

cution. It is in his hands when he gives notice ; and also on the return day. There is no reason why we should suspect, that it might have been out of his hands in the intermediate time. Although it would have been better, if the officer had returned the fact expressly, that he kept the execution ; still we are, on the whole, of opinion, that the return is sufficient.

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Judgment for the plaintiff.



SAMUEL ANDERSON vs. EDMUND WALKER.

In a prosecution on the statute of 1820, *cap. 36* to recover a fine from a private, for non-attendance at an annual training, the complainant is liable to cost, if he fail to sustain the prosecution.

In this case a complaint was filed with a justice of the peace, in pursuance of the statute of 1820, *cap. 36*, against *Walker*, for non-attendance at an annual training. Upon the trial before the justice, judgment was rendered in favor of *Walker* ; from which judgment *Anderson* appealed to this court, and, after having entered his appeal here, became nonsuit ; upon which the appellee moved for costs.

J. C. Chamberlain, for the appellant.

H. Hubbard, for the appellee.

By the court. In this case the appellee has moved the court to allow him costs ; and the question whether his motion ought, or ought not, to prevail, must be determined by the statute of 1820, *cap. 36, sec. 50 and 51*. It is very clear from the provisions in those sections, that it was the intention of the legislature, that the complainant should recover costs. But nothing is said with respect to the costs of the respondent. We should, therefore, conclude, that the intention of the legislature was, that the respondent should have his costs, as in other cases. And it is a circumstance decisively in favor of such conclusion, that the statute of 1819, *cap. 1, sec. 49*, provided, that no clerk should be liable to pay any defendant cost, in any case, in which the commanding officer of

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the company endorsed his approval on the information of such clerk ; and this provision is wholly omitted in the statute of 1820, which is a revision of all the statutes on the subject.

Costs allowed.

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THE STATE vs. SAMUEL G. BISHOP.

Writs of *certiorari* are not limited by the 7th section of the statute of June 30, 1825, entitled "an act for the limitation of actions and preventing vexatious suits," that section being intended to limit writs of error only.

This was a writ of *certiorari*, issued on motion of the respondent, commanding two justices of the peace for this county to certify their doings upon a certain process of forcible entry and detainer, had before them on the complaint of one *Willard* against the respondent, in the year 1817.

And now the court was moved to quash the writ of *certiorari*, as having issued improvidentially, after it was barred by the statute of June 16, 1791. 1 *N. H. Laws*, 165.

By the court. That statute is now repealed by the act of June 30, 1825, (3 *N. H. Laws*, 65,) and whether the seventh section of the latter act was intended to embrace writs, which had issued before its passage, it is unnecessary to inquire ; because we are of opinion, that writs of *certiorari* are not limited by that section, which applies only to writs of error. A writ of error issues as a matter of course, without any application to the court, and is therefore properly limited ; but a writ of *certiorari* is never suffered to issue, without an order of the court, and may always be denied, when the application is made after an unreasonable time.— There is not the same necessity, therefore, for limiting a