

“pairing the several highways and bridges” within their boundaries. They alone can appoint surveyors to expend it; and they alone are liable for injuries received through “insufficiency or want of repairs of any highways or bridges in any town or parish in this state.”

State  
vs.  
Campton.

Under this statute, we are aware of no construction or usage, devolving the repairs of either bridges or roads upon counties; and it would be utterly impossible to define, without an express statute, when a bridge on account of its expense, its length, or its origin, should now be chargeable to the county or a town.

In some towns, intersected by large and numerous streams, the maintenance of bridges is very burthensome; but having been once erected and long used with utility and without toll to the public, the towns cannot be relieved from their repair except by the intervention of the legislature.

*Judgment on the verdict.*



LYDIA DERBY vs. GEORGE W. PHELPS.

A contract to marry at the end of five years is within that clause of the statute to prevent frauds and perjuries, which relates to agreements not to be performed within the space of one year from the time of making them.

This was an action of assumpsit on a promise of marriage. At the trial here, under the general issue, and a plea of the statute of limitations, the plaintiff proposed to prove, that in A. D. 1811, the defendant, being about to commence the study of his profession, desired the plaintiff to receive his addresses as a suitor, and at the end of about five years, when he expected to be settled in business, to marry him; and that, in pursuance of this offer, his addresses were received, and continued till the defendant's marriage with another lady, in A. D. 1820.

This evidence was objected to, as within the statute of frauds; but having been admitted, a verdict was found for the plaintiff, subject to future consideration on the validity of the above objection.

Derby  
vs.  
Phelps.

*S. Wilcox and R. Fletcher*, for plaintiff.

*Phelps, Bell, Chamberlain and Bartlett*, for the defendant.

WOODBURY, J. Our statute "to prevent frauds and perjuries," provides, among other things, "that no action shall be brought whereby to charge any person upon an agreement made upon consideration of marriage, or upon any agreement, that is not to be performed within the space of one year from the time of making it, unless such promise or agreement" "be in writing," &c.(1)

(1) 1 N. H. Laws 178.

The defendant cannot avail himself of the first clause above cited; because, though once decided in *Philpott vs.*

(2) 3 Lev. 65. *Wallet*, (2) that a contract to marry must in all cases be in writing; yet, that decision has since been overruled in *Cork*

(3) 1 Stra. 34. *vs. Baker*, (3) and in *Harrison vs. Cage and wife*.—1 *Ld. Ray.* 386.—*Salk.* 24.—5 *Mod.* 411.—*Bull. N. P.* 280.—2 *Equ. Ca. Ab.* 248.—*Skin.* 196.

This clause of the statute is now held to reach not mutual promises to marry, but only promises for other things made in consideration of marriage. *Bac. Ab.* "Agreement," C. 3.

But under the other clause of the statute, we apprehend the objection to the evidence must be adjudged fatal. This was an agreement, which by the terms of it was not to be performed till the expiration of about five years; and hence comes within the very teeth of the statute. Had the tenor of the agreement been, that the contract should be fulfilled on a certain event, which might or might not have happened within a year, but which in fact did not happen till after a year, the agreement would not have been within the statute. 1 *Salk.* 280.—*Skin.* 326.—*Stra.* 34.—*Burr.* 1278.—1 *Bl. Rep.* 353.—1 *Ld. Ray.* 317.—*Com. Rep.* 49.—*Holt* 326.—3 *Salk.* 9.—10 *John. Rep.* 244.

But such was not the tenor of it. Nor can this description of contracts be taken out of the statute by the circumstance, that when the original statute of frauds passed under Charles the II., these contracts were not sued at law, but were merely the subject of proceedings to compel a performance of them in the ecclesiastical courts. For numerous kinds of contracts, not then in use and not then prosecuted in the

common law courts, have since had birth under the new exigencies and improvements of society, and are all brought to the test of the general provisions of the statute.

In respect to a part performance of this contract, which doubtless, if proved, might cure the absence of any writing,<sup>(1)</sup> the case as saved presents no question of this kind, and, according to our recollection, none such was raised at the trial.

Should this be relied on hereafter as an answer to the statute, it will then be early enough to decide what ought to be considered a part performance of a contract, on whose rites and ceremonies, and their respective importance in performing a marriage, so much diversity of opinion exists. See *Londonderry vs. Chester, ante*.

*New trial.*

Derby  
vs.  
Phelps.

(1) Bac. Ab.  
"Agreement,"  
C., and Auths.  
there cited.

STRAFFORD, FEBRUARY TERM, 1823.

THE TOWN OF MEREDITH vs. ALEXANDER P. LADD.

The office of constable is a public elective office, and a sale of it by the town is contrary to sound policy.  
A note given to secure the consideration, agreed to be paid for said office, is void.

This was assumpsit on a promissory note, dated April 9th, 1817, for \$13,50. The parties agreed, that the defendant was chosen constable for the town of Meredith, in March 1815, in consideration of his agreeing to pay said town for the office, the sum of \$13,50, and that the note now in suit, was given to secure that consideration. The plaintiffs were to become nonsuit, or the defendant defaulted, according to the opinion of the court on the above facts.

*Orne*, counsel for the plaintiffs.

*Everett*, for the defendant.

WOODBURY, J. The sale of any elective office of a public nature is contrary to sound policy. See statutes 5th & 6th Edward 6th & 20th Edward 3d & 4th Henry 4th: *Bac. Ab.* "Office" *F. Noy*, 102.—*Moor*, 731.—*Hawk. P. C.* 67 *ch.*