,
person personating, 168
indictment, 171
list furnished accused, 193
oath in criminal cases, 195
oath before grand jury, 195-213
convicts competent, 200
questions on voir dire, 200