

STATE v. SHERBURNE.

58	159
74	53

An indictment upon ss. 5, 6, 7, or 8, c. 259, Gen. St., is bad, if it does not show which one of those sections the defendant is accused of violating.

INDICTMENT, for obstructing a sheriff in the service of a *capias*. The court reserved the question of the sufficiency of the indictment.

Greene, solicitor, for the state.

Mugridge, for the defendant.

FOSTER, J. The indictment is not sufficient, upon s. 5, 6, or 7, c. 259, Gen. St., because it does not allege that the officer was engaged in the service of process in a civil case, or in any criminal case described in either of those sections. It is not sufficient, upon s. 8, because it does not allege that the officer was in the discharge of any duty of his office "in any case not included in the preceding sections."

Case discharged.

STANLEY, J., did not sit.

DAVIS v. FOGG & Tr., CAMPBELL & HANSCOM, Claimants.

58b	159
68	414
68	513

A claimant of funds in the hands of a trustee, permitted by an interlocutory order of court to appear for the purpose of contesting the plaintiff's right to the funds, will not be allowed to defeat the plaintiff's prior right if his own title be shown to be invalid.

FOREIGN ATTACHMENT. Issue between the plaintiff and the claimants of funds in the hands of the trustee. The plaintiff's writ, dated Oct. 18, 1874, and served on the trustee Oct. 20, 1874, was entered in court at the April term, 1875, where it was continued from term to term, until the Oct. term, 1876. At the April term, 1875, leave was granted by the court to take the trustee's deposition in sixty days. Similar leave was granted at the Oct. term, 1875. At the April term, 1876, the deposition not having been taken, upon motion of the trustee's counsel the trustee was discharged, but subsequently, at the same term, this order was rescinded, upon the plaintiff's motion and with the trustee's consent, and further leave was given to take the trustee's deposition; and the claimants were then admitted to claim the funds in the trustee's hands. In support of their claim, they rely upon the following facts: Subsequent to the commencement of this