

CASES

ARGUED AND DETERMINED

IN THE

SUPERIOR COURT OF JUDICATURE.

FOR THE

COUNTY OF COOS, MAY TERM,

A. D. 1831.

S. G. BISHOP *versus* J. MARSHALL.

No person, except a justice of the peace or a minister of the gospel, can incur the penalty prescribed in the third section of the act regulating marriages. And if, in an action founded upon that section, it is not averred in the declaration that the defendant was a justice of the peace or a minister, the declaration must be adjudged defective in substance.

DEBT. "For that the defendant, at Columbia, in said county, on the 29th November, 1825, joined in marriage S. J. Brown, then in Stratford, in said county, and Caroline Bishop, then of Columbia, in said county, without certificate under the hand of the respective clerks of the towns, in which they then resided, of publishment of their intentions to be joined in marriage, &c. contrary to the act, &c. whereby, &c."

The cause was tried upon the general issue, at November term, 1828, and a verdict returned in favor of the defendant, upon which judgment was rendered.

The cause was again tried upon review, at May term, 1830, and a verdict returned in favor of the plaintiff.

Bishop
v.
Marshall.

The defendant moved in arrest of judgment, and objected to the declaration, that there was no averment that the defendant was a justice of the peace, or a minister.

Bell, for the plaintiff.

Sheafe, for the defendant.

By the court. This action is founded upon the third section of the statute entitled "an act regulating marriages and for the registering of marriages, births and burials," which enacts "that if any justice of the peace or minister, shall join any persons in marriage without a certificate, &c. they shall severally forfeit and pay the sum of twenty pounds, to the use of any parent, master, guardian, or next friend to either of the parties so married who may sue, &c."

It is very clear, that justices of the peace and ministers alone, can incur the penalty prescribed in this clause of the statute. If any person, not a justice of the peace, nor a minister, joins any persons in marriage, he is liable by the same section in the statute to be punished by indictment.

The declaration in this case is defective in substance, and the judgment must be arrested.

Judgment arrested.

E. LYMAN *versus* JOSEPH LOOMIS.

In a deed of conveyance, if the description be sufficient to ascertain the land intended to be conveyed, the land will pass, although it do not agree with some of the particulars in the description.

COVENANT BROKEN. The plaintiff alleged in his declaration, that the defendant, by deed dated May 24, 1822,